

# Board Book

State Bar of Georgia  
Board of Governors  
Agenda Book



2016 Midyear Meeting  
Buford, Ga.



# State Bar of Georgia

260<sup>th</sup> BOARD OF GOVERNORS MEETING

Saturday, January 9, 2016

9:00 a.m.–12:00 p.m.

Legacy Lodge at Lake Lanier Islands  
7000 Lanier Islands Parkway  
Buford, Georgia

*Dress: Business Casual*

## AGENDA

<u>Topics</u>	<u>Presenter</u>	<u>Page No.</u>
<b>1) ADMINISTRATION</b>		
a) Welcome and Call to Order .....	Bob Kauffman President	1-8
b) Pledge of Allegiance and Invocation .....	Kent Altom	
c) Recognition of Former Presidents, Judges And Special Guests .....	Bob Kauffman	
d) Roll Call (by signature) .....	Buck Rogers, Secretary	9-15
e) Future Meetings Schedule .....	Bob Kauffman	16-17
f) Presentation of Resolution to Mike Cranford.....	Bob Kauffman	18
<b>2) MIDYEAR MEMBERS' MEETING ACTION ITEMS</b> - <i>All active State Bar of Georgia members are invited to attend and vote in the Midyear Members' Meeting.</i>		
a) Amendment to Bylaws Article VII, Nominations and Elections .....	Bill NeSmith	19-23

***Plenary session is concluded, and Board of Governors meeting commences.***

### 3) LEGISLATION

a) Advisory Committee on Legislation (ACL) .....	Marc Howard, Chair .....	24-26
December 8, 2015 Meeting	Thomas Worthy	

#### New Legislative Proposals (action)

(1) Funding Request for the Georgia Department of Law.....		27-31
• Georgia Department of Law		
(2) Settlement Funds Proposal .....		32-35
• Access to Justice Committee		
(3) Funding Request for the Georgia Resource Center .....		36-42
• Georgia Resource Center		
(4) Nonprofit Corporation Code Amendments .....		43-50
• Nonprofit Law Section		
(5) E-Discovery Legislation.....		51-83
• Electronically Stored Information Committee		
(6) Waiver of Counsel in Juvenile Proceedings Proposal .....		84-99
• Child Protection and Advocacy Section		
(7) Juvenile Court Practice Proposal .....		100-101
• Child Protection and Advocacy Section		
(8) Benefit Corporation Proposal .....		102-116
• Business Law Section		
(9) Clarification of Licensure Requirements Proposal.....		117-120
• Real Property Law Section		
(10) Lis Pendens Statute Amendments.....		121-124
• Real Property Law Section		
(11) Good Funds Statute Amendments .....		125-127
• Real Property Law Section		
• Please note that this proposal was passed unanimously by the Executive Committee on 12/17/2015, rather than the Advisory Committee on Legislation		

## 4) ACTION

- a) Minutes of the 259<sup>th</sup> Meeting of the .....Buck Rogers ..... 128-134  
Board of Governors on October 24, 2015
- b) Proposed Rules Changes Bylaws Amendments .....Bill NeSmith ..... 135-145
- Rule 4-227 Petitions for voluntary discipline
  - Rule 1-203 Practice by active members; nonresidents
  - Rule 4.4 Respect for rights of third persons
  - Rule 5.3 Responsibilities regarding nonlawyer assistants
  - Rule 4-210 Powers and duties of special masters
  - Rule 8-106 Hours and Accreditation
- c) Nominations of State Bar Officers.....Bob Kauffman  
(nominations = 5 minutes, seconds = 2 minutes)  
1 year terms 2016 – 2017
- Office of Treasurer
  - Office of Secretary
  - Office of President-elect
  - Office of President
- d) Nominations of ABA Delegates .....Bob Kauffman
- Post 1 (currently held by Robert Rothman)
  - Post 3 (currently held by Hulett Askew)
  - Post 7 (currently held by Gerald Edenfield)
- e) Approval of Strategic Plan.....Bob Kauffman

## 5) INFORMATIONAL REPORTS

- a) President's Report .....Bob Kauffman
- b) Treasurer's Report .....Pat O'Connor ..... 146-151  
Treasurer
- c) Young Lawyers Division.....Jack Long..... 152-164  
YLD President

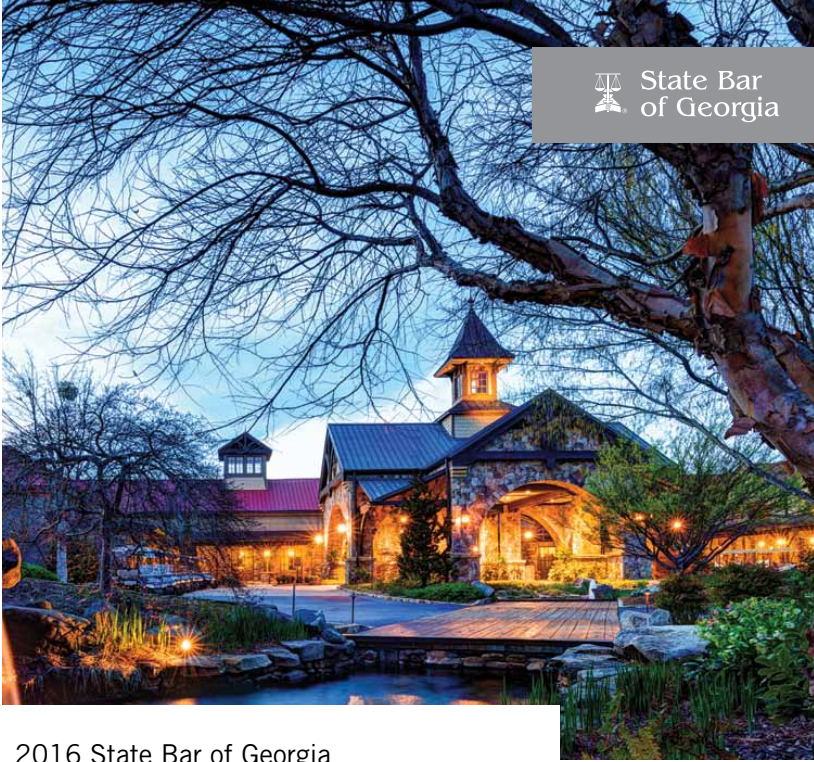
d) Activities in the Circuits.....	Nicki Vaughan Northeastern Circuit The Honorable Philip Smith Bell-Forsyth Judicial Circuit
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## 6) WRITTEN REPORTS

a) Executive Committee Minutes	
(1) September 11, 2015 .....	165-170
(2) October 2, 2015.....	171-172
(3) November 13, 2015.....	173-176
b) Office of the General Counsel Report .....	177-180
c) Satellite Office Usage Report (Coastal Georgia and South Georgia offices)...	181-183
d) Military Legal Assistance Program .....	184-193
e) Consumer Assistance Program.....	194-195
f) Law Practice Management Program .....	196-199
g) Chief Justice’s Commission on Professionalism.....	200-201
h) Media Report.....	202-205

## 7) CLOSING

a) Old Business.....	Bob Kauffman
b) New Business.....	Bob Kauffman
c) Questions/Answers; Comments/Suggestions .....	Board of Governors Officers Executive Committee Executive Director General Counsel
d) Adjournment .....	Bob Kauffman



 State Bar  
of Georgia

2016 State Bar of Georgia

# MIDYEAR MEETING

7-9 JANUARY 2016

Legacy Lodge at Lake Lanier Islands, Buford, Ga.


Hotel Deadline is Dec. 11, 2015  
Final registration ends Dec. 18, 2015

# SCHEDULE

## THURSDAY, JAN. 7




- 8 a.m. – 6:30 p.m.** Registration | Table Top displays
- 8 a.m. – 6:30 p.m.** YLD Cell Phone/Suit Drive
- 9 a.m. – 12 p.m.** CLE—Aging in the Law: Navigating Beyond Today's Practice
- 11:30 a.m. – 1 p.m.** Taxation Law Section Lunch—Taxation of Settlement Payments: Structuring the Tax Results to the Recipient and the Payer in Employment and Commercial Litigation
- 2 – 5 p.m.** CLE—Access to Justice: Making Unbundled Legal Services a Part of Your Business Plan
- 6:30 – 9 p.m.** Past Presidents' Dinner *(by invitation only)*

## FRIDAY, JAN. 8

- 7 a.m. – 7 p.m.** Registration | Table Top displays
- 7 a.m. – 7 p.m.** YLD Cell Phone/Suit Drive
- 8 – 9 a.m.** Past Presidents' Breakfast
- 9 a.m. – 12 p.m.** CLE—Georgia's Journey to Marriage Equality: The Importance of Diversity and Inclusion in the Profession
- 10 a.m. – 3 p.m.** Investigative Panel
- 10:30 a.m. – 12:30 p.m.** Joint Meeting of the Executive Committees of the Military Legal Assistance Program Committee and the Military/Veterans Law Section
- 12 – 3 p.m.** YLD Leadership Academy
- 1 – 4 p.m.** Review Panel
- 2 – 5 p.m.** CLE—Are You Fit to Practice? 
- 2 – 5 p.m.** Disciplinary Rules and Procedures Committee
- 3 – 3:30 p.m.** YLD Nominating Committee

- 3 – 4 p.m.** Law Practice Management Committee
- 3:30 – 5 p.m.** YLD General Session
- 4 – 5 p.m.** Member Benefits Committee
- 6:30 – 9 p.m.** Board of Governors Dinner

## SATURDAY, JAN. 9

- 7 – 8 a.m.** Fitness Trail Run/Walk 
- 7 – 8 a.m.** Yoga Class 
- 7 – 8 a.m.** Zumba Class 
- 8 a.m. – 12 p.m.** Registration | Table Top displays
- 8 a.m. – 12 p.m.** YLD Cell Phone/Suit Drive
- 9 a.m. – 12 p.m.** Board of Governors Meeting
- 10 a.m. – 12 p.m.** YLD Leadership Academy



## HOTEL ACCOMMODATIONS

Legacy Lodge at Lake Lanier Islands  
7000 Lanier Island Parkway  
Buford, GA 30518  
770-945-8787

The Legacy Lodge at Lake Lanier Islands is our host hotel, offering a discounted room rate of \$135 single/double per night plus resort fees and taxes. To make reservations and receive our special rate, call Legacy Lodge at 770-945-8787 and ask for the State Bar of Georgia's Midyear Meeting.

Reservations must be made by Friday, Dec. 11, as rooms will be on a space and rate availability basis after this date.

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

 Indicates an event specific to the State Bar's wellness initiative.

CLE | THURSDAY

## AGING IN THE LAW: NAVIGATING BEYOND TODAY'S PRACTICE

9 A.M. – 12 P.M. | 3 CLE hours

Aging in our esteemed profession has its rewards, opportunities and challenges. This CLE program is designed to cover many angles and leave attendees—both new and those more seasoned—armed with ideas and practical tools to develop effective business continuity, transition, second-season and practice departure plans. Learn the latest concerns with generational connecting, practice succession, ethical practice for seasoned lawyers, and best practices for moving forward in today's "new normal" and beyond.

### TOPICS & SPEAKERS

#### Welcome and Program Overview

Natalie R. Kelly, *Director, Law Practice Management, State Bar of Georgia, Atlanta*

#### Managing the New Normal: Tips for New and Seasoned Lawyers

Natalie R. Kelly

#### Generational Connecting: What You Need to Know

Avarita L. Hanson, *Executive Director, Chief Justice's Commission on Professionalism, Atlanta*

#### Ethics, Senior Lawyers and Succession in Practice

Panelists: W. Wheeler Bryan, *Senior Lawyers Section, State Bar of Georgia, Attorney at Law, Atlanta*; V. Sharon "Sharri" Edenfield, *Immediate Past President, Young Lawyers Division, State Bar of Georgia, Edenfield, Cox, Bruce, & Classens, P.C., Statesboro*; William P. Smith, *Ethics Counsel, Office of the General Counsel, State Bar of Georgia, Atlanta*

**Program Chair:** Natalie R. Kelly

**Co-Sponsors:** Law Practice Management Program; Office of the General Counsel; Senior Lawyers Section; Young Lawyers Division; Chief Justice's Commission on Professionalism





CLE | THURSDAY

## ACCESS TO JUSTICE: MAKING UNBUNDLED LEGAL SERVICES A PART OF YOUR BUSINESS PLAN

2 - 5 P.M. | 3 CLE hours, including 1 Professionalism


The State Bar's Access to Justice Committee and Pro Bono Project present a CLE addressing limited scope services for both pro bono and low bono/reduced fee "gap" populations. Limited scope representation, or "unbundled" legal services, is an alternative to the traditional full-service model where an attorney can limit the attorney-client relationship to a specific task such as document assistance or procedural advice. In addition to adding to your business bottom line, unbundled legal services are proving to be a highly successful way of providing access to justice for many jurisdictions, and this seminar will explore the initiative in Georgia.

### SPEAKERS

Sarah C. Cipperly, *Cipperly Law Group LLC, Marietta*; Shelia Manely, *JusticeCafé, The Manely Firm, P.C., Marietta*; William J. Howe III, *Gevurtz Menashe, Portland, OR*; Darrell L. Sutton, *Sutton Law Group, LLC, Marietta*; David B. Purvis, *JusticeCafé, The Manely Firm, P.C., Marietta*; Paula J. Frederick, *General Counsel, Office of the General Counsel, State Bar of Georgia, Atlanta*

**Program Chair:** Michael L. Monahan,  
*Director, Pro Bono Project, State Bar of Georgia, Atlanta*

**Co-Sponsors:** Access to Justice Committee; Pro Bono Project

 Indicates an event specific to the State Bar's wellness initiative.



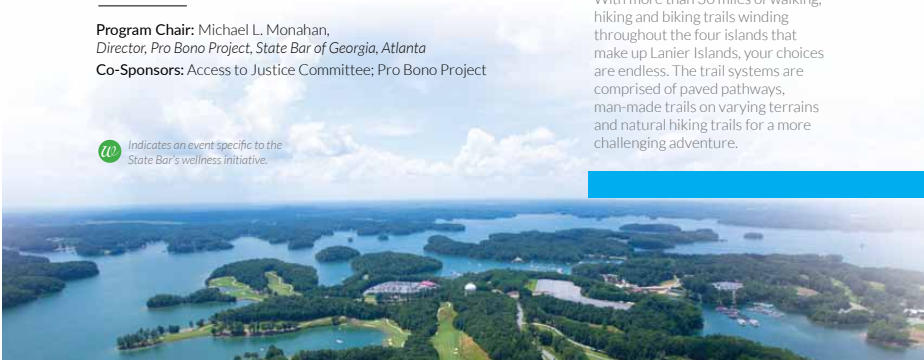
## WELLNESS AT LANIER ISLANDS

### FITNESS CENTER AT LEGACY LODGE

Featuring True equipment, the fitness center at Legacy Lodge offers complimentary use of treadmills, bikes and elliptical machines. Yoga mats, bands and physio balls are also available for individual use. The TRX Suspension System is available for individual use or for group classes with advanced reservation.

### WALKING, HIKING AND BIKING THROUGHOUT THE ISLANDS

With more than 30 miles of walking, hiking and biking trails winding throughout the four islands that make up Lanier Islands, your choices are endless. The trail systems are comprised of paved pathways, man-made trails on varying terrains and natural hiking trails for a more challenging adventure.



## GEORGIA'S JOURNEY TO MARRIAGE EQUALITY: THE IMPORTANCE OF DIVERSITY AND INCLUSION IN THE PROFESSION

9 A.M. - 12 P.M. | 3 CLE hours, including 1 Professionalism

Join YLD's Inclusion in the Profession Committee for a seminar. The CLE will focus on the Supreme Court's recent decision regarding marriage equality, Georgia's legal history on this issue and how the decision affects the legal profession going forward.

### TOPICS & SPEAKERS:

#### Welcome and Program Overview

John R. B. "Jack" Long, YLD President, *John R. B. Long, P.C., Augusta*; ShaMiracle S. Johnson, *Liberty Mutual Group, Atlanta*

#### Introduction of Panelists

Amanda N. Heath, *The Law Offices of Tanya D. Jeffords & Associates, P.C., Augusta*; William T. Davis, *Kitchens New Cleghorn, LLC, Atlanta*

#### The Supreme Court's Recent Decision Regarding Marriage Equality: Georgia's Legal History on this Issue and How the Decision Affects the Legal Profession Going Forward

Moderators: William T. Davis and ShaMiracle S. Johnson  
Panelists: Robin J. Shahar, *Chief Counsel, City of Atlanta Department of Law, Mayor's Advisor on LGBT Issues, Atlanta*; Jeffery M. Cleghorn, *Kitchens New Cleghorn, LLC, Atlanta*

#### Introduction of Speaker

Titus T. Nichols, *Assistant District Attorney, Augusta Judicial Circuit, Augusta*

#### The Importance of Diversity and Inclusion in the Profession

Hon. Glenda A. Hatchett, *The Hatchett Firm, PC, Atlanta*

**Program Co-Chairs:** ShaMiracle S. Johnson; Titus T. Nichols; Amanda N. Heath

**Sponsor:** YLD Inclusion in the Profession Committee




## EXHIBITORS\*

- A-Action Bail Bonds
- Attorney Protective
- Business Appraisal Group, LLC
- Daily Report
- Legal Technology Services
- MLQ Attorney Services
- PeachCourt
- Pope Reporting & Video, LLC
- State Bank Trust

\* at time of printing

## ARE YOU FIT TO PRACTICE?

2 - 5 P.M. |  3 CLE hours, including 1 Professionalism

Explore practical methods to combat professional stress as a lawyer and be resilient in your law practice. It is no secret that lawyers have the highest levels of stress, dissatisfaction, burnout, divorce, preventable disease, suicide and substance abuse of any profession. Hear about initiatives to help lawyers regain optimal mental, physical and emotional well-being and find that ever elusive work-life balance. This seminar will also address practical alternatives and corrective strategies to improve your health, lower your stress levels and help you address professional burnout. You will also hear about State Bar President Bob Kauffman's creation of a Lawyer Wellness Task Force, headed by Executive Committee Member Ken Hodges. The Task Force is developing a Wellness Program for consideration by the State Bar's Board of Governors.

### **SPEAKER:**


Dan A. Atkinson, *Vice President, WellWorks For You, West Chester, Pa.*

**Program Chair:** George W. Martin Jr., *M.Div., MA, President and CEO, CorpCare Associates, Inc., Atlanta*

**Co-Sponsor:** State Bar of Georgia Lawyer Assistance Program



## SPECIAL EVENTS

 *Business attire is appropriate for all meetings and events.*

### **YLD COMMUNITY SERVICE PROJECT: CELL PHONE/SUIT DRIVE** *Jan. 7 - 9 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. 8 | 6:30 - 9 p.m.*

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

### **WINTER ADVENTURE**

Lake Lanier Islands is debuting a brand new winter adventure, having transformed the popular water park attractions into snow play zones, one-man bobsled tracks and other frosty attractions. Attendees of the State Bar of Georgia Midyear Meeting will be able to purchase tickets at the gate for a discounted ticket price of \$22. Be sure to tell the attendant at the gate that you are with the State Bar of Georgia. For more information about Winter Adventure, visit the website (<http://www.lanierislands.com/winteradventure>).

### **RUN/WALK/YOGA/ZUMBA** *Saturday, Jan. 9 | 7 - 8 a.m.*

Supporting President Bob Kauffman's wellness initiative, we are pleased to offer meeting attendees the opportunity to participate in a fitness trail run/walk, a yoga class or a zumba class Saturday morning, prior to the Board Meeting. Those who would like to run/walk, meet in the hotel lobby. The yoga and zumba classes will be held in the fitness center and taught by staff instructors. There is no charge to meeting attendees. Mark which activity that you plan to attend on the registration form.

# 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](http://www.gabar.org). Final registration deadline is Friday, Dec. 18, 2015.

## 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. 18, 2015. The State Bar of Georgia will accept only written requests for refund of registration fees. No refunds will be made after Dec. 18.

## 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, 2016 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. Verbal registrations will not be accepted.

 Indicates an event specific to the State Bar's wellness initiative.

Before Dec. 18    After Dec. 18

## Board Functions

- BOG Dinner .....\$85    \$105
- BOG Meeting ..... N/C    N/C

## CLE Programs

- Aging in the Law .....\$95    \$115
- Access to Justice.....\$95    \$115
- Georgia's Journey to Marriage Equality.....\$95    \$115
- Are You Fit to Practice?.....\$95    \$115

## Section Event

- Taxation Law Lunch.....N/C    \$20

## YLD Events

- YLD General Session.....N/C    N/C

## Recreation

- Fitness Trail Run/Walk.....N/C    N/C
- Yoga Class.....N/C    N/C
- Zumba Class.....N/C    N/C

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 \_\_\_\_\_

 State Bar of Georgia



# State Bar of Georgia

2016 Midyear Meeting  
104 Marietta St. NW, Suite 100  
Atlanta, GA 30303-2743

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Atlanta, GA

Look for the  for opportunities to include wellness in your meeting experience.

## SPONSORS & REGISTRATION

Special thanks to the following corporate sponsors for their support of the State Bar of Georgia!



### REGISTRATION

Final deadline is Friday, Dec. 18, 2015.

All participants must pre-register using the registration form. You may also register online at [www.gabar.org](http://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. 18, at which time pre-registration will close; onsite registration will open at the Legacy Lodge on Thursday, Jan. 7, 2016.

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

### Board of Governors Attendance Record

	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14	1-15	4-15	6-15(Fri)	6-15(Sat)	10-15
	Oconee	HH	HH	Jekyll	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
Virgil L. Adams	n/a	n/a	n/a	n/a	n/a	n/a	n/a	.	.	.	e	.	.	.
Sarah Brown Akins	.	.	.	e	.	.	.	.	.	.	e	.	.	.
Mark W. Alexander	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Kent Edward Altom	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	.	.
Anthony B. Askew	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Eric A. Ballinger	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Donna G. Barwick	e	e	e	e	.	e	e	.	.	.	.	e	e	.
Joshua C. Bell	.	.	.	.	.	.	.	.	.	.	.	.	.	e
Kenneth R. Bernard, Jr	e	.	.	.	.	.	e	e	.	.	e	.	.	.
Diane E. Bessen	.	.	.	e	.	e	.	.	.	.	e	e	.	.
Sherry Boston	.	.	.	e	.	e	.	.	e	.	.	.	.	e
Jeb T. Branham	n/a	n/a	.	.	.	.	.	.	.	.	.	e	e	.
Thomas Neal Brunt	.	.	.	.	.	.	.	.	.	.	.	.	.	e
Thomas R. Burnside III	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Stephanie D. Burton	.	.	.	e	.	.	.	.	e	.	e	.	.	.
JaDawyna C. Butler	n/a	n/a	.	.	.	.	.	.	.	.	.	.	.	e
S. Kendall Butterworth	e	.	.	e	e	e	.	.	.	e	e	e	e	.
David Lee Cannon, Jr.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Paul Todd Carroll, III	.	.	.	.	.	.	.	.	.	.	.	.	.	e
Carol V. Clark	.	.	e	.	.	.	.	.	.	.	e	e	.	e
John Christopher Clark	.	e	e	.	.	.	.	.	.	.	e	.	.	.
Edward R. Collier	n/a	n/a	.	.	.	.	.	.	.	.	e	e	e	.
Martin L. Cowen III	.	.	.	.	.	.	.	.	.	.	.	.	.	.

To request an excused absence, please email Secretary Buck Rogers (buck@frg-law.com)

**Board of Governors Attendance Record**

	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14	1-15	4-15	6/15(Fri)	6/15(Sat)	10-15
	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
Susan W. Cox	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Terrence Lee Croft	•	•	•	e	•	•	•	•	e	•	•	e	e	•
Matthew B. Crowder	n/a	n/a	•	•	•	e								
William V. Custer, IV	•	•	•	•	•	•	•	•	•	•	•	•	•	•
David P. Darden	•	•	•	e	•	•	e	e	e	•	•	•	•	•
Gerald Davidson Jr.	•	•	•	•	•	•	e	e	•	e	e	•	•	•
J. Anderson Davis	•	•	•	•	•	e	e	e	•	e	e	•	•	•
Kimberly Cooper Davis	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	e	•	e	e	e
Randall H. Davis	•	•	•	•	•	•	•	•	•	•	•	•	•	•
J. Antonio Delcampo	e	•	•	•	•	•	•	•	•	•	•	•	•	e
Scott Dewitt Delius	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•
Joseph W. Dent	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Foy R. Devine	•	•	•	•	•	•	•	•	•	•	•	•	•	e
Thomas V. Duck, III	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
V. Sharon Edenfield	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
Damon E. Elmore	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Archibald A. Farrar	•	e	e	•	•	•	•	•	•	•	•	•	•	e
Douglass Kirk Farrar	e	•	•	•	•	•	•	•	•	e	•	•	•	•
Elizabeth L. Fite	•	•	•	•	•	•	e	e	•	•	•	e	•	•
John A. Fitzner III	•	•	•	e	•	•	•	•	e	•	e	•	•	•
Gary Stuart Freed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Gregory A. Futch	•	•	•	•	•	•	•	•	•	•	•	•	•	•
William Gilmore Gainer	•	e	e	•	•	•	•	•	•	•	•	•	•	•

To request an excused absence, please email Secretary Buck Rogers (buck@frg-law.com)

## Board of Governors Attendance Record

	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14	1-15	4-15	6/15(Fri)	6/15(Sat)	10-15
	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
Laverne Lewis Gaskins	n/a	n/a	•	•	•	•	•	•	•	e		•	•	•
William C. Gentry	•	•	•	•	•	•	e	e	•	•	•	•	•	•
Walter J. Gordon Sr.	e	e	e	•	•	•	•	•	e	e	•	•	•	•
Patricia A. Gorham	•	e	e	•	•	•	•	•	•	•	•	•	e	•
Karlise Y. Grier	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Thomas F. Gristina	•	•	•	•	•	e	•	•	e	•	•	•	•	•
John Kendall Gross	•	•	•	•	e	e	•	•	e	e	e	•	•	•
James E. Hardy		•	•	•	•	•	•	•	•	e	•	•	•	•
John G. Haubenreich	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Patrick H. Head	•	e	e	•	•	•	•	•	•	•	•	•	•	•
Lawton C. Heard, Jr.	•	•	•	•	•	•	•	•	•	•	•	•	e	•
Render M. Heard Jr.		•	•	•	•		•	•	•	•	e	•	•	•
Thomas W. Herman	•	•	•	•	•	•	•	•	e	•	•	•	•	•
R. Javoyne Hicks White	•	•	e	e	•	•	•	•	e	•	e	•	•	•
Donna Stanaland Hix	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Michael D. Hobbs	•	•	•	e	e	•	•	•	e	•	•	•	•	e
Kenneth B. Hodges, III	•	•	•	e	e	•	•	•	•	•	•	•	•	•
Phyllis J. Holmen	•	•	•	•	•	•	•	•	•	•	e	•	•	•
J. Marcus E. Howard	•	•	•	e	•	e	•	•	e	e	•	•	•	•
Amy V. Howell	•	•	•	e	•	•	•	•	e	•	e	•	•	•
Roy B. Huff Jr.	•	e	e	e	•	•	e	e	•	•	•	•	•	e
James W. Hurt		•	•	•	•	•	•	•	•	•	•	•	•	•
Christopher D. Huskins	•			•	•	•			•	•			•	•

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**Board of Governors Attendance Record**

	3-13	6-13(Fri)	6-13(Sat)	10-13	1-14	3-14	6-14(Fri)	6-14(Sat)	11-14	1-15	4-15	6/15(Fri)	6/15(Sat)	10-15
	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
James T. Irvin	e	.	.	.	.	.	.	.	.	e	.	.	.	.
William Dixon James	.	.	.	.	.	.	e	e	.	.	.	.	.	e
Curtis S. Jenkins	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Lester B. Johnson, III	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Dawn M. Jones	.	.	.	.	.	.	.	.	.	.	e	.	.	.
Michael R. Jones, Sr.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Elena Kaplan	.	.	.	.	.	.	.	.	e	.	.	.	.	.
Robert J. Kauffman	.	.	.	.	.	.	.	.	.	.	.	.	.	.
John Flanders Kennedy	.	e	e	.	.	.	.	.	e	.	e	.	.	.
William J. Keogh, III	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Barry E. King	n/a	n/a	.	.	.	.	.	.	e	.	.	.	.	.
Judy C. King	.	.	.	.	.	.	.	.	e	.	.	.	.	.
Seth D. Kirschenbaum	.	.	.	e	.	.	.	.	.	.	.	.	.	.
Catherine Koura	.	e	.	.	.	.	e	e	e	.	.	e	.	.
Edward B. Krugman	.	.	.	.	.	.	.	.	.	.	e	.	.	.
Jeffrey R. Kuester	.	.	.	.	.	.	.	.	e	.	.	.	.	e
Allegra Lawrence-Hard	.	.	.	.	.	.	.	.	e	.	e	.	.	.
J. Alvin Leaphart	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Dawn Renee Levine	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	.	.	.	.	.	.
David S. Lipscomb	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Dax Eric Lopez	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	.	.
John Ryd Bush Long	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	.	.	.	.	.	.
Ronald A. Lowry	e	.	.	.	.	.	.	.	.	e	.	.	.	.

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	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
John Bell Manly	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
Samuel M. Matchett	•		•	e	•	•	e	e	•	•	•	•	•	e
William R. McCracken	e	e	•	•	e	•	•	•	•	e	•	e	e	
Leticia A. McDonald	•	•	•	e	•	•	•	•	•	•	e	•	•	
Brad J. McFall	•			e	•	e			•					
Ashley W. McLaughlin						•	•	•	e	•	e	•	•	e
Michael D. McRae				•	•	•	e	e	•	•	•	•	•	•
Terry L. Miller	•	•	•	•	•	•	•	•	•	•	•	•	•	•
W. Benjamin Mitcham,	•	•	•	•	•	•	•	•	e	•	•	•	•	•
Jennifer C. Mock	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	•
G.B. Moore III	•	•	•	e	•	•	•	•	e	•	•	•	•	•
Shondeana G. Morris	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	•
Laura J. Murphree	n/a	n/a	•	e	•	•	•	•	•	•	•	•	•	•
Gwyn P. Newsom	•	•	•	•	•	•	•	•	•	•	e	e	•	•
Sam G. Nicholson	n/a	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•
Dennis C. O'Brien	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Patrick T. O'Connor	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Samuel S. Olenz										•				
Jonathan B. Pannell	•	•	•	•	•	•	•	•	•	•	e	•	•	•
Joy Renea Parks	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•
Carson Dane Perkins		•	•		•	•		•	•	•	•		•	•
Patrise Perkins-Hooker	•	•	•	•	•	•	•	•	•	•	•	•	•	•
R. Chris Phelps	•	•	•	•	•	•	•	•	•	•	•	•	•	•

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	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
Will H. Pickett, Jr.	•	e	e	•	•	e			•		•		•	
W. Gregory Pope	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Jill Pryor	•	e	e	e	•	•	e	e	•	•	e			
William M. Ragland, Jr.	•	•	•	e	•	•	•	•	e	•	•	e	e	•
Robert V. Rodatus	•	e	e	•	•	•	e	e	•	•	•	e	e	•
Tina S. Roddenbery	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Brian D. Rogers	•	•	•	•	e	•	•	•	•	•	•	•	•	•
Joseph A. Roseboroug	•	•	•		•	•	•	•		•	•	•	•	•
William C. Rumer	•	•	•	e	•	•	•	•	e	•	e	e	e	•
Claudia S. Saari	•	•	•	e	•	•	•	•	•	•	•	e	•	•
Aimee Pickett Sanders	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
Dennis C. Sanders	•	•	•	e	•	•	•	•	e	•	•			
H. Burke Sherwood	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	•	•	•	•
Robert H. Smalley, III	•	•	•	•	•	•	•	•	•	•	•	e	•	e
Philip C. Smith	•	e	e	•	•	•	•	•	•	•	•			•
R. Rucker Smith	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Daniel B. Snipes	e	•	•	•	•	•	•	•	•	e	•	•	•	•
R. Gary Spencer	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•
H. Craig Stafford	•	•	•	e	•	e	•	•	•	•	•	•	•	e
Lawrence A. Stagg		•	•		•	•	•	•		•	•			
Lawton E. Stephens	•	•	•	e	•	•	•	•	e	•	•	•	•	e
C. Deen Strickland	•	•	•	•	•	•	•	•	•	•	e	•	•	e
Frank B. Strickland	e	•	•	•	•	e	•	•	e	e	e	e	•	•

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	Oconee	HH	HH	Jekyl	ATL	Oconee	Amelia	Amelia	Jekyll	ATL	Brass	Stone Mtn	Stone Mtn	Sav
	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
Joseph Carl Sumner, Jr.	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Michael B. Terry	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Anita W. Thomas	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Dwight L. Thomas		e	•	e	•	•	•	•	•	•	e	•	•	e
Edward D. Tolley										•				
Clayton A. Tomlinson	n/a	n/a	n/a	n/a	n/a	n/a	n/a	•	•	•	e	•	•	•
Martin E. Valbuena	•	•	•	e	•	•	•	•	•	•	•	•	•	•
Carl R. Varnedoe	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Nicki N. Vaughan	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Carl A. Veline, Jr.	•	•	•	•	•	•	•	•	•	•	•	•	•	•
J. Henry Walker		•	•	e	•	•	•	•	•	•	e	•	•	•
Janice M. Wallace	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Jeffrey S. Ward	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Harold B. Watts	•	•	•	e	•	•	•	•	e	•	•	•	•	•
John P. Webb	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Nancy J. Whaley	•	•	•	•	•	•	•	•	•	•	e	•	•	•
Sandra N. Wisenbaker	•	•	•	e	•	•	•	•	e	•	•	•	•	•
Kathleen M. Womack	e	•	•	•	•	•	•	•	•	•	•	•	•	•
Katherine K. Wood	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Douglas R. Woodruff	e	•	•	•	•	•	•	•	•	•	•	e	•	e
Gerald P. Word	•	•	•	e	e	e	•	•	•	•	e	e	e	•
Fred A. Zimmerman	n/a	n/a	•	•	•	•	•	•	•	•	•	•	•	•
<b>• - Attended Meeting</b>						<b>n/a - Not on BOG</b>								

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# Future Meetings Schedule

(12/17/2015)



## Executive Committee/Strategic Planning

January 28, 2016	Court of Appeals Dinner, Morton's, Atlanta, GA, 6 p.m.
February 10, 2016	Sam & Rosco's Restaurant, Douglasville, GA, 12 p.m.
April 15-17, 2016	Supreme Court Retreat, Mansion on Forsyth Park, Savannah, GA
May 19, 2016	State Bar Headquarters
September 9-11, 2016	Executive Cmte. Retreat, The Brice, Savannah, GA
Feb. 17-19, 2017	Supreme Court Retreat, The Inn at Palmetto Bluff, Bluffton, SC

## Board of Governors

Midyear 2016	January 7-9, 2016	Legacy Lodge at Lake Lanier Islands, Buford, GA
Spring 2016	May 6-7, 2016	Bar Center, Atlanta, GA
Annual 2016	June 16-19, 2016	Omni Amelia Island, Amelia Island, FL
Fall 2016	Oct. 21-23, 2016	The Lodge & Spa at Callaway Gardens, Pine Mountain, GA
Midyear 2017	January 5-7, 2017	The Ritz Carlton, Buckhead, GA
Spring 2017	March 24-26, 2017	Ritz at Lake Oconee, Greensboro, GA
Annual 2017	June 8-11, 2017	Jekyll Island, GA

**Young Lawyers Division**

---

Midyear 2016	January 7-9, 2016	Legacy Lodge at Lake Lanier Islands, Buford, GA
Spring 2016	March 10-13, 2016	The Cosmopolitan of Las Vegas, Las Vegas, NV
Annual 2016	June 16-19, 2016	Omni Amelia Island, Amelia Island, FL
Annual 2017	June 8-11, 2017	Jekyll Island, GA

**American Bar Association Meetings**

---

Midyear 2016	February 3-9, 2016	San Diego, CA
Annual 2016	August 4-9, 2016	San Francisco, CA
Midyear 2017	February 1-7, 2017	Miami, FL
Annual 2017	August 10-15, 2017	New York, NY
Midyear 2018	January 31-Feb. 6, 2018	Vancouver, British Columbia
Annual 2018	August 2-7, 2018	Chicago, IL
Midyear 2019	January 23-29, 2019	Las Vegas, NV
Annual 2019	August 8-13, 2019	San Francisco, CA
Midyear 2020	February 12-18, 2020	Austin, TX
Annual 2020	August 6-11, 2020	Toronto, Ontario, Canada
Midyear 2021	February 10-16, 2021	Orlando, FL
Annual 2021	August 5-10, 2021	Chicago, IL

**Southern Conference Meetings**

---

2016	October 13-16, 2016	Big Cedar Lodge, Branson, MO
2017	October 2017	Tennessee
2018	October 2018	Louisiana
2019	October 2019	Georgia
2020	October 2020	Florida

**State Bar of Georgia**  
Resolution of Appreciation to  
**J. Michael Cranford**

**Whereas**, J. Michael Cranford has been an active member of the State Bar of Georgia since 1985; and

**Whereas**, Cranford is a partner at The Law Office of J. Michael Cranford in Macon, focusing his practice on criminal defense; and

**Whereas**, Cranford served for years as a member and chair of the Indigent Defense Committee, as well as a long-time member and chair of the Criminal Law Section; and

**Whereas**, Cranford earned the Hugh Q. Wallace Award in recognition of distinguished service to indigent criminal defendants; and

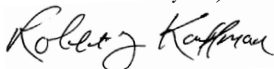
**Whereas**, Cranford received the Rees Smith Lifetime Achievement Award from the Georgia Association of Criminal Defense Lawyers, where he is a life-member and former president; and

**Whereas**, Cranford was named 2012 Lawyer of the Year by the Macon Bar Association, of which he also served as chair; and

**Whereas**, Cranford served his community through service and support of innumerable community organizations, commissions, and boards, as recognized by his receipt of the 2013 Justice Robert Benham Award for Community Service from the Chief Justice's Commission on Professionalism and the State Bar of Georgia, the award for which he is most proud.

**Now therefore be it resolved**, that the State Bar of Georgia does hereby express its sincere appreciation to J. Michael Cranford for his lifetime career devoted to public service and the practice of criminal law as reflected in his service to the State Bar.

Given this 9th day of January 2016.



Robert J. "Bob" Kauffman  
President, State Bar of Georgia

1 **Bylaw Article VII Nominations and Elections**

2  
3 **Section 6. Ballots.**

4 \_\_\_\_\_ The ~~Executive Elections~~ Committee shall determine the list of candidates and have  
5 ballots prepared. The ballot shall include the name of each candidate and a space for a write-in  
6 vote for each position to which the ballot applies. If practicable, the space for a write-in vote  
7 may be eliminated from ballots for which no write-in candidate has declared under Article VII,  
8 Section 1 (c) or Article VII, Section 2 (c) above. The ballot shall contain voting instructions and  
9 a notice of the location and last date by which the ballot must be received, at the State Bar  
10 Headquarters. The Board of Governors shall annually determine this date. The ballots may be in  
11 written or electronic form, or both.  
12

13 **Section 7. Voters Lists; Distribution of Ballots.**

14 \_\_\_\_\_ (a) ~~A voters list shall be prepared containing the names of the members qualified to~~  
15 ~~vote in elections for officers, ABA delegates, circuit board members and nonresident~~  
16 ~~board members. Each member shall be assigned a distinguishing number. A voters list~~  
17 ~~containing the names of active members within the circuit shall be prepared for each~~  
18 ~~circuit. Each member shall be assigned a distinguishing number.~~

19 ~~\_\_\_\_\_ (b) A voters list shall be prepared for active nonresident members. Each member shall be~~  
20 ~~given a distinguishing number.~~

21 ~~\_\_\_\_\_ (c)-(b) On the date determined according to Section 14 of this Article, each all active~~  
22 ~~members in good standing shall be furnished by regular mail a ballot for the elections in~~  
23 ~~which they are qualified to vote and a return envelope.:~~

24 ~~\_\_\_\_\_ (1) a ballot for election of officers of the State Bar and for election of a member or~~  
25 ~~members of the Board of Governors of the member's circuit or, in the case of nonresident~~  
26 ~~members, for the nonresident member post, if an election is to be held in that year; and~~  
27 ~~(2) A special return envelope addressed to the headquarters of the State Bar bearing the~~  
28 ~~number referred to in subparagraphs (a) and (b) above. The ballots shall bear no number.~~

29 ~~\_\_\_\_\_ (d)-(c) In lieu of the written ballot described above, a member may vote by a secure~~  
30 ~~electronic ballot which meets all the requirements for integrity as determined by the~~  
31 ~~Elections Committee. Should any member submit both a paper ballot and an electronic~~  
32 ~~ballot, only the electronic ballot shall be counted.~~  
33

34 **Section 8. Method of Voting.**

35 For written ballots, the member shall mark the ballot according to its instructions and  
36 shall return the ballot or ballots in the envelope provided ~~to the State Bar~~ on or before the date  
37 specified by the Board of Governors. Only written ballots of an individual member, timely  
38 returned in the envelope provided with the ballot required by Section 7 (c) (2) above, shall be  
39 deemed valid. Electronic ballots shall be cast according to the instructions provided with the  
40 electronic ballot.  
41

42 **Section 9. Elections Committee.**

43 The Elections Committee shall conduct the election, count or supervise the counting of  
44 the ballots, and report the results on the date determined according to Section 14 of this Article



45 | under procedures established by the Board of Governors. The Elections Committee may utilize  
46 | State Bar of Georgia and independent and impartial contract staff and facilities as the Committee  
47 | deems appropriate and may employ impartial accounting and clerical assistance as necessary.

48 | In computing the number of votes constituting a majority of those cast in each election of  
49 | officers, the committee shall exclude from the computation the votes cast for a properly declared  
50 | "write-in" candidate receiving less than two percent of the total votes cast.

51

52 | **Section 11. Tie Vote.**

53 | (a) Officers and ABA delegates. If there is a tie vote between two or more candidates  
54 | receiving the highest number of votes in any election for officers or ABA delegates, the  
55 | incumbent shall continue to serve until the Board of Governors elects one of the tying candidates  
56 | as the successor. If more than one election results in a tie vote, the Board of Governors shall first  
57 | determine who shall be elected in this order: Treasurer, Secretary, President-Elect and, when  
58 | appropriate, President.

59 | (b) Circuit Posts. If there is a tie vote between two or more candidates receiving the  
60 | highest number of votes in any election for a circuit post, a run-off election shall be held  
61 | pursuant to Article VII, Section 12 of these Bylaws.

62

63 | **Section 12. Run-Off.**

64 | If no candidate for office receives a majority of the votes cast or if there is a tie vote for a  
65 | circuit post, within ten days from the date of the report of the Elections Committee, or the  
66 | Recount Committee, the Board of Governors shall make provisions for a runoff election between  
67 | the two candidates receiving the highest number of votes or all tied candidates. The runoff  
68 | election shall be held no later than thirty days from the date of the report of the Elections  
69 | Committee or Recount Committee and shall be conducted as provided for regular elections. The  
70 | incumbent shall continue to serve until the successor is determined. In run-off elections,  
71 | members of the Board shall be elected by plurality vote.

72

73 | **Section 13. Recount.**

74 | ~~Any candidate dissatisfied with the result of the count by the Election Committee in his~~  
75 | ~~or her election contest may request within two days of the date upon which the count is~~  
76 | ~~completed, a recount of the ballots pertaining to the election by filing a request in writing with~~  
77 | ~~the Executive Director. Any candidate dissatisfied with the result of the count may file a~~  
78 | ~~written recount request with the Executive Director, within two business days after the winners~~  
79 | ~~are declared. The Executive Director shall notify the President of the request for a recount and~~  
80 | ~~the President shall direct the Elections Committee to review the request(s) and if deemed~~  
81 | ~~appropriate, the Elections Committee will direct an independent elections vendor [SK1] to~~  
82 | ~~conduct a recount. Once the certified recount totals are received, the Elections Committee will~~  
83 | ~~announce its findings to all candidates in the disputed election and any other concerned parties.~~  
84 | ~~appoint a recount committee composed of persons who are not members of the Election~~  
85 | ~~Committee. The results of the recount shall be final. As soon as practicable, but not less than~~  
86 | ~~three days prior to the Wednesday of the week during which the annual meeting of the State~~  
87 | ~~Bar is scheduled, the Recount Committee shall count the ballots pertaining to all elections in~~  
88 | ~~which a recount has been requested, examine the ballots not counted, determine the number of~~

89 ~~votes validly cast for each candidate in the election, and immediately report the results to the~~  
90 ~~President who shall announce the results at the first plenary session during that annual meeting.~~  
91 ~~The results of the recount shall be final.~~

92

93 **Section 14. Date of Elections.**

94 ~~\_\_\_\_\_ (a) \_\_\_\_\_ At least 15 days prior to the meeting of the Executive Committee immediately~~  
95 ~~preceding the fall meeting of the Board of Governors, t~~The Elections Committee shall ~~timely~~  
96 meet and publish a proposed schedule for the upcoming elections which shall set out the specific  
97 dates for the following events: the date the Official Election Notice is to be published in the  
98 *Georgia Bar Journal*; the date the Nominating Petition package shall be mailed to Board of  
99 Governors Incumbents; the date the Board of Governors shall nominate candidates for officers of  
100 the State Bar of Georgia; the deadline for the receipt of nominating petitions for incumbent  
101 Board Members; the deadline for the receipt of nominating petitions for new Board Members;  
102 the deadline for receipt of nominations of nonresident members of the Board; the date on which  
103 the ballots are to be mailed; the deadline for ballots to be cast in order to be valid; and the date  
104 the election results shall be reported and made available.

105 ~~\_\_\_\_\_ (b) \_\_\_\_\_~~The Executive Committee shall review and approve, or modify and approve such  
106 schedule as submitted by the Elections Committee. The schedule, as approved by the Executive  
107 Committee, shall then be submitted to the Board of Governors no later than the ~~fall Annual or~~  
108 ~~Summer Meeting preceding the election meeting~~ for approval.

109 ~~\_\_\_\_\_ (c) \_\_\_\_\_ Should the Executive Committee determine that the election schedule must be~~  
110 ~~finalized prior to the fall meeting of the Board of Governors, or in the event there is no fall~~  
111 ~~meeting of the Board of Governors, the Executive Committee may give final approval to the~~  
112 ~~election. For good cause, the Executive Committee may modify this approval schedule.~~

113

114 **Clean Version**

115 **Bylaw Article VII Nominations and Elections**

116

117 **Section 6. Ballots.**

118 The Elections Committee shall determine the list of candidates and have ballots prepared.  
119 The ballot shall include the name of each candidate and a space for a write-in vote for each  
120 position to which the ballot applies. If practicable, the space for a write-in vote may be  
121 eliminated from ballots for which no write-in candidate has declared under Article VII, Section 1  
122 (c) or Article VII, Section 2 (c) above. The ballot shall contain voting instructions and a notice of  
123 the location and last date by which the ballot must be received. The Board of Governors shall  
124 annually determine this date. The ballots may be in written or electronic form, or both.

125

126 **Section 7. Voters Lists; Distribution of Ballots.**

127 (a) A voters list shall be prepared containing the names of the members qualified to  
128 vote in elections for officers, ABA delegates, circuit board members and nonresident  
129 board members. Each member shall be assigned a distinguishing number.

130 (b) On the date determined according to Section 14 of this Article, all active members  
131 in good standing shall be furnished by regular mail a ballot for the elections in which they  
132 are qualified to vote and a return envelope.

133 (c) In lieu of the written ballot described above, a member may vote by a secure  
134 electronic ballot which meets all the requirements for integrity as determined by the Elections  
135 Committee. Should any member submit both a paper ballot and an electronic ballot, only the  
136 electronic ballot shall be counted.  
137

138 **Section 8. Method of Voting.**

139 For written ballots, the member shall mark the ballot according to its instructions and  
140 shall return the ballot or ballots in the envelope provided on or before the date specified by the  
141 Board of Governors. Only written ballots of an individual member, timely returned in the  
142 envelope provided with the ballot, shall be deemed valid. Electronic ballots shall be cast  
143 according to the instructions provided with the electronic ballot.  
144

145 **Section 9. Elections Committee.**

146 The Elections Committee shall conduct the election, count or supervise the counting of  
147 the ballots, and report the results on the date determined according to Section 14 of this Article  
148 under procedures established by the Board of Governors. The Elections Committee may utilize  
149 State Bar of Georgia and independent and impartial contract staff and facilities as the Committee  
150 deems appropriate. In computing the number of votes constituting a majority of those cast in  
151 each election of officers, the Committee shall exclude from the computation the votes cast for a  
152 properly declared "write-in" candidate receiving less than two percent of the total votes cast.  
153

154 **Section 11. Tie Vote.**

155 (a) Officers and ABA delegates. If there is a tie vote between two or more candidates  
156 receiving the highest number of votes in any election for officers or ABA delegates, the  
157 incumbent shall continue to serve until the Board of Governors elects one of the tying candidates  
158 as the successor. If more than one election results in a tie vote, the Board of Governors shall first  
159 determine who shall be elected in this order: Treasurer, Secretary, President-Elect and, when  
160 appropriate, President.

161 (b) Circuit Posts. If there is a tie vote between two or more candidates receiving the  
162 highest number of votes in any election for a circuit post, a run-off election shall be held  
163 pursuant to Article VII, Section 12 of these Bylaws.  
164

165 **Section 12. Runoff.**

166 If no candidate for office receives a majority of the votes cast or if there is a tie vote for a  
167 circuit post, within ten days from the date of the report of the Elections Committee, the Board of  
168 Governors shall make provisions for a runoff election between the two candidates receiving the  
169 highest number of votes or all tied candidates. The runoff election shall be held no later than  
170 thirty days from the date of the report of the Elections Committee and shall be conducted as  
171 provided for regular elections. The incumbent shall continue to serve until the successor is  
172 determined. In runoff elections, members of the Board shall be elected by plurality vote.  
173

174 **Section 13. Recount.**

175 Any candidate dissatisfied with the result of the count may file a written recount  
176 request with the Executive Director, within two business days after the winners are declared.  
177 The Executive Director shall notify the President of the request for a recount and the President  
178 shall direct the Elections Committee to review the request(s). If deemed appropriate, the  
179 Elections Committee will direct an independent elections vendor to conduct a recount. Once  
180 the certified recount totals are received, the Elections Committee will announce its findings to  
181 all candidates in the disputed election and any other concerned parties. The results of the  
182 recount shall be final.  
183

184 **Section 14. Date of Elections.**

185 (a) The Elections Committee shall timely meet and publish a proposed schedule for  
186 the upcoming elections which shall set out the specific dates for the following events: the date  
187 the Official Election Notice is to be published in the *Georgia Bar Journal*; the date the  
188 Nominating Petition package shall be mailed to Board of Governors Incumbents; the date the  
189 Board of Governors shall nominate candidates for officers of the State Bar of Georgia; the  
190 deadline for the receipt of nominating petitions for incumbent Board Members; the deadline for  
191 the receipt of nominating petitions for new Board Members; the deadline for receipt of  
192 nominations of nonresident members of the Board; the date on which the ballots are to be  
193 mailed; the deadline for ballots to be cast in order to be valid; and the date the election results  
194 shall be reported and made available.

195 (b) The Executive Committee shall review and approve, or modify and approve such  
196 schedule as submitted by the Elections Committee. The schedule, as approved by the Executive  
197 Committee, shall then be submitted to the Board of Governors no later than the Annual or  
198 Summer Meeting preceding the election for approval.

199 (c) For good cause, the Executive Committee may modify this approval schedule.

## ADVISORY COMMITTEE ON LEGISLATION

2015-2016

MINUTES OF MEETING NO. 2

December 8, 2015

State Bar of Georgia Headquarters

Atlanta, Georgia

The second meeting of the 2015-2016 State Bar of Georgia Advisory Committee on Legislation (“ACL”) was held Tuesday, December 8, 2015 at the State Bar of Georgia headquarters in Atlanta, Georgia.

### ATTENDANCE

The following members and liaisons were present: Marc Howard (Chair), Elena Kaplan (Vice Chair), Thomas Worthy (Staff Liaison), Bob Kauffman (Executive Committee Liaison), Henry Walker, Dawn Jones, Tracee Benzo, Judge John Sumner, Carol Clark, Thomas Burnside, Dennis Sanders, Representative Mary Margaret Oliver, Representative Wendell Willard, Jon Pannell, Judge Lawton Stephens, Frank Strickland, Michael Geoffroy, Patricia Gorham, Amy Howell, Justice Keith Blackwell, Andy Davis, Martin Levinson and Nancy Whaley.

The following members and liaisons participated via conference call: Carl Varnedoe, Eric Ballinger, Ana Maria Martinez, Dennis Cathey, Donna Hix, Ivy Cadle, Josh Bell, Chris Clark, Judge Steve Dillard and Curtis Jenkins.

Others present included: Rusty Sewell (consultant), Wanda Segars (consultant), Meredith Weaver (consultant), Roy Robinson (consultant), Paula Frederick, Bill NeSmith, Jeff Davis, Justice David Nahmias, Robin Frazer Clark, Phyllis Holmen, Jordan Read, Brian Kammer, Alison Grounds, David Darden, Brandon Peak, Leslie Bryan, Cynthia Clanton, Mike McGlamry, Julia Hill, Debra Nesbit, Bob Bray, Matthew Couvillion, Catherine Fitch, Shannon Weathers, Natasha MacDonald, Christine Butcher, Karlise Grier, Nathan Hayes, Sarah Hawkins Warren, Bill Clark, Anne Lewis, Kade Cullefer and Edward Lindsey.

### CALL TO ORDER

ACL Chair Marc Howard called the meeting to order at 10:16 am. Roll call was taken by signature and members and liaisons participating by phone introduced themselves.

### APPROVAL OF MINUTES

The minutes of the September 15, 2015, meeting were unanimously 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 the Midyear Meeting in Lake Lanier Islands, Georgia on January 9, 2016.

#### 1. **Funding Request for the Georgia Department of Law.**

Deputy Solicitor General of the State of Georgia, Sarah Hawkins Warren, presented this proposal, which authorizes the State Bar of Georgia to support the Department of Law’s funding request for an increase in FY17 appropriations to the Department of Law. Attorney General Olens is seeking this increase for the following three purposes: (1) increase salaries to equalize starting pay

between Law Department attorneys and attorneys at other state agencies, (2) provide funds for merit-based salary increases and (3) create a Law Department Honors Fellowship program modeled after that of the United States Department of Justice. The *Keller* vote was unanimous. The vote for supporting this proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**2. Settlement Funds Proposal.**

Phyllis Holmen presented this proposal on behalf of the Access to Justice Committee. The ATJ Committee requests the State Bar to support appropriate legislative action to allocate funds recently received by the State of Georgia in the Chase Bank USA N.A. settlement to the Administrative Office of the Courts for the purposes of grants to Georgia Legal Services and Atlanta Legal Aid. The purpose of these grants would be to use the settlement money to support activities that aid and protect Georgia consumers. The *Keller* vote was unanimous. The vote for supporting the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**3. Funding Request for the Georgia Resource Center.**

Brian Kammer of the Georgia Resource Center presented this proposal, which requests the traditional state appropriation of \$800,000 to the AOC for the funding of the Georgia Appellate Practice and Educational Resource Center. The *Keller* vote was unanimous. The vote for supporting the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**4. Nonprofit Corporation Code Amendments.**

Matthew Couvillion of the Nonprofit Law Section presented this proposal which amends the Official Code of Georgia to provide for the redomestication of nonprofit corporations. This amendment would provide a mechanism by which foreign nonprofit corporations can change their state of organization to Georgia and Georgia nonprofit organizations can change their state of organization to another state. The *Keller* vote was unanimous. The vote for supporting the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**5. Revision of the Civil Practice Act for Rules Relating to Electronic Discovery.**

Leslie Bryan, chair of the Electronically Stored Information Committee, presented this proposal, which amends the Civil Practice Act to provide for rules relating to the discovery of electronically stored information. The committee engaged in a lengthy and robust debate specifically regarding the provisions of the proposal relating to proportionality and spoliation and the differences between the proposed statute and the new Federal Rules of Civil Procedure. The *Keller* vote was unanimous. The vote supporting the proposal was 21-6. The Board of Governors will consider this proposal on January 9, 2016.

**6. Waiver of Counsel in Juvenile Proceedings Proposal.**

Karlise Grier of the Child Protection and Advocacy Section presented this proposal, which would amend the statute regarding waiver of counsel by parents in dependency cases. The amendment would require that the waiver be knowing, voluntary and on the record. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**7. Juvenile Court Practice Proposal.**

Karlise Grier of the Child Protection and Advocacy Section presented this proposal, which clarifies that juvenile court judges have the authority to continue to conduct any hearings that are

needed in a particular case and that are already authorized in the juvenile code during the time that an appeal is pending. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**8. Benefit Corporation Proposal.**

Jack Hardin of the Business Law Section presented this proposal, which permits benefit corporations to incorporate in Georgia. The *Keller* vote was unanimous. The vote to support the proposal was 24-1. The Board of Governors will consider this proposal on January 9, 2016.

**9. Disposition of Unclaimed Property Proposal.**

Bob Kauffman of the Real Property Law Section presented this proposal, which would amend the Georgia Disposition of Unclaimed Funds Act to create a specific exception for the disbursement of unclaimed *de minimus* funds from IOLTA trust accounts to provide an option to remit those funds to nonprofit organizations. After concerns raised by Committee members and the Office of the General Counsel, the Committee took no action. The measure will not be brought before the Board of Governors.

**10. Clarification of Licensure Requirements Proposal.**

Bob Kauffman of the Real Property Law Section presented this proposal, which would clarify in the insurance code that licensed Georgia attorneys who collect premiums on, issue policies of, and otherwise counsel to the advisability or requirement for, title insurance are not required to be licensed insurance agents. This proposal is in response to an opinion issued by the General Counsel of the Georgia Office of Insurance and Safety Fire Commissioner. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider this proposal on January 9, 2016.

**11. Lis Pendens Statute Amendments.**

Bob Kauffman of the Real Property Law Section presented this proposal, which specifically provides that a notice of lis pendens may be filed in connection with an arbitration proceeding. The *Keller* vote was unanimous. The vote to support the proposal was unanimous. The Board of Governors will consider the proposal on January 9, 2016.

**ADJOURNMENT**

With no further business before the Committee, Mr. Howard adjourned the meeting at 1:18 p.m.



## GEORGIA DEPARTMENT OF LAW

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November 30, 2015

Via Email

Mr. W. Thomas Worthy, Esq.  
Director of Governmental Affairs  
State Bar of Georgia  
104 Marietta Street, NW, Suite 100  
Atlanta, Georgia 30303

*Re: Law Department FY 2017 Budget*

Dear Mr. Worthy:

The Law Department ("Department") requests that the State Bar of Georgia support funding requests that it has proposed to promote recruitment of highly qualified attorneys to the Law Department, and to increase retention of experienced attorneys who have already demonstrated a commitment to public service and to our clients: state agencies. I asked Governor Deal to include this funding request in his proposed budget, and he has expressed support for the three core objectives explained below. This request for support from the State Bar of Georgia is being made pursuant to Section 1.02(a)(1) of Standing Board Policy 100.

**I. Increase salaries to equalize starting pay between Law Department attorneys and attorneys at other state agencies, and to retain more attorneys with 0-15 years of experience.**

More than 80% of Law Department attorneys have 0-15 years of experience:

- 47% of attorneys have no more than 5 years of experience;
- 18% of attorneys have no more than 10 years of experience; and
- 15% of attorneys have no more than 15 years of experience.

Thus, attorneys with 0-15 years of experience comprise the heart of the Law Department's work force—but they are also the attorneys most likely to leave the



Department for higher-paying jobs. Unfortunately, attorneys with 0-15 years of experience increasingly have been leaving the Department for higher-paying *public-sector* jobs, including jobs with client agencies.

There is in fact a disparity between the starting (and overall) salaries paid to Law Department attorneys versus attorneys at state agencies—which are clients that the Law Department serves. The Law Department starting salary for a newly admitted attorney is \$52,000. By contrast, the starting salary for attorneys at many state agencies is \$60,000. Further underscoring this issue is a 2004 study conducted by the Carl Vinson Institute,<sup>1</sup> which recommended *more than ten years ago* that starting salaries be increased to almost \$60,000 for Law Department attorneys.<sup>2</sup> It is difficult to recruit qualified young attorneys to work in the Law Department when other state agencies pay thousands of dollars more per year for new attorneys as a matter of course. Increasing starting salaries would help the Law Department recruit and retain qualified young attorneys.

The disparity between Law Department and state agency attorney pay has also resulted in increased turnover at the Law Department. In the last three years, the average attorney turnover at the Law Department has been 15% per year. Even more troublesome, more than 35 attorneys have left the Law Department in the last five years for higher paying *public sector jobs*—including jobs with client agencies—and received a median \$15,000 salary increase by doing so. This trend does not appear to be slowing: in the first four months of this year alone, more than 10 attorneys have left the Law Department for other public-sector jobs.

Providing increased overall salaries, particularly for new attorneys and attorneys with 5-15 years of experience, will help the Law Department retain experienced attorneys who have made major contributions to the Department and to its clients.

## **II. Provide funds for merit-based salary increases for the Law Department's outstanding performers and future leaders.**

The Law Department has also requested funds to provide merit-based salary increases for 35 of the Department's outstanding performers and future leaders. These funds would help retain future leaders of the Department and would ultimately create costs savings by avoiding the new-attorney training that results when turnover increases.

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<sup>1</sup> See Vinson Institute of Government, *Preliminary Report: A Classification and Compensation Plan For the Georgia Department of Law* (Nov. 2004).

<sup>2</sup> The study recommended a \$55,000 minimum salary for new attorneys admitted to the bar (Assistant Attorney General I), with the majority of those attorneys making a salary of at least \$61,875 and a median salary of \$68,750. An increase to a starting salary of \$56,000 was authorized by Governor Perdue but rescinded because of the recession.

### III. Create a Law Department Honors Fellowship program.

To recruit additional young attorneys, and to foster what we hope will be the Department's future leaders, the Law Department has also proposed creation of a Law Department Honors Fellowship program. Each year starting in 2017, the Law Department would hire three outstanding recent graduates for a two-year Honors Fellowship to work in one of the Department's Divisions (including in the Solicitor General's office). The creation of this program will allow the Department to hire at least three bright young attorneys each year on the typical public-interest hiring timeline for 3Ls and judicial clerks, instead of having to wait for an opening—the timing of which is typically uncertain and which results in delays that deter qualified applicants from applying to the Department in the first place. In addition to offering litigation and courtroom experience—skills that are critical for the legal marketplace—the Honors Fellowship will also include attorney training and programming with distinguished speakers. Though each Honors Fellowship would last only two years, it is the Department's hope that many of the Honors Fellows would elect to continue working at the Law Department and become future leaders in the organization.

I would be pleased to answer any questions you have, or to provide additional information as needed. Thank you for your assistance and for the Bar's support of the Law Department.

Sincerely,



Samuel S. Olens  
Attorney General of Georgia

Cc: Teresa MacCartney, Director, Office of Planning & Budget  
Joe Hood, Director, Public Safety Division, Office of Planning & Budget  
Jessica Johnson, Policy Coordinator, Office of Planning & Budget

Enclosures

## Law Department Proposed FY 2017 Budget

Request FY 17	Purpose
\$2,426,077	Annualize salary increases in FY 17
\$569,800	Merit salary increases: $35 \times 10,000 \times 1.628^1$
\$300,000	Honors Fellowship Program FY 17  [ $\$60,000 \times 3 = \$180,000 \times 1.628 =$ $\$293,000$ plus $\$7,000$ for recruitment]
<b>\$3,295,877</b>	

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<sup>1</sup> Benefits multiplier.

## Law Department Proposed FY 2017 Budget

Request FY 17	Purpose
\$2,426,077	<p><b>Annualize salary increases in FY 17</b></p> <ul style="list-style-type: none"> <li>• Total request <math>\\$1,490,000 \times 1.628^1 = \\$2,426,077</math></li> <li>• Increase starting salaries for newly barred attorneys from \$52,000 to \$60,000</li> <li>• Commensurate increases for attorneys with 0-15 years of experience</li> <li>• 60% of total proposed increases (\$894,000) to recruit/retain attorneys with 0-15 years of experience</li> <li>• Amount of proposed salary increase tapers for salaries that have already benefitted from previous raises and/or COLAs</li> </ul>
\$569,800	<p><b>Merit salary increases</b></p> <ul style="list-style-type: none"> <li>• <math>35 \times \\$10,000 \times 1.628 = \\$569,800</math></li> <li>• Reward and retain top performers</li> </ul>
\$300,000	<p><b>Honors Fellowship Program FY 17</b></p> <ul style="list-style-type: none"> <li>• <math>\\$60,000 \times 3 \times 1.628 = \\$293,000 + \\$7,000</math> for recruitment</li> <li>• 2-year Honors Fellowship for 3 recent graduates each year</li> <li>• Experience, training, mentorship, litigation opportunities</li> <li>• Develop future leaders</li> </ul>
\$3,295,877	

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<sup>1</sup> Benefits multiplier.



November 10, 2015

Mr. Thomas Worthy  
Director of Governmental Affairs  
State Bar of Georgia  
104 Marietta St., N.W.  
Atlanta, GA 30303

Dear Mr. Worthy:

The Access to Justice Committee of the State Bar of Georgia requests that the State Bar of Georgia support appropriate legislative action to allocate funds recently received by the State of Georgia to support activities that aid and protect Georgia consumers. The allocated funds would be used in accordance with the intent of an agreement entered into by the State of Georgia and others to support such activities.

The background of this request is as follows. In July 2015, a multistate investigation by state attorneys general into lending practices by Chase Bank USA N.A. and Chase Bankcard Services led to an Assurance of Voluntary Compliance (AVC) between Chase and 47 states, including Georgia. Georgia subsequently received its share of this award, in the amount of \$2,794,693.80. The AVC limits the amount that can be withheld by each state attorney general to 10% of the payment, which must be designated for a consumer education plan. The AVC further indicates that the remaining funds are to be used by participating states in some manner that aids and protects consumers. In some states, substantial sums will be allocated to government or other entities with that responsibility. Georgia law, however, requires the remainder to be remitted to the general fund, contrary to the intention of the parties to the AVC.

We have attached a letter from the Georgia Department of Law concerning distribution of funds from the above-named AVC. Attorney General Olens is urging Georgia's legislative leaders and Governor to set aside a substantial portion of the remainder funds for the stated intention of the AVC, which is to say, to support activities that will aid and protect Georgia consumers. General Olens names the Georgia Legal Services Program, the Atlanta Legal Aid Society, and the Georgia Bar Foundation as entities that could meaningfully and effectively achieve the intent of the AVC. Members of the Access to Justice Committee have witnessed cases of abuse and exploitation of consumers across the state, exacerbated by the slow pace of recovery of the economy for Georgians of limited means. Further, Georgia's senior citizens are especially vulnerable to unlawful and unfair transactions and collection tactics because they have

**HEADQUARTERS**

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Thomas Worthy

**Governmental Affairs: Chase Bank Settlement**

November 10, 2015

Page two

limited access to attorneys, do not know that they may have a remedy or defense to the abusive tactics, or are simply shut-ins with no ability to protect themselves. Like the Attorney General, the State Bar of Georgia should support the use of the AVC funds to level the playing field and protect consumers across the state.

We are therefore requesting that the State Bar urge the General Assembly to vote to set aside a substantial sum to expand activities by organizations like Georgia Legal Services Program, the Atlanta Legal Aid Society, and the Georgia Bar Foundation to protect Georgia's consumers from predatory and unlawful conduct. In addition to making proper use of the funds, this position would be consistent with the State Bar's mission to serve the public and its priority of providing access to justice.

Thank you for your support.



Access to Justice Committee  
State Bar of Georgia

By Angela Hinton  
Vice Chair

Attachment

Cc: Mike Monahan



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August 14, 2015

The Honorable Nathan Deal  
The Office of the Governor  
State of Georgia  
206 Washington Street  
Suite 203, State Capitol  
Atlanta, GA 30334

The Honorable Casey Cagle  
Office of the Lieutenant Governor  
240 State Capitol  
Atlanta, GA 30334

The Honorable David Ralston  
Speaker, House of Representatives  
332 State Capitol  
Atlanta, Georgia 30334

Re: Assurance of Voluntary Compliance with Chase Bank USA N.A. and Chase  
Bankcard Services, Inc.

Dear Governor Deal, Lt. Governor Cagle and Speaker Ralston:

In July, as the result of a multistate investigation, this Office entered into an Assurance of Voluntary Compliance ("AVC") with Chase Bank USA N.A. and Chase Bankcard Services, Inc. to address allegations that Chase engaged in the practice commonly referred to as robo-signing by using false, inaccurate and deceptive affidavits to obtain debt collection judgments against credit card consumers during the time period of 2009 through 2013. Forty-seven states, including Georgia, and the District of Columbia participated in the settlement.

In addition to consumer restitution and the requirement that Chase implement detailed consumer protection measures related to the sale of credit card debt, the AVC provides for payments to the signatory Attorneys General. The payment received by this Office was in the amount of \$2,794,693.80. The clear intent of the AVC is for the participating states to use the payment in

August 14, 2015  
Page 2

some manner that will aid and protect consumers. Specifically, the AVC provides that the payments are "to be used for purposes that may include but are not limited to civil penalties, attorneys' fees, and other costs of investigation and litigation, or to be placed in or applied to any consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for any other uses permitted by state law." The AVC limits the amount that may be designated as a civil penalty to ten percent of the aggregate payment to the states.

Despite the range of options set forth in the AVC for the use of the payment, however, this Office is limited to those uses that are permissible under Georgia law. The controlling statute is Code Section 10-1-381(c), which as applied to this AVC, would permit ten percent of the payment to be designated for a consumer education plan while this Office is required to remit the balance to the general fund.

Once remitted to the general fund, the decision of how to designate these monies rests with the legislature and the Governor. I am writing to encourage you to give significant weight to the intended purpose of this payment in making this decision. Organizations such as Georgia Legal Services, Atlanta Legal Aid and the Georgia Bar Foundation offer consumer protection services and may be able to use a portion of the payment from the AVC consistent with its purpose and in a manner that would help them fulfill their respective missions. Such a designation would be especially significant to consumer aid organizations in light of the reduction in recent years to income related to Interest on Lawyers Trust Account or IOLTA, which is used primarily to fund civil legal services for the poor.

Thank you for your attention to this important matter.

Sincerely,



Samuel S. Olens  
Attorney General

cc: Phyllis Holmen, Esq., Georgia Legal Services, Executive Director  
Steve Gottlieb, Esq., Atlanta Legal Aid, Executive Director  
Len Horton, Esq., Georgia Bar Foundation, Executive Director



**LEGISLATIVE PROPOSAL**  
**TO THE BOARD OF GOVERNORS**  
**STATE BAR OF GEORGIA**

**November 2015**

This Proposal is submitted by the Board of Directors (“Board”) of the Georgia Appellate Practice and Educational Resource Center, Inc. (“Resource Center”). The Proposal seeks continued State Bar support for adequate state funding for the Resource Center, specifically that continuation funding of eight hundred thousand dollars (\$800,000) be included in the budget of the Judicial Council for the next session of the General Assembly. Given the history of budget cuts sustained by the Resource Center and the overall budget challenges the General Assembly will face at the next session, State Bar support for the Resource Center is particularly critical at this time.

**I. HISTORICAL BACKGROUND**

In 1985, the State Bar of Georgia created the Special Committee to Review the Georgia Attorney Role in Post-Conviction Proceedings (“Special Committee”) to address the lack of competent counsel for indigent, death-sentenced inmates in post-conviction proceedings. The Special Committee documented the need for counsel in such proceedings and assessed the impact of this situation on the quality and administration of justice in state and federal courts. The Special Committee proposed a multi-faceted solution involving the State Bar, the state law schools, the federal courts, and the Supreme Court of Georgia and the creation of the Georgia Resource Center. The Special Committee’s report and recommendation were unanimously adopted by the State Bar Board of Governors in January 1986. The State Bar of Georgia was

one of the three recipients in the United States of the 1988 Harrison Tweed Award from the American Bar Association for the Special Committee's work on this project.

The Resource Center was established in 1988 as a 501(c)(3) non-profit corporation. It is governed by a Board of Directors of one (1) non-attorney and thirteen (13) attorneys from throughout Georgia who are appointed by the Supreme Court of Georgia and the State Bar of Georgia. The Resource Center staff is currently comprised of the Executive Director, one (1) Senior Litigator, five (5) full-time Staff Attorneys, one (1) full-time Investigator, three (3) part-time Investigators, and an Office Manager, who all earn salaries far below that which they could earn in the public and private sectors. The Resource Center's office space is spartan and its cases are litigated on a shoe-string budget.

Georgia is the only state which does not appoint or compensate counsel in state habeas corpus proceedings.<sup>1</sup> This poses an especially acute problem in capital cases where post-conviction review has been recognized to be a critical stage in the death penalty appellate process.<sup>2</sup> The Resource Center is mandated to oversee *all* capital post-conviction cases in Georgia, either through direct representation or through support of pro bono counsel.<sup>3</sup> Its staff provides representation for Georgia's indigent death sentenced prisoners in habeas corpus

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<sup>1</sup> See *Gibson v. Turpin*, 270 Ga. 855 (1999). By the slimmest of margins, the Supreme Court of Georgia held that death sentenced inmates had no constitutional right to counsel in state habeas corpus proceedings. The court did note however that a statute providing for state-funded counsel might be a good policy but that absent legislative enactment of such a provision, state-funded counsel was not constitutionally compelled

<sup>2</sup> See, e.g., *Murray v. Giarratano*, 492 U.S. 1, 24, 26 (1989).

<sup>3</sup> This means the Resource Center is responsible for overseeing 79 cases from over 40 different counties across the state.

proceedings either as sole counsel or co-counsel with volunteer law firms from across the country. Capital habeas corpus proceedings are among the most complex in the legal field and require intensive investigation and litigation by experienced attorneys and investigators.

The Resource Center is the most efficient and cost-effective means of moving capital cases to final adjudication<sup>4</sup> and is a necessary safeguard against wrongful execution.<sup>5</sup> By providing representation at this stage, moreover, the Resource Center allows Georgia's capital punishment system to function expeditiously (in particular by streamlining federal habeas review) in bringing these cases to final resolution.

The work of the Georgia Resource Center has not gone unnoticed. The Resource Center's efforts on behalf of its clients caused it to be awarded the 2012 Indigent Defense Award by the Georgia Association of Criminal Defense Lawyers. In addition, the Resource Center received the 2013 Legal Legends Award by the American Constitution Society in recognition of its integral role in protecting the rights of indigent death-sentenced prisoners and ensuring fairness in the administration of capital punishment in Georgia. In August of 2013, the Resource

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<sup>4</sup> A performance audit requested by the Georgia Senate Appropriations Committee and conducted by the Department of Audits in 2005 found that Resource Center attorneys handled more cases and expended less money per case than similar organizations providing post-conviction representation to death sentenced prisoners in other states.

<sup>5</sup> According to a Columbia University study of error rates in capital cases from 1973 to 1995, Georgia had an 80% reversal rate. See James S. Liebman, A Broken System: Error Rates in Capital Cases, 1973-1995, available at [http://www2.law.columbia.edu/instructionalservices/liebman/liebman\\_final.pdf](http://www2.law.columbia.edu/instructionalservices/liebman/liebman_final.pdf). Since 1996, 55 death penalty cases have resulted in sentencing relief. During that same period, 39 death sentences have been carried out. Accordingly, for every one execution carried out in Georgia since 1996, approximately 1.45 death sentences have been reversed. The significance of this rate of error is obvious: proving that the system can be fundamentally fair only if there is a Resource Center to provide checks and balances to the system in state habeas review.

Center was honored with the Deirdre O'Brien Award for Outstanding Advocacy on Behalf of Persons with Intellectual Disabilities from the ARC of Georgia.

For the past twenty-seven (27) years, the State Bar of Georgia has actively supported the Resource Center's legislative proposal. The formal and active support for this legislative proposal by the State Bar is crucial to obtain continued funding from the State, so that the important work of the Resource Center can continue.

## **II. SPECIFIC LEGISLATION**

No specific legislation is pending, but the Resource Center funding request will be included in the appropriations bill of the Georgia General Assembly.

The Georgia Resource Center respectfully requests support for a continuation of baseline funding of \$800,000, which the General Assembly awarded the Resource Center in FY 2013, FY 2014, FY 2015 and FY 2016.

The more recent history of state funding for the Resource Center is as follows: Beginning in FY 2002 through FY 2008, the Resource Center's baseline funding from the General Assembly was \$800,000. Because state funding was stagnant for those seven years, despite ever increasing costs, the Resource Center sought, and was awarded, grants from the Georgia Bar Foundation in FY 2006-2009. In response to the increased funding from the Georgia Bar Foundation, the General Assembly cut the Resource Center's grant to \$580,000 for FY 2009.

When the economic downturn devastated the Georgia Bar Foundation's revenues, its support of the Resource Center was drastically reduced in FY 2010 and FY 2011. Since FY 2012, the Foundation has not provided any financial support to the Resource Center due to

financial restraints.<sup>6</sup> For FY 2012, despite the lack of any support from the Bar Foundation, the General Assembly reduced funding of the Resource Center to \$565,500. As noted above, in FY 2013 through FY 2016, the General Assembly returned funding to its FY 2002-2008 level of \$800,000.

As a founding partner of the Georgia Resource Center, the Georgia Bar has strongly supported the Resource Center's work since its inception in 1988, recently providing direct financial assistance. While the continuation of this financial support is uncertain, the FY 2017 budget cautiously projects continued support of \$110,000 from the State Bar of Georgia. The budget reflects revenue of \$310,000 in federal court compensation for work representing Georgia state prisoners in federal capital habeas cases in FY 2017.<sup>7</sup> In addition, the budget projects charitable donations of \$14,000 for FY 2017. The Resource Center's total budget for FY 2017 is \$1,234,000.

Without continuation of baseline funding of \$800,000, the Resource Center will be forced to lay off legal staff. This core funding will allow the Resource Center to maintain the minimum staff necessary to fulfill its mandate to provide adequate legal services to Georgia's indigent death-sentenced clients and take on additional cases that will enter the system in FY 2016 and

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<sup>6</sup> Elimination of funding for the Resource Center from the Georgia Bar Foundation was due to a catastrophic reduction in IOLTA funds disbursed from the Foundation. As a result, funding was eliminated or drastically reduced for all programs formerly supported by the Foundation.

<sup>7</sup> Federal court compensation is received in periodic amounts that vary substantially according to the number of federal habeas cases which are approaching resolution at any given time, and the time it takes the courts to fulfill payment vouchers. This budgeted figure is a revenue projection as federal billing is wholly dependent on the progression of cases through the federal courts.

FY 2017. The effectiveness, efficiency and credibility of Georgia's death penalty system depend on an adequately-staffed and sufficiently-funded Resource Center. Accordingly, the Georgia Resource Center urgently requests that the State Bar of Georgia support a continuation of baseline funding of \$800,000.

Endorsement of this proposal is consistent with the purposes of the State Bar of Georgia. Members of the bar are uniquely qualified to analyze the technical and public policy issues inherent in this proposal and can fulfill a duty of public service by examining these issues and making a statement to the General Assembly. Endorsement of these proposals will also improve the administration of justice in appellate and post-conviction capital proceedings in Georgia.

### **III. SUMMARY OF EXISTING LAW**

We do not believe there is any existing law applicable to this proposal.

### **IV. PROPONENTS OR OPPONENTS**

The State Bar of Georgia has supported full funding for the Resource Center since its inception in 1986. The Georgia Supreme Court has also supported funding for the Resource Center, as has the Board of Governors and the Judicial Council of Georgia.

There are no known opponents of this proposal.

### **V. OTHER COMMITTEES AND SECTIONS**

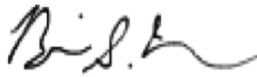
A copy of this proposal will be sent to the following other committees or sections which may have an interest in the legislation: the Advisory Committee on Legislation; the Criminal Law Section; and the Individual Rights Section of the State Bar. These committees and sections have previously supported funding for the Resource Center.

## VI. CONCLUSION

For the above-stated reasons, the Board of Directors of the Georgia Resource Center petitions the State Bar of Georgia for endorsement of continuation funding of \$800,000 for the Resource Center and that such funding be placed in the budget of the Judicial Council for the next session of the General Assembly.

Submitted: November 25, 2015.

Respectfully submitted,



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[brian.kammer@garesource.org](mailto:brian.kammer@garesource.org)

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NONPROFIT LAW SECTION LEGISLATIVE PROPOSAL

PROPOSAL RE: REDOMESTICATION OF NONPROFIT CORPORATIONS

1. Specific legislation has been prepared and is attached hereto as Exhibit A. Said proposed legislation adds O.C.G.A. 14-3-1109 and 1110 as to provide for the redomestication of nonprofit corporations.
2. This legislation will change Georgia law by providing a mechanism by which foreign nonprofit corporations can change their state of organization to Georgia and Georgia nonprofit corporations can change their state of organization to another state.
3. Under current Georgia Law a foreign nonprofit corporation that seeks to become a Georgia nonprofit corporation can only become a Georgia nonprofit corporation through a merger. For Georgia nonprofit corporations that seek to move from Georgia, the same is true, the Georgia nonprofit can only move to another state through a merger. Unless the nonprofit corporation that survives the merger already has an IRS Determination Letter stating that the surviving nonprofit corporation is tax exempt, any nonprofit corporation that changes its state of incorporation through a merger must obtain a new Determination Letter from the IRS for the surviving nonprofit corporation. Obtaining a new Determination Letter creates a substantial burden and, consequently, many nonprofit corporations will not attempt to change their state of incorporation even if they desire to do so. Recently the IRS released private letter rulings that allowed nonprofit corporations to redomesticate to a new state, without obtaining a new Determination Letter, if the move was completed pursuant to a statute allowing for such redomestication. The proposed legislation would create a Georgia statutory process by which a nonprofit corporation could redomesticate in a way that is consistent with these recent private letter rulings.
4. There are no known opponents of the proposed legislation.
5. Comments from the other sections of the State Bar are being solicited; no other section is believed to have an interest in the proposed legislation.
6. The Nonprofit Law Section recommends that this proposal be adopted by the State Bar of Georgia.



Matthew Couvillion  
Chair  
Nonprofit Law Section  
Legislation Committee



## EXHIBIT A

**Proposed Amendments to the Georgia Nonprofit Corporations Code**  
**Redomestication of Foreign Nonprofit Corporations to Georgia**  
**And**  
**Redomestication of Georgia Nonprofit Corporations to Another State**  
*In General*

Title 14, Chapter 3 of the Official Code of Georgia is hereby amended by adding new Sections 1109 through 1110 to Article 11 thereof to read as follows:

**14-3-1109. Conversion to corporation.**

- (a) By complying with this Code section, a foreign corporation may become a corporation if the law of the foreign jurisdiction authorizes a domestication, redomestication, reincorporation, conversion, or similar statutory procedure to become a corporation.
- (b) To become a corporation, a foreign corporation shall elect to become a corporation. Such election shall require such approval as may be sufficient under applicable law or the governing documents of the electing foreign corporation to authorize such election.
- (c) Such election shall be made by delivering to the Secretary of State for filing a certificate of conversion and accompanying articles of incorporation that comply with Code Section 14-3-202 and 14-3-401. The certificate shall set forth:
- (1) The name and jurisdiction of the converting foreign corporation; and if the name of the foreign corporation is unavailable for use in Georgia or the foreign corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of Code Section 14-3-401;
  - (2) A statement that the foreign corporation elects to become a corporation;
  - (3) If later than the date and time the certificate of conversion is filed, the effective date, or the effective date and time, of the conversion;
  - (4) A statement that the election has been approved as required by subsection (b) of this Code section; and
  - (5) A statement that the articles of incorporation accompanying the certificate (i) are in the form required by Code Section 14-3-202; (ii) set forth the name for the corporation that satisfies the requirements of Code Section 14-3-401; and (iii) are the articles of

incorporation of the corporation formed pursuant to such election unless and until modified in accordance with this chapter.

- (d) Upon the conversion becoming effective:
  - (1) The converting foreign corporation shall become a corporation formed under this chapter, except that the existence of the corporation so formed shall be deemed to have commenced on the date the converting foreign corporation commenced its existence in the jurisdiction in which such foreign corporation was first created, formed, incorporated, or otherwise came into being;
  - (2) The articles of incorporation filed with the certificate of conversion shall be the articles of incorporation of the corporation formed pursuant to such conversion unless and until amended in accordance with this chapter;
  - (3) The governing documents of the converting foreign corporation shall be of no further force or effect;
  - (4) The resulting corporation formed by such election shall retain all of the rights, privileges, immunities, franchises, and powers of the foreign corporation; all property, real, personal, and mixed, all contract rights, and all debts due to such foreign corporation, as well as all other choses in action, and each and every other interest of or belonging to or due to the foreign corporation shall be taken and deemed to be vested in the converting corporation without further act or deed; the title to any real estate, or any interest therein, vested in the converting foreign corporation shall not revert or be in any way impaired; and none of such items shall be deemed to have been conveyed, transferred, or assigned for any purpose; and
  - (5) The corporation shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the converting foreign corporation; any claim existing or action or proceeding pending by or against such foreign corporation may be prosecuted as if such conversion had not become effective; and neither the rights of creditors nor any liens upon the property of the converting foreign corporation shall be impaired.
- (e) A conversion pursuant to this Code section shall not be deemed to constitute a dissolution of the foreign corporation and shall constitute a continuation of the existence of the foreign corporation in the form of a corporation. A corporation formed by a conversion pursuant to this

Code section shall for all purposes be deemed to be the same entity as the converting foreign corporation.

(f) A corporation formed pursuant to this Code section may file a copy of such certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such corporation is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of deeds in such county with the converting foreign corporation indexed as the grantor and the corporation indexed as the grantee. No real estate transfer tax under Code Section 48-6-1 shall be due with respect to the recordation of such certificate of conversion.

**14-3-1110. Conversion to foreign corporation.**

(a) By complying with this section, a corporation may become a foreign corporation if the law of the foreign jurisdiction authorizes a domestication, redomestication, reincorporation, conversion, or similar statutory procedure to become a foreign corporation.

(b) To become a foreign corporation, a corporation shall convert to a foreign corporation, and to effect such conversion the corporation shall adopt (and file with the Secretary of State as required by subsection (n) of this Code section) a certificate of conversion.

(c) To be adopted by a corporation a certificate of conversion must be approved:

(1) By the board;

(2) By the members, if any, but only if and to the extent that members are entitled to vote on the conversion (subject, however, to subsection (h) of this Code section) under the corporation's articles or bylaws; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by Code Section 14-3-1030 for an amendment to the articles or bylaws.

(d) If the corporation does not have members or if the members are not entitled to vote on the conversion, then unless otherwise provided in the corporation's articles or bylaws, the certificate of conversion shall be approved by a majority of the directors in office at the time the certificate of conversion is adopted. The corporation shall provide notice of any directors' meeting at which adoption of the certificate of conversion will be considered in accordance with subsection

(b) of Code Section 14-3-822. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the adoption of the certificate of conversion.

(e) The board may condition its adoption of the certificate of conversion, and the members may condition their approval of the adoption of the certificate of conversion, on the receipt of a higher percentage of affirmative votes or on any other basis.

(f) If the corporation is required or seeks to have adoption of the certificate of conversion approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Code Section 14-3-705. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the adoption of the certificate of conversion pursuant to which the corporation will convert into a foreign corporation and shall contain or be accompanied by a copy of the certificate of conversion. The notice shall conspicuously identify any adverse change to the rights of members that would result from the conversion (including any adverse change to the rights of members under the law of the foreign jurisdiction applicable to the proposed foreign corporation). The notice shall also include a copy or summary of the articles of incorporation and bylaws (or similar governing documents) of the proposed foreign corporation that will become effective upon the conversion.

(g) If the certificate of conversion may be approved by the members by written consent or written ballot (including for this purpose consent or ballot by electronic transmission), the material soliciting the approval shall contain or be accompanied by a copy of the certificate of conversion. The material soliciting the approval shall conspicuously identify any adverse change to the rights of members that would result from the conversion (including any adverse change to the rights of members under the law of the foreign jurisdiction). The material soliciting the approval shall also include a copy or summary of the articles of incorporation and bylaws (or similar governing documents) of the proposed foreign corporation that will become effective upon the conversion.

(h) Voting by members or class of members is required to approve the adoption of a certificate of conversion if the conversion will implement any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws of the corporation, would entitle the members or class of members to vote on the proposed amendment under Code Sections 14-3-1003, 14-3-1004, 14-3-1021, or 14-3-1022. In such circumstances, the corporation shall comply

with subsections (f) or (g) of this Code section, as applicable, with respect to the members or class of members entitled to vote. Furthermore, the certificate of conversion may be adopted if it is approved by the members or class of members entitled to vote in the same manner as would be required to approve such amendment or, if the articles or bylaws do not specify how the members or class of members vote to approve such amendment, then by two-thirds of the votes cast or a majority of the voting power, whichever is less.

(i) A corporation described in paragraph (2) of subsection (a) of Code Section 14-3-1302 must give written notice to the Attorney General, including a copy of the proposed certificate of conversion and a copy or summary of the articles of incorporation and bylaws (or similar governing documents) of the proposed foreign corporation that will become effective upon the conversion, at least 30 days before the certificate of conversion is filed in accordance with subsection (n) of this Code section.

(j) Any of the terms of the certificate of conversion may be made dependent upon facts ascertainable outside of the certificate of conversion, provided that the manner in which such facts shall operate upon the terms of the conversion is clearly and expressly set forth in the certificate of conversion. As used in this subsection, the term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(k) After a certificate of conversion has been adopted, unless the certificate of conversion provides otherwise, then at any time before the conversion has become effective the conversion may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the certificate of conversion or, if none is set forth, in the manner determined by the board of directors.

(l) The conversion shall be effected as provided in, and shall have the effects provided by, the law of the state or jurisdiction under whose law the resulting foreign corporation is formed, and to the extent not inconsistent with such law, by the terms of the certificate of conversion.

(m) If the resulting foreign corporation is required to obtain a certificate of authority to transact business in this state by the provisions of this title governing foreign corporations, it shall do so pursuant to Code Section 14-3-1501.

(n) After a certificate of conversion is adopted in accordance with this Code section, then unless the conversion subsequently is abandoned the corporation shall deliver to the Secretary of State for filing the certificate of conversion setting forth:

- (1) The name of the corporation;
- (2) The name and jurisdiction of the proposed foreign corporation to which the corporation shall be converted;
- (3) If later than the date and time the certificate of conversion is filed, the effective date, or the effective date and time, of such conversion;
- (4) A statement that the certificate of conversion has been adopted as required by subsection (c) of this Code section;
- (5) A statement that the authority of its registered agent to accept service on its behalf is revoked as of the effective time of such conversion and that the Secretary of State is irrevocably appointed as the agent for service of process on the resulting foreign corporation in any proceeding to enforce an obligation of the corporation arising prior to the effective time of such conversion;
- (6) A mailing address to which a copy of any process served on the Secretary of State under paragraph (5) of this subsection may be mailed as provided in subsection (o) of this Code section; and
- (7) A statement that the Secretary of State shall be notified of any change in the resulting foreign corporation's mailing address.

(o) Upon the conversion becoming effective, the resulting foreign corporation is deemed to appoint the Secretary of State as its agent for service of process in any proceeding to enforce any of its obligations arising prior to the effective time of such conversion. Any party that serves process upon the Secretary of State in accordance with this subsection shall also mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the foreign corporation, or a person holding a comparable position, at the mailing address provided pursuant to subsection (n)(6) of this Code section.

(p) A converting corporation pursuant to this Code section may file a copy of its certificate of conversion, certified by the Secretary of State, in the office of the clerk of the superior court of the county where any real property owned by such corporation is located and record such certified copy of the certificate of conversion in the books kept by such clerk for recordation of

deeds in such county with the corporation indexed as the grantor and the foreign corporation indexed as the grantee. No real estate transfer tax otherwise required by Code Section 48-6-1 shall be due with respect to recordation of such certificate of conversion.

- (q) Upon the conversion becoming effective,
- (1) the resulting foreign corporation shall retain all of the rights, privileges, immunities, franchises, and powers of the converting corporation;
  - (2) all property, real, personal, and mixed, all contract rights, and all debts due to such converting corporation, as well as all other choses in action, and each and every other interest of or belonging to or due to the converting corporation shall be taken and deemed to be vested in the resulting foreign corporation without further act or deed;
  - (3) title to any real estate, or any interest therein, vested in the converting corporation shall not revert or be in any way impaired by reason of the conversion;
  - (4) none of such items described in subparagraphs (1) through (3) immediately above shall be deemed to have been conveyed, transferred, or assigned by reason of the conversion for any purpose; and
  - (5) the resulting foreign corporation shall thereupon and thereafter be responsible and liable for all the liabilities and obligations of the converting corporation, and any claim existing or action or proceeding pending by or against such converting corporation may be prosecuted as if such conversion had not become effective, and neither the rights of creditors nor any liens upon the property of the converting corporation shall be impaired by such conversion.



DOFFERMYRE SHIELDS CANFIELD & KNOWLES, LLC

*TRIAL AND APPELLATE LAWYERS*

December 2, 2015  
Via email to thomasw@gabar.org

W. Thomas Worthy, Esq.  
Director of Governmental Affairs  
State Bar of Georgia  
104 Marietta Street  
Suite 100  
Atlanta, Georgia 30303

Re: Proposal from the Task Force on Electronically Stored Information

Dear Thomas:

As Chair of the Bar Task Force on Electronically Stored Information, I am writing to further explain some of the thinking behind the legislation we are proposing. This cover letter should have accompanied the submission of our proposal and the fact that it did not attests only to my inexperience with this process.

As I think you know, the Task Force unanimously supported the proposal we have put forth with one exception and that dissenting member was only opposed to subsection (2) of the new spoliation section to be added to O.C.G.A. 9-11-37. I think it is a real credit to the Bar and these lawyers in particular that we were able to reach consensus on what has previously been a contentious issue.

As I think you appreciate, the lawyers making this proposal are some of the best known and most respected trial lawyers in the state. While the Task Force did have one member who is in-house counsel, most members have spent their careers preparing and trying cases throughout the state and the country in both state and federal courts. And, the in-house counsel is a lawyer who spends the bulk of his time on litigation matters. Should you decide to pass it on, I am attaching a list of the members of the Task Force for the ACL's review because I think the names of the individuals and their law firms give credibility to the result.

Also for distribution to the ACL, again if you think it appropriate, I am attaching a "redline" of the current Federal Rule of Civil Procedure 26 (with the amendments that became effective yesterday) compared to the Georgia Civil Practice Act, O.C.G.A. § 9-11-26. The point of the comparison is to demonstrate that, since December, 1993, Georgia has been out of sync with the federal rule.

1355 PEACHTREE STREET, NE / SUITE 1900 / ATLANTA, GEORGIA 30309

MAIN (404) 881-8900/FAX (404) 920-3246

WEBSITE: [www.DSCKD.com](http://www.DSCKD.com)





W. Thomas Worthy, Esq.  
December 2, 2015  
Page 2

It is important to recognize the significant differences between the Georgia rule and the federal rule when we have been urged to adopt the newly amended federal rules on some issues. Perhaps the easiest example of the difficulty lies in the federal adoption of a proportionality analysis to determine what may be discovered in a given case. Regardless of whether any Task Force member may or may not believe such an analysis is appropriate, we saw it as beyond our charge to suggest a fundamental change in the scope of discovery in state courts. It may be that the Bar decides to propose a wholesale re-write of the Civil Practice Act to bring it more in line with the Federal Rules but such a re-write was not within our purview.

I thank you for the opportunity to submit our proposal and I, along with a few other members of our Task Force, look forward to meeting with the ACL on December 8 to respond to any questions or concerns they may have.

Sincerely,

A handwritten signature in cursive script that reads "Leslie J. Bryan".

Leslie J. Bryan

LJB/dlv

Attachments

**Members of the Task Force  
On Electronically Stored Information**

## GEORGIA BAR ESI TASK FORCE

### MEMBER PROFILES

#### Cinque Mark Axam

Mr. Axam is currently a Partner at Axam-Roberts Legal Group, LLC, where he specializes in credit and debt matters. He is a graduate of North Carolina Central University School of Law.

#### Emily S. Bair

Ms. Bair is the founder of Emily S. Bair & Associates, P.C., where she specializes exclusively in family law. She is a graduate of Emory University School of Law.

#### Leslie J. Bryan - Chair

Ms. Bryan is an attorney with Doffermire Shields Canfield & Knowles, LLC. She specializes in complex litigation. She is a graduate of Emory University School of Law.

#### John C. Childs

Mr. Childs works for Georgia-Pacific, LLC. He is currently Assistant General Counsel, specializing in litigation. He is a graduate of California Western School of Law.

#### David B. Darden

Mr. Darden is a Member at Parker, Hudson, Rainer & Dobbs, LLP. He practices general business litigation, including contract disputes, business torts, and consumer finance. He is a graduate of Georgetown University Law Center.

#### Henry D. Fellows, Jr.

Mr. Fellows is a Partner at Fellows LaBriola, LLP, where he specializes in complex business litigation. He is a graduate of Georgetown University Law Center. Mr. Fellows is a member of the American College of Trial Lawyers and, in that capacity, monitors the Federal Civil Rules Advisory Committee for the ACTL.

Alan J. Hamilton

Mr. Hamilton is a Member at Shiver Hamilton, LLC. He focuses his law practice on significant personal injury cases, wrongful death, and business torts. He is a graduate of the University of Georgia School of Law.

Kimberly J. Johnson

Ms. Johnson is an attorney at Pope McGlamry where she has focused her practice on representing plaintiffs in personal injury, wrongful death, products and pharmaceutical liability, qui tam health care fraud and mass torts actions. She is a graduate of the University of Alabama School of Law.

Thomas J. Kerr

Jeff Kerr is now the CEO of CaseFleet but was formerly in private practice. CaseFleet is an all-in-one solution that integrates tools for litigation, practice management, and e-discovery. He is a graduate of Emory University School of Law.

K. Alex Khoury

Mr. Khoury is a Partner at Balch & Bingham, LLP. His practice focuses on commercial litigation matters, including contract disputes and business torts. He is a graduate of Mercer University, Walter F. George School of Law.

Edward H. Lindsey, Jr.

Mr. Lindsey, a former member of the Georgia General Assembly, is a founding partner in Goodman McGuffey Lindsey & Johnson, LLP. His practice involves commercial matters, products and tort liability, construction, professional malpractice, insurance and class action disputes. He is a graduate of the University of Georgia School of Law.

L. Brett Lockwood – Vice Chair

Mr. Lockwood is a Partner at Smith, Gambrell & Russell, LLP. His practice areas include corporate governance, commercial and venture finance, mergers and acquisitions, corporate technology transactions, licensing law, outsourcing, strategic alliances, distribution arrangements and executive compensation and general business law matters. He is a graduate of Emory University School of Law.

Michael L. McGlamry

Mr. McGlamry is a Member at Pope McGlamry. His practice is focused on representing plaintiffs in personal injury, wrongful death, products and pharmaceutical liability, class actions and mass torts actions. He is a graduate of the University of Georgia School of Law.

Brandon L. Peak

Mr. Peak is a partner at Butler Wooten Cheeley & Peak LLP. His areas of practice include personal injury, trucking accidents, products liability, wrongful death, FCA/Whistleblower and class actions. He is a graduate of Mercer University, Walter F. George School of Law.

Mary A. Prebula

Ms. Prebula, a former Chair of this Task Force, is the Sole Managing Member of Prebula & Associates, P.C. Her practice areas include general civil litigation including commercial, business, real estate, product liability, ERISA, COBRA, personal injury, employment law, probate, family law, general corporate law, wills and trust. She is a graduate of Emory University School of Law.

Kenneth L. Shigley

Mr. Shigley, a former President of the Georgia Bar, is the founder of Shigley Law, LLC. He specializes in representing clients in cases of serious personal injury and wrongful death. He is a graduate of Emory University School of Law.

Richard G. Tisinger, Jr.

Mr. Tisinger is Member of Tisinger Vance, P.C. He practiced is focused on healthcare litigation, insurance defense and professional malpractice. He is a graduate of the University of Georgia School of Law.

Jeffrey S. Ward

Mr. Ward is a Partner at Drew Eckl & Farnham, LLP where he manages the Brunswick, GA office. He practices general casualty law, professional malpractice law, and workers' compensation defense. He is a graduate of the University of Georgia School of Law.

Dan H. Willoughby, Jr. (resigned for personal reasons 11/16/15)

Mr. Willoughby is a Partner at King & Spalding, LLP. He is a member of the Firm's E-Discovery Group and heads the Firm's Discovery Center. In addition to his work as a commercial and products liability litigator, Mr. Willoughby has devoted his career to the management of major discovery matters from preservation to production and was a participant in the 2010 Duke Conference that led to the proposed amendments to the federal rules. He is a graduate of the University of Georgia School of Law.

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**A BILL TO BE ENTITLED**

**“E-DISCOVERY ACT”**

To amend Chapter 11 of Title 9 of the Official Code of Georgia Annotated, related to the “Georgia Civil Practice Act,” so as to change provisions relating to general provisions governing discovery to provide for discovery of electronically stored information; to change provisions to accommodate issues created or impacted by electronically stored information; to codify assertion of privilege and trial preparation claims and to provide for clawback provisions; to add proportionality to protective order provisions; to add provisions with regard to failure to preserve electronically stored information; to change provisions relating to when an interrogatory answer allows the option to produce business records to require sufficient information to locate such records; to provide for related matters, to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

**SECTION 1.**

Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to the “Georgia Civil Practice Act,” is amended by revising Code Section 9-11-26, relating to general provisions governing discovery, and to add subsection (b) (5), as follows:

**“§ 9-11-26. General provisions governing discovery**

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subsection (c) of this Code section,

24 the frequency of use of these methods is not limited.

25 (b) *Scope of discovery.* Unless otherwise limited by order of the court in accordance with  
26 this chapter, the scope of discovery is as follows:

27 (1) IN GENERAL. Parties may obtain discovery regarding any matter, not privileged,  
28 which is relevant to the subject matter involved in the pending action, whether it relates to the  
29 claim or defense of the party seeking discovery or to the claim or defense of any other party,  
30 including the existence, description, nature, custody, condition, and location of any books,  
31 documents, electronically stored information, or other tangible things and the identity and  
32 location of persons having knowledge of any discoverable matter. It is not ground for objection  
33 that the information sought will be inadmissible at the trial if the information sought appears  
34 reasonably calculated to lead to the discovery of admissible evidence;

35 (2) INSURANCE AGREEMENTS. A party may obtain discovery of the existence and  
36 contents of any insurance agreement under which any person carrying on an insurance business  
37 may be liable to satisfy part or all of a judgment which may be entered in the action or to  
38 indemnify or reimburse for payments made to satisfy the judgment. Information concerning  
39 the insurance agreement is not by reason of disclosure admissible in evidence at trial. For  
40 purposes of this paragraph, an application for insurance shall not be treated as part of an  
41 insurance agreement;

42 (3) TRIAL PREPARATION; MATERIALS. Subject to paragraph (4) of this subsection, a party  
43 may obtain discovery of documents, electronically stored information, and tangible things  
44 otherwise discoverable under paragraph (1) of this subsection and prepared in anticipation of  
45 litigation or for trial by or for another party or by or for that other party's representative  
46 (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing



47 that the party seeking discovery has substantial need of the materials in the preparation of his  
48 case and that he is unable without undue hardship to obtain the substantial equivalent of the  
49 materials by other means. In ordering discovery of such materials when the required showing  
50 has been made, the court shall protect against disclosure of the mental impressions,  
51 conclusions, opinions, or legal theories of an attorney or other representative of a party  
52 concerning the litigation. A party may obtain, without the required showing, a statement  
53 concerning the action or its subject matter previously made by that party. Upon request, a  
54 person not a party may obtain, without the required showing, a statement concerning the action  
55 or its subject matter previously made by that person. If the request is refused, the person may  
56 move for a court order. Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the  
57 award of expenses incurred in relation to the motion. For purposes of this paragraph, a  
58 "statement previously made" is (A) a written statement signed or otherwise adopted or  
59 approved by the person making it, or (B) a stenographic, mechanical, electrical, or other  
60 recording, or a transcription thereof, which is a substantially verbatim recital of an oral  
61 statement by the person making it and contemporaneously recorded; and

62 (4) TRIAL PREPARATION; EXPERTS. Discovery of facts known and opinions held by  
63 experts, otherwise discoverable under paragraph (1) of this subsection and acquired or  
64 developed in anticipation of litigation or for trial, may be obtained only as follows:

65 (A) (i) A party may, through interrogatories, require any other party to identify  
66 each person whom the other party expects to call as an expert witness at trial, to state the  
67 subject matter on which the expert is expected to testify, and to state the substance of the  
68 facts and opinions to which the expert is expected to testify and a summary of the grounds  
69 for each opinion.

70 (ii) A party may obtain discovery under Code Section 9-11-30, 9-11-31, or 9-  
71 11-34 from any expert described in this paragraph, the same as any other witness, but  
72 the party obtaining discovery of an expert hereunder must pay a reasonable fee for the  
73 time spent in responding to discovery by that expert, subject to the right of the expert  
74 or any party to obtain a determination by the court as to the reasonableness of the fee  
75 so incurred;

76 (B) A party may discover facts known or opinions held by an expert who has been  
77 retained or specially employed by another party in anticipation of litigation or preparation  
78 for trial and who is not expected to be called as a witness at trial, only as provided in  
79 subsection (b) of Code Section 9-11-35 or upon a showing of exceptional circumstances  
80 under which it is impracticable for the party seeking discovery to obtain facts or opinions  
81 on the same subject by other means; and

82 (C) Unless manifest injustice would result:

83 (i) The court shall require the party seeking discovery to pay the expert a  
84 reasonable fee for time spent in responding to discovery under subparagraph (B) of  
85 this paragraph; and

86 (ii) With respect to discovery obtained under division (ii) of subparagraph  
87 (A) of this paragraph, the court may require, and with respect to discovery obtained  
88 under subparagraph (B) of this paragraph the court shall require, the party seeking  
89 discovery to pay the other party a fair portion of the fees and expenses reasonably  
90 incurred by the latter party in obtaining facts and opinions from the expert.

91 (5) CLAIMING PRIVILEGE OR PROTECTING TRIAL PREPARATION MATERIALS.

92 (A) Information Withheld. When a party withholds information otherwise

93 discoverable by claiming that the information is privileged or subject to protection as trial  
94 preparation material, the party must:

95 (i) expressly make the claim; and

96 (ii) describe the nature of the documents, electronically stored information,  
97 communications, or tangible things not produced or disclosed—and do so in a  
98 manner that, without revealing information itself privileged or protected, will  
99 enable other parties to assess the claim.

100 (B) Information Produced. If information produced in discovery is subject to a  
101 claim of privilege or of protection as trial-preparation material, the party making the claim may  
102 notify any party that received the information of the claim and the basis for it. After being notified,  
103 a party must promptly return, sequester, or destroy the specified information and any copies it  
104 has; must not use or disclose the information until the claim is resolved; must take reasonable  
105 steps to retrieve the information if the party disclosed it before being notified; and may promptly  
106 present the information to the court under seal for a determination of the claim. The producing  
107 party must preserve the information until the claim is resolved.

108 (c) Protective orders. Upon motion by a party or by the person from whom discovery is  
109 sought and for good cause shown, the court in which the action is pending or, alternatively, on  
110 matters relating to a deposition, the court in the county where the deposition is to be taken may  
111 make any order which justice requires to protect a party or person from annoyance, embarrassment,  
112 oppression, or undue burden or expense. Upon a showing of good cause by the party or the person  
113 seeking a protective order, the court may consider whether the discovery sought is not proportional  
114 to the needs of the case, considering the importance of the issues at stake in the action, the amount  
115 in controversy, the parties' relative access to relevant information, the parties' resources, the

116 importance of the discovery in resolving the issues, and whether the burden or expense of the  
117 proposed discovery outweighs its likely benefit. The court may enter an order including one or  
118 more of the following:

119 (1) That the discovery not be had;

120 (2) That the discovery may be had only on specified terms and conditions, including a  
121 designation of the time or place;

122 (3) That the discovery may be had only by a method of discovery other than that  
123 selected by the party seeking discovery;

124 (4) That certain matters not be inquired into or that the scope of the discovery be limited  
125 to certain matters;

126 (5) That discovery be conducted with no one present except persons designated by the  
127 court;

128 (6) That a deposition, after being sealed, be opened only by order of the court;

129 (7) That a trade secret or other confidential research, development, or commercial  
130 information not be disclosed or be disclosed only in a designated way; or

131 (8) That the parties simultaneously file specified documents, electronically stored  
132 information, or information enclosed in sealed envelopes to be opened as directed by the court.

133 If the motion for a protective order is denied in whole or in part, the court may, on such  
134 terms and conditions as are just, order that any party or person provide or permit discovery.  
135 Paragraph (4) of subsection (a) of Code Section 9-11-37 applies to the award of expenses incurred  
136 in relation to the motion.

137 (d) *Sequence and timing of discovery.* Unless the court, upon motion, for the convenience  
138 of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may

139 be used in any sequence; and the fact that a party is conducting discovery, whether by deposition  
140 or otherwise, shall not operate to delay any other party's discovery.

141 (e) *Supplementation of responses.* A party who has responded to a request for discovery  
142 with a response that was complete when made is under no duty to supplement his response to  
143 include information thereafter acquired, except as follows:

144 (1) A party is under a duty seasonably to supplement his response with respect to any  
145 question directly addressed to:

146 (A) The identity and location of persons having knowledge of discoverable matters;  
147 and

148 (B) The identity of each person expected to be called as an expert witness at trial,  
149 the subject matter on which he is expected to testify, and the substance of his testimony.

150 (2) A party is under a duty seasonably to amend a prior response if he obtains  
151 information upon the basis of which:

152 (A) He knows that the response was incorrect when made; or

153 (B) He knows that the response, though correct when made, is no longer true and  
154 the circumstances are such that a failure to amend the response is, in substance, a knowing  
155 concealment.

156 (3) A duty to supplement responses may be imposed by order of the court, agreement  
157 of the parties, or at any time prior to trial through new requests for supplementation of prior  
158 responses.”

159

160 **SECTION 2.**

161 Said Chapter is further amended by revising paragraphs (1) and (5) of subsections (b) and

162 paragraph (1)(B) of subsection (f) of Code Section 9-11-30 relating to depositions upon oral  
163 examination, to include electronically stored information, as follows:

164 **§ 9-11-30. Depositions upon oral examination**

165 ....

166

167 “(b) *Notice of examination.*

168 (1) GENERAL REQUIREMENTS. A party desiring to take the deposition of any person  
169 upon oral examination shall give reasonable notice in writing to every other party to the action.  
170 The notice shall state the time and place for taking the deposition, the means by which the  
171 testimony shall be recorded, and the name and address of each person to be examined, if  
172 known, and, if the name is not known, a general description sufficient to identify the person to  
173 be examined or the particular class or group to which he or she belongs. If a subpoena for the  
174 production of documentary and tangible evidence, including electronically stored information,  
175 is to be served on the person to be examined, the designation of the materials to be produced,  
176 as set forth in the subpoena, shall be attached to, or included in, the notice.”

177 .....

178 “(5) PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION AND  
179 THINGS. The notice to a party deponent may be accompanied by a request made in compliance  
180 with Code Section 9-11-34 for the production of documents, electronically stored information,  
181 and tangible things at the taking of the deposition. The procedure of Code Section 9-11-34  
182 shall apply to the request.”

183

184 ....

185 “(f) *Certification and filing by officer; inspection and copying of exhibits; copy of*

186 *deposition.*

187 (1)

188 ....

189 (B) Documents, electronically stored information, and things produced for  
190 inspection during the examination of the witness shall, upon the request of a party, be  
191 marked for identification and annexed to and returned with the deposition and may be  
192 inspected and copied by any party, except that the person producing the materials may  
193 substitute copies to be marked for identification, if he or she affords to all parties fair  
194 opportunity to verify the copies by comparison with the originals; and, if the person  
195 producing the materials requests their return, the officer shall mark them, give each party  
196 an opportunity to inspect and copy them, and return them to the person producing them,  
197 and the materials may then be used in the same manner as if annexed to and returned with  
198 the deposition. Any party may move for an order that the original be annexed to and  
199 returned with the deposition to the court, pending final disposition of the case.”

200

201 **SECTION 3.**

202 Said Chapter is further amended by revising subsection (c) of Code Section 9-11-33 relating to  
203 interrogatories to parties, as follows:

204 **§ 9-11-33. Interrogatories to parties**

205 ....

206 “(c) *Option to produce business records.* Where the answer to an interrogatory may be  
207 derived or ascertained from the business records of the party upon whom the interrogatory has  
208 been served or from an examination, audit, or inspection of such business records, or from a

209 compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the  
210 answer is substantially the same for the party serving the interrogatory as for the party served, it is  
211 a sufficient answer to the interrogatory to specify the records from which the answer may be  
212 derived or ascertained in sufficient detail to enable the interrogating party to locate and identify  
213 them as readily as the responding party could and to afford to the party serving the interrogatory  
214 reasonable opportunity to examine, audit, or inspect such records and to make copies,  
215 compilations, abstracts, or summaries.”

216

217 **SECTION 4.**

218 Said Chapter is further amended by revising Code Section 9-11-34 relating to production of  
219 documents and things and entry upon land for inspection and other purposes, to expand to include  
220 electronically stored information, and other purposes, as follows:

221 **“§ 9-11-34. Production of documents, electronically stored information, and things and**  
222 **entry upon land for inspection and other purposes**

223 (a) *Scope.* Any party may serve on any other party a request:

224 (1) To produce and permit the requesting party or its representative making the request,  
225 or someone acting on his behalf, to inspect, ~~and~~ copy, test, or sample the following items in  
226 the responding party’s possession, custody, or control:

227 (A) any designated documents or electronically stored information, including  
228 writings, drawings, graphs, charts, ~~phone records,~~ photographs, sound recordings, images,  
229 and other data or data compilations, stored in any medium from which information can be  
230 obtained, ~~translated, if necessary, by the respondent through detection devices~~ either  
231 directly or, if necessary, after translation by the responding party into a reasonably usable



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form; or

(B) any designated tangible things; to inspect and copy, test, or sample which constitute or contain matters within the scope of subsection (b) of code Section 9-11-26 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of subsection (b) of Code Section 9-11-26.

(b) *Procedure*

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request;

(A) shall set forth ~~the items to be inspected, either by individual item or by category, and describe each item~~ with reasonable particularity each item or category of items to be inspected;

(B) ~~The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts; and~~

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant

255 may serve a response within 45 days after service of the summons and complaint upon that  
256 defendant. The court may allow a shorter or longer time.

257 (B) Responding to Each Item. For each item or category, the response must either  
258 state that inspection and related activities will be permitted as requested or state with  
259 specificity the grounds for objecting to the request, including the reasons. The responding  
260 party may state that it will produce copies of documents or of electronically stored  
261 information instead of permitting inspection. The production must then be completed no  
262 later than the time for inspection specified in the request, or as soon as is reasonably  
263 practicable thereafter, which time must be specified in the response.

264 (C) Objections. An objection must state whether any responsive materials are being  
265 withheld on the basis of that objection. An objection to part of a request must specify the part  
266 and permit inspection of the rest. The response shall state, with respect to each item or category,  
267 that inspection and related activities will be permitted as requested, unless the request is  
268 objected to, in which event the reasons for objection shall be stated. If objection is made to  
269 part of an item or category, that part shall be specified. The party submitting the request may  
270 move for an order under subsection (a) of Code Section 9-11-37 with respect to any  
271 objection to or other failure to respond to the request or any part thereof, or any failure to  
272 permit inspection as requested.

273 (c) Applicability to nonparties.

274 (1) This Code section shall also be applicable with respect to discovery against persons,  
275 firms, or corporations who are not parties, in which event a copy of the request shall be served  
276 upon all parties of record; or, upon notice, the party desiring such discovery may proceed by  
277 taking the deposition of the person, firm, or corporation on oral examination or upon written  
278 questions under Code Section 9-11-30 or 9-11-31. A party requesting discovery from a

279 nonparty shall take reasonable steps to avoid imposing undue burden or expense on the  
280 nonparty. The nonparty or any party may file an objection as provided in subsection (b) of this  
281 Code section. If the party desiring such discovery moves for an order under subsection (a) of  
282 Code Section 9-11-37 to compel discovery, he or she shall make a showing of good cause to  
283 support his or her motion. The party making a request under this Code section shall, upon  
284 request from any other party to the action, make all reasonable efforts to cause all information  
285 produced in response to the nonparty request to be made available to all parties. A reasonable  
286 document copying charge may be required.

287 (2) This Code section shall also be applicable with respect to discovery against a  
288 nonparty who is a practitioner of the healing arts or a hospital or health care facility, including  
289 those operated by an agency or bureau of the state or other governmental unit. Where such a  
290 request is directed to such a nonparty, a copy of the request shall be served upon the person  
291 whose records are sought by certified mail or statutory overnight delivery, return receipt  
292 requested, or, if known, that person's counsel, and upon all other parties of record in  
293 compliance with Code Section 9-11-5; where such a request to a nonparty seeks the records of  
294 a person who is not a party, a copy of the request shall be served upon the person whose records  
295 are sought by certified mail or statutory overnight delivery, return receipt requested, or, if  
296 known, that person's counsel by certified mail or statutory overnight delivery, return receipt  
297 requested, and upon all parties of record in compliance with Code Section 9-11-5; or, upon  
298 notice, the party desiring such discovery may proceed by taking the deposition of the person,  
299 firm, or corporation on oral examination or upon written questions under Code Section 9-11-  
300 30 or 9-11-31. The nonparty, any party, or the person whose records are sought may file an  
301 objection with the court in which the action is pending within 20 days of service of the request

302 and shall serve a copy of such objection on the nonparty to whom the request is directed, who  
303 shall not furnish the requested materials until further order of the court, and on all other parties  
304 to the action. Upon the filing of such objection, the party desiring such discovery may move  
305 for an order under subsection (a) of Code Section 9-11-37 to compel discovery and, if he or  
306 she shall make a showing of good cause to support his or her motion, discovery shall be  
307 allowed. If no objection is filed within 20 days of service of the request, the nonparty to whom  
308 the request is directed shall promptly comply therewith.

309 (3) For any discovery requested from a nonparty pursuant to paragraph (2) of this  
310 subsection or a subpoena requesting records from a nonparty pursuant to Code Section 9-11-  
311 45, when the nonparty to whom the discovery request is made is not served with an objection  
312 and the nonparty produces the requested records, the nonparty shall be immune from  
313 regulatory, civil, or criminal liability or damages notwithstanding that the produced  
314 documents or electronically stored information contained confidential or privileged  
315 information.

316 (d) *Confidentiality*. The provisions of this Code section shall not be deemed to repeal the  
317 confidentiality provided by Code Sections 37-3-166 concerning mental illness treatment records,  
318 37-4-125 concerning mental retardation treatment records, 37-7-166 concerning alcohol and drug  
319 treatment records, 24-12-20 concerning the confidential nature of AIDS information, and 24-12-  
320 21 concerning the disclosure of AIDS information; provided, however, that a person's failure to  
321 object to the production of documents or electronically stored information, as set forth in paragraph  
322 (2) of subsection (c) of this Code section shall waive any right of recovery for damages as to the  
323 nonparty for disclosure of the requested documents or electronically stored information."

324

## SECTION 5.

325 Said Chapter is further amended by revising Code Section 9-11-34.1 relating to civil access for  
326 evidence seized in criminal proceedings, as follows:  
327 **“§ 9-11-34.1. No copying of materials relating to certain offenses related to minors.**  
328 Notwithstanding the provisions of Code Section 9-11-34, in any civil action based upon evidence  
329 seized in a criminal proceeding involving any violation of Part 2 of Article 3 of Chapter 12 of Title  
330 16, a party shall not be permitted to copy any books, papers, documents, electronically stored  
331 information, photographs, tangible objects, audio and visual tapes, films and recordings, or copies  
332 or portions thereof.”

333 **SECTION 6.**

334 Said Chapter is further amended by revising paragraph (2) of subsection (a) of Code Section 9-  
335 11-36, relating to request for admission, as follows:  
336 **“9-11-36. Request for Admission.**  
337  
338 (a) *Scope; service; answer or objection; motion to determine sufficiency.*  
339  
340 (1) A party may serve upon any other party a written request for the admission, for purposes of the  
341 pending action only, of the truth of any matters within the scope of subsection (b) of Code Section  
342 9-11-26 which are set forth in the request and that relate to statements or opinions of fact or of the  
343 application of law to fact, including the genuineness of any documents or electronically stored  
344 information described in the request. Copies of documents or electronically stored information  
345 shall be served with the request unless they have been or are otherwise furnished or made available  
346 for inspection and copying. The request may, without leave of court, be served upon the plaintiff  
347 after commencement of the action and upon any other party with or after service of the summons  
348 and complaint upon that party.”

349 **SECTION 7.**

350 Said Chapter is further amended by revising subsection (c) of Code Section 9-11-37, relating to  
351 failure to make discovery, and to add subsection (e) of Code Section 9-11-37 relating to failure  
352 to preserve electronically stored information, as follows:

353 **“§ 9-11-37. Failure to make discovery**

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356 “(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any  
357 document electronically stored information or the truth of any matter as requested under Code  
358 Section 9-11-36 and if the party requesting the admissions thereafter proves the genuineness of  
359 the document electronically stored information or the truth of the matter, he may apply to the  
360 court for an order requiring the other party to pay him the reasonable expenses incurred in making  
361 that proof, including reasonable attorney's fees. The court shall make the order unless it finds that  
362 the request was held objectionable pursuant to subsection (a) of Code Section 9-11-36, or the  
363 admission sought was of no substantial importance, or the party failing to admit had reasonable  
364 ground to believe that he might prevail on the matter, or there was other good reason for the  
365 failure to admit.”

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368 “(e) *Failure to preserve electronically stored information.* If electronically stored  
369 information that should have been preserved in the anticipation or conduct of litigation is lost  
370 because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced  
371 through additional discovery, and the Court finds that there is prejudice to another party from  
372 the loss of the information:

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- 374 (1) The Court may order measures no greater than necessary to cure the prejudice;  
375 (2) If measures are insufficient to cure the prejudice, and further considering the practical  
376 importance of the evidence and whether the party who failed to preserve acted in good  
377 or bad faith, the Court may instruct the jury that it may presume the information was  
378 unfavorable to the party; or  
379 (3) Upon finding the party who failed to preserve acted with the intent to deprive potential  
380 litigants of the information's use in litigation or to avoid civil, administrative,  
381 regulatory or criminal sanctions or penalties, may:  
382 a. Instruct the jury that it shall presume the information was unfavorable to the party; or  
383 b. Strike the party's claims or defenses, dismiss the action or enter default judgment.  
384 (4) Any party or the Court may request a hearing. Upon the request of a party, the Court  
385 shall in its ruling make findings of fact and conclusions of law.

386

387 **SECTION 8.**

388 Said Chapter is further amended by revising Code Section 9-11-45, relating to subpoenas for  
389 taking depositions, as follows:

390 **“§ 9-11-45. Subpoena for taking depositions; place of examination**

391 (a)(1)(A) The clerk of the superior court of the county in which the action is pending or the  
392 clerk of any court of record in the county where the deposition is to be taken shall issue subpoenas  
393 for the persons sought to be deposed, upon request.

394 (B) Upon agreement of the parties, an attorney, as an officer of the court, may issue  
395 and sign a subpoena for the person sought to be deposed on behalf of a court in which the

396 attorney is authorized to practice or a court for a venue in which a deposition is compelled  
397 by the subpoena, if the deposition pertains to an action pending in a court in which the  
398 attorney is authorized to practice.

399 (C) Subpoenas issued pursuant to this paragraph shall be issued and served in  
400 accordance with law governing issuance of subpoenas for attendance at court, except as to  
401 issuance by an attorney. The subpoena may command the person to whom it is directed to  
402 produce and permit inspection and copying of designated books, papers,  
403 documents, electronically stored information, or tangible things which constitute or contain  
404 matters within the scope of the examination permitted by subsection (b) of Code Section  
405 9-11-26, but in that event the subpoena will be subject to subsection (c) of Code Section 9-  
406 11-26; or the court, upon motion made promptly and in any event at or before the time  
407 specified in the subpoena for compliance therewith, may quash or modify the subpoena if  
408 it is unreasonable and oppressive, or condition denial of the motion upon the advancement  
409 by the person in whose behalf the subpoena is issued of the reasonable cost of producing  
410 the books, papers, documents, electronically stored information, or tangible things. A party  
411 requesting discovery from a nonparty shall take reasonable steps to avoid imposing undue  
412 burden or expense on the nonparty.

413 (2) The person to whom the subpoena is directed may, within ten days after the service  
414 thereof or on or before the time specified in the subpoena for compliance, if such time is less  
415 than ten days after service, serve upon the attorney designated in the subpoena written  
416 objection to inspection or copying of any or all of the designated materials. If objection is  
417 made, the party serving the subpoena shall not be entitled to inspect and copy the materials  
418 except pursuant to an order of the court from which the subpoena was issued. The party serving



419 the subpoena may, if objection has been made, move, upon notice to the deponent, for an order  
420 at any time before or during the taking of the deposition, provided that nothing in this Code  
421 section shall be construed as requiring the issuance of a subpoena to compel a party to attend  
422 and give his deposition or produce documents or electronically stored information, at the  
423 taking of his deposition where a notice of deposition under Code Section 9-11-30 has been  
424 given or a request under Code Section 9-11-34 has been served, such notice or request to a  
425 party being enforceable by motion under Code Section 9-11-37.

426 (b) A person who is to give a deposition may be required to attend an examination:

427 (1) In the county wherein he resides or is employed or transacts his business in person;

428 (2) In any county in which he is served with a subpoena while therein; or

429 (3) At any place which is not more than 30 miles from the county seat of the county  
430 wherein the witness resides, is employed, or transacts his business in person.”

431

432 **SECTION 9.**

433 This Act shall become effective on July 1, 2015.

434

435 **SECTION 10.**

436 All laws and parts of laws in conflict with this Act are repealed.

437

December 16, 2015

The Board of Governors  
State Bar of Georgia  
104 Marietta St. NW Suite 100  
Atlanta, GA 30303

Re: *E-Discovery Proposal*

Dear Members of the Board of Governors:

The Georgia Chamber of Commerce represents more than 30,000 diverse businesses across the state of Georgia and is the state's largest business advocacy organization. Our membership represents every local chamber in Georgia and 85% of our members are small businesses with fewer than 25 employees. Our members range from mom and pop companies to manufacturers to the state's largest employers and account for over 2/3rds of the state's workforce. An integral part of our efforts to keep Georgia competitive consists of maintaining an equitable and efficient judicial and legal climate. In this regard, we are disappointed that the e-discovery proposal does not adopt the December 1, 2015 amendments to the Federal Rules of Civil Procedure requiring that discovery be "proportional to the needs of the case," and does not adequately address the well-documented problem of over-preservation of electronically stored information (ESI) that results from inconsistent trial court decisions about the legal standard for the imposition of severe sanctions, including an adverse inference jury instruction. The Chamber strongly opposes the proposed language addressing electronic discovery and appreciates this opportunity to share its thoughts.

**1. Proportionality**

The proposal relegates proportionality to the protective order section of Rule 26 rather than tracking the federal approach, which places proportionality as an express limit on the scope of discovery. The federal approach places the burden on all parties who request discovery to ensure proper limitations exist. In contrast, the Georgia proposal places the burden on the objecting party to move the court for a protective order, thus bearing the cost and burden of proof on the issue. At least 29 states have adopted proportionality as a limit on discovery and the national trend continues to favor adopting the federal approach. To our knowledge, Georgia would be the first state to affirmatively reject this approach for an alternative.

## **2. Rule 37(e)**

The primary reason motivating the federal reform efforts was a broad consensus among practitioners, litigants, judges and academics that the Second Circuit's approach to spoliation sanctions, i.e., allowing adverse inference instructions on the basis of negligence, was too harsh a rule that led to inefficient and costly over preservation of ESI. Thus, the Federal Rules were modified after years of study and debate (and by consensus among plaintiff and defendant interests and after extensive public comment), eliminating the possibility of such a sanction without an express showing of "intent to deprive" evidence to another party. Conversely, 9-11-37(e)(2) of this proposal adopts current Georgia case law on spoliation by imposing a multiple factor test that has not been used in any other state – whether conduct was performed in good faith or bad faith – to be considered by trial courts in determining whether to give an adverse jury instruction. However, the proposal does not require a court to find bad faith or misconduct before giving an adverse inference instruction; thus, the proposed test fails to protect against the risk of an adverse inference instruction being subjectively given by a trial court judge in our state for inadvertent or negligent loss of ESI and does not suitably address concerns about over-preservation. By rejecting the federal language and adopting this proposal, Georgia runs the risk of creating more uncertainty in its litigation climate.

## **3. Consistency**

Georgia businesses, both large and small, are faced with the threat of litigation daily and are forced to preserve exorbitant amounts of data due to a lack of clarity and consistency in the law. This issue places a tremendous financial strain on Georgia businesses. It is the view of Chamber membership that state rules governing the discovery of ESI must be aligned with the Federal Rules. Georgia businesses would be negatively impacted by the proposed rules that depart from and are in conflict with the Federal Rules because of the risk surrounding an assortment of untested rules. Businesses require certainty and consistency in order to remain competitive and commercially viable.

Georgia is a desirable state to conduct business, in part, because we have aligned ourselves with sensible practice and procedure. Recently, the business community has worked in concert with the Georgia Bar to enact an overhaul of the Evidence Code. These legislative reforms followed the Federal Rules closely in order to generate consistency in Georgia courtrooms. Should this proposal move forward, we will place ourselves in a position contrary to both recent Georgia

trends and the direction of other states by creating two sets of parallel rules. While our neighbors track the Federal Rules closely, we are in danger of placing Georgia at an economic disadvantage by miring our companies in ambiguity. Also, by consciously rejecting the new Federal Rules, our courts and litigants lose the benefit of guidance from the detailed advisory committee notes as well as federal case law development, further contributing to uncertainty and risk of non-uniform application of the rules.

Therefore, it is our recommendation that the State Bar table the current e-discovery proposal. The Chamber suggests that the better approach would be to work together to adopt the Federal Rules verbatim. Adopting the new Federal Rules verbatim would give Georgia both consistency in its courts and fairness to its citizens and businesses. As always, the Chamber appreciates its good working relationship with the State Bar and looks forward to working together to help move Georgia forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'EK Cullefer', with a long horizontal flourish extending to the right.

E. Kade Cullefer  
Vice President, Legal  
Georgia Chamber of Commerce

Dear President Kauffman and Fellow Members of the Board of Governors:

I write in support of the State Bar Task Force on E-Discovery's proposal that will be up for consideration by our Board of Governors at the Mid-Year Meeting in January. As reflected by their signatures below, I am joined in this effort by a number of distinguished members and leaders of this Bar. Collectively, we offer the following for consideration by the Board of Governors:

The proposal that will be before the Board has been endorsed by the Bar's Advisory Committee on Legislation and is the end product of two State Bar task forces, consisting of nearly 30 lawyers and all of their various diverse constituencies, working over the past three years. That large group of lawyers included some of the best and most experienced defense and plaintiffs' lawyers in our Bar. They were tasked specifically with the duty of reviewing the new proposed federal rules regarding discovery and determining which of those rules should be adopted verbatim into our state rules of discovery and which should be altered to fit the needs of Georgia litigants and practitioners whose cases are litigated in the STATE courts of Georgia.

Over this three year period, the majority of the participants on the two task forces worked for, and sincerely sought to achieve, broad-based consensus. Unfortunately, a small number of the participants worked exclusively not to achieve consensus but to impose on everyone else their will of adopting in toto the new federal rules, even those rules that will make practicing in state courts more time-consuming, more burdensome and more expensive. The debate before you today lies between that vast majority of lawyers who worked for a broad-based consensus (one that was achieved through good faith give and take) versus a very small portion of the Bar who are dead set on the singular goal of adopting verbatim the new federal rules of discovery as the rules of discovery that all State court litigants and lawyers must follow in Georgia courts.

The State Bar Task Force's proposal is the result of that give and take I've referenced above and has elements preferred by some and not preferred by some. But, most everyone throughout this exhaustive effort was willing to give and not just take. The end result, therefore, is that the proposal has a significant amount of the newly adopted federal rules on discovery. In fact, the largest portions of the proposal contain precisely the language found in those new federal rules. Even the departures from the federal rules were agreed to by every member of the latest Task Force with the exception of one member who did not agree with only one subsection of the proposed changes.

So, where does the State Bar Task Force's proposal depart from the federal rules and why?

First, the federal rule would inject the concept of "proportionality" into the "scope" of discovery. The Task Force compromised on the issue of proportionality raised by the federal rules and agreed to insert it into their proposal because they recognized the importance of the concept of proportionality (the weighing of the importance of the discovery that is sought and the issues at stake in the litigation versus the cost of retrieving and producing the information sought). But, the Task Force agreed unanimously that the proper time and mechanism for raising the proportionality issue was not as an "objection to the scope" – a tact that inevitably

would lead to boilerplate objections to scope in response to every discovery request and thereby add time and costs to discovery for all parties.

Instead, the Task Force decided the appropriate time and mechanism for asserting that a discovery request is not proportional to the value of the case would be in a Motion for a Protective Order filed by the party objecting to the specific discovery request. The main reason this is a more appropriate mechanism is that it places the burden of showing a lack of proportionality on the party that possesses the requested evidence. That makes perfect sense because the party from which the evidence is being sought knows the volume of the responsive evidence, where that evidence is located, and how much it will cost to retrieve and produce that evidence. The requesting party knows NONE of those things and, therefore, would not be capable of proving anything to a trial judge about any of those issues that are at the core of the issue of proportionality. The Motion for a Protective Order properly places that burden on the party capable of meeting that burden and does so without creating boilerplate objections to routine discovery requests. This will ensure that parties will not be arbitrarily deprived of evidence necessary to prosecute or defend a case. Again, this departure from the new federal rules was agreed to UNANIMOUSLY by the Bar's 2015 Task Force on E-Discovery.

The second area where the State Bar Task Force's proposal departs from the federal rules is in the area of spoliation. In sharp contrast to longstanding and well-settled Georgia law, "bad faith" would not be enough under the new federal rule to enable a trial judge to impose any meaningful sanction on a spoliating party. Prejudice (no matter how severe) would not be enough. The federal rule would require "specific intent to deprive" the opposing party of the information's use in the litigation. That standard goes too far in taking away judicial discretion to fashion appropriate remedies that balance the culpability of the spoliator's conduct (i.e., the 'bad faith' inquiry under current law) with the importance of the evidence (i.e., the prejudice and practical importance inquiry of current law). There is no evidence, anecdotal or otherwise, that Georgia trial judges are misapplying the current rules, or that sanctions have run amok in Georgia. Nor is there any evidence that the new standard would be any "easier to apply" than the current rules – other than the fact that it unequivocally would insulate more bad conduct from consequences and that is not a goal the Bar should be striving to achieve on such an important issue.

As to the stated concern about the sheer volume of electronic discovery that corporations must manage, that fact is certainly something trial judges can – and already do – weigh into the calculus when determining bad faith and whether the information should even have been "reasonably" preserved in the first place. In short, the new federal rule on spoliation is a solution in search of a problem that has not been shown to exist in Georgia. Any fair-minded reading of the Bar's Task Force on E-discovery's proposed new state rules reveals that there are numerous protections for the so-called 'innocent' spoliator. The fact that a well-balanced group of practicing litigators – plaintiffs' lawyers and defense lawyers – agreed to the language, with only one dissenting vote on one subsection, further demonstrates that this language is

reasonable and balanced and more than adequate to leave Georgia trial judges with meaningful ways to remedy prejudice from evidence spoliation.

I will conclude by explaining why Georgia's discovery rules can and should be different from the newly adopted federal rules. After all, some argue, the federal rules are the end product of a lengthy vetting process by some very bright folks. Why should Georgia's state court discovery rules continue to be slightly different from the new federal rules?

My first answer to that question is to repeat what I have heard from many of my colleagues all over the State of Georgia and especially those practicing in smaller-sized firms and those practicing in the more remote areas of the State instead of in the big firms in Atlanta. And, that is the observation that "Most Georgia lawyers don't practice in federal court for a reason." That reason is that the federal rules of discovery and other rules of procedure are too restrictive, too demanding, and too likely to impose financial burdens on parties and litigants that most Georgia citizens (and lawyers) simply cannot afford. Perhaps such financial and other burdens are appropriate in patent infringement and other high-dollar cases that must be tried in federal court where there is a hefty amount-in-controversy threshold. But, that does not mean that Georgia litigants or lawyers should have to endure those burdens in order to litigate every routine domestic dispute, every estate litigation and every routine breach of contract case in our State courts.

My second answer to why it is ok to have different discovery rules in State court than in federal court goes to the heart of what litigation is all about. Litigation has the noble virtue of forcing into the light information about important social issues of the day through the process of discovery and sometimes even trial. Whether the state chooses to promote or hinder that litigation is, therefore, a question of fundamental political import.

A vibrant, broad and effective discovery process in civil litigation allows private citizens and small businesses to investigate and bring to light the negligent behavior of bad actors. The only alternative to this system is an ever-increasing governmental bureaucracy designed to constantly monitor and police the actions of private citizens and businesses. Where there is such an ever-expansive bureaucracy – like one finds at our federal level of government – perhaps the constriction of the power and efficacy of discovery makes sense. That may be an explanation for why the federal courts – with the blessing of the federal legislature – have allowed an ever-tightening set of limitations to be placed on the discovery process such as those found in the new federal rules on discovery and as lobbied for by the opponents to the proposal crafted by the State Bar's E-Discovery Task Force.

However, as one of the pre-eminent legal scholars of our time, Duke Law Professor Paul Carrington, has eloquently observed: "We should keep clearly in mind that discovery is the American *alternative* to the administrative state. Every day, hundreds of American lawyers caution their clients that an unlawful course of conduct will be accompanied by serious risk of exposure at the hands of some hundreds of thousands of lawyers, each armed with a subpoena power by which misdeeds can be uncovered. Unless corresponding new powers are conferred

on public officers, constricting discovery would diminish the disincentives for lawless behavior across a wide spectrum of forbidden conduct.”

Supporters of the proposal crafted by the Bar’s E-Discovery Task Force believe that, on the State level, where we do not have an unlimited bureaucracy, we must maintain the vibrancy, the full breadth and the efficacy of our civil litigation discovery process. Unnecessarily limiting the ability of parties to secure information in the possession of an adverse party that is relevant to a party’s claims or defenses – or unnecessarily tying our trial judges’ hands so that they cannot impose appropriate sanctions for spoliation – will result in an ever-increasing need for an ever-increasing governmental bureaucracy to constantly monitor and police the actions of private citizens and businesses. That is not what Georgia is about and that is not what Georgia lawyers should countenance.

For all of the foregoing reasons, we urge the Georgia Bar Board of Governors to endorse the proposal crafted by the State Bar’s Task Force on E-Discovery and approved by the Bar’s Advisory Committee on Legislation.

Respectfully Submitted,

BOG Member J. Christopher Clark

Former State Rep. Edward H. Lindsey, Jr.

Robin Frazer Clark (State Bar Past President)

BOG Member Marc Howard (Chair of ACL)

S. Lester Tate (State Bar Past President)

BOG Member Dan Snipes (Past Chair of ACL)

BOG Member Virgil Louis Adams

BOG Member Randall H. Davis

Kenneth B. Hodges, III (State Bar Exec. Committee Member)



TO: State Bar Advisory Committee on Legislation  
FROM: State Bar Child Protection and Advocacy Section  
RE: Proposed Legislation

On Nov. 16, the Court of Appeals issued an opinion a dependency case, In the Interest of J.C. The opinion included a footnote by Judge McFadden expressing concern about practices surrounding the waiver of counsel by parents in dependency cases. The footnote states:

The unappealed deprivation order states that the mother waived counsel. From counsels' statements at oral argument, it appears that such waivers, negotiated with DFCS, may be a regular occurrence at adjudicatory hearings in deprivation cases in some jurisdictions. Although the propriety of this waiver of counsel is not raised on appeal, we note that Georgia law entitled the mother to legal representation, including court-provided counsel if she were found indigent, and Georgia law required the juvenile court to ascertain that the mother was aware of this right. Former OCGA § 15-11-6 (b). A waiver of this statutory right to counsel must be both knowing and voluntary, In the Interest of B. B., 267 Ga. App. 360, 362 (2) (599 SE2d 304) (2004), and it must be made on the record. In the Interest of J. M. B., 296 Ga. App. 786, 789 (676 SE2d 9) (2009). Proceedings that might lead to the termination of a parent-child relationship also can implicate due process concerns. See generally Lassiter v. Dept. of Social Svcs., 452 U. S. 18, 31-32 (II) (C) (101 S Ct 2153, 68 LE2d 640) (1981) (adopting standards for determining whether due process entitled parent to counsel in termination proceeding). The instant case offers an example of the significant, detrimental effect of a parent's lack of counsel in deprivation proceedings. In the earlier proceeding the mother, without benefit of counsel, stipulated that the child was deprived, that the attendant circumstances (such as alleged cutting behavior) constituted deprivation, and that the child could be removed from her care for up to a year. These stipulations have limited to some degree the arguments the mother has been able to make in later stages of the proceedings, including in this appeal. In fact, the state has emphasized the mother's stipulations in its appellate arguments, asserting that, "about six months prior to the hearing on [DFCS's] motion to transfer custody, [the mother] had stipulated to the fact that J. C. was deprived due to her mental instability and consented to placing him in the physical custody of his maternal aunt."

The Child Protection and Advocacy Section is asking the Advisory Committee on Legislation to recommend that the State Bar support offering an amendment to the new code that would reinstate the specific old-code requirement that the waiver be knowing, voluntary, and on the record. As Judge McFadden's footnote suggests, in the emotionally-charged atmosphere of a dependency action, parents are brought into court by the Department of Family and Children Services, represented by trained and competent Special Assistant Attorneys General, to defend their ability to adequately care for their children. These parents are statutorily entitled to lawyers, and, if they qualify financially, they are entitled to appointed lawyers. When parents

claim that they do not want an attorney, the court has the responsibility to determine that the waiver of that right, which results in an imbalance in the litigation of the dependency proceeding, is fully understood by the parent and is still voluntarily being waived. The proposed modification of the statute will resolve the matter so that a waiver may be assumed to be knowing and voluntary, as required by law. The full opinion is attached for your reference.

OCGA § 15-11-103

(g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to:

(1) Obtain and employ an attorney of such party's own choice;

(2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or

(3) Waive the right to an attorney, but only if the court has first ascertained on the record that that the waiver is knowing and voluntary.

15-11-6 [OLD CODE]

(b) *Right to legal representation.* Except as otherwise provided under this article, a party is entitled to representation by legal counsel at all stages of any proceedings alleging delinquency, unruliness, incorrigibility, or deprivation and if, as an indigent person, a party is unable to employ counsel, he or she is entitled to have the court provide counsel for him or her. *If a party appears without counsel, the court shall ascertain whether such party knows of his or her right to counsel and to be provided with counsel by the court if he or she is an indigent person.* [Emphasis added] The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented indigent person upon the request of such a person. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them.

15-11-103 [New Code]

(g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to:

- (1) Obtain and employ an attorney of such party's own choice;
- (2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or
- (3) Waive the right to an attorney.

J. C.

Court of Appeals of Georgia, Third Division

November 16, 2015, Decided

A15A1144.

Reporter

2015 Ga. App. LEXIS 679

IN THE INTEREST OF J. C., a child.

**Notice:** Decision text below is the first available text from the court; it has not been editorially reviewed by LexisNexis. Publisher's editorial review, including Headnotes, Case Summary, Shepard's analysis or any amendments will be added in accordance with LexisNexis editorial guidelines.

**Core Terms**

deprivation, aunt, psychologist, juvenile court, clear and convincing evidence, juvenile, no evidence, domestic violence, legal custody, case manager, emotional, abusive, lived, physical custody, circumstances, counseling, impairment, Neglect, prostitution, custody, cutting, housing, temporary custody, parenting class, Perpetration, supervise, drug use, proceedings, punctuation, temporary

**Opinion**

[\*1] McFadden, Judge.

The mother of J. C. appeals from the juvenile court's March 5, 2014 order transferring temporary legal custody of the child, then one-and-a-half years old, from the mother to the child's aunt. Because there was not clear and convincing evidence that at the time of the transfer order the child was presently deprived due to the mother's parental unfitness, we reverse.

Georgia's former juvenile code applies to this case because it was commenced in 2013. See generally *In the Interest of G. R. B.*, 330 Ga. App. 693 n. 1 (769 SE2d 119) (2015) (explaining that new juvenile code applies to juvenile proceedings commenced on and after January 1, 2014, and describing changes made by new juvenile code pertaining to deprivation proceedings). The former juvenile code authorized a juvenile court to transfer temporary legal custody of a child from a parent to one of several enumerated persons or entities if the child was found to be a deprived child. Former *OCGA § 15-11-55(a)(2)(A)*.

A "deprived child" is a child who is "without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals[.]" Former *OCGA § 15-11-2 (8)(A)*. "[A]n order temporarily transferring custody of a child based on alleged [\*2] deprivation must be grounded upon a finding that the child is at the present time a deprived child, and a finding of parental unfitness is essential to support an adjudication of present deprivation." *In the Interest of G. S.*, 279 Ga. App. 89, 92 (630 SE2d 607) (2006) (citations and punctuation omitted; emphasis in original); accord *In re J. C. P.*, 167 Ga. App. 572, 575-576 (307 SE2d 1) (1983) (on motion for reconsideration). In other words,

[t]o authorize even a loss of temporary custody by a child's parents, on the basis of deprivation, the deprivation must be shown to have resulted from unfitness on the part of the parent, that is either intentional or unintentional misconduct resulting in the abuse or neglect of the child or by what is tantamount to physical or mental incapacity to care for the child.

*In the Interest of S. S.*, 232 Ga. App. 287, 289 (501 SE2d 618) (1998) (citation and punctuation omitted).

1. *Facts and procedural history.*

Keeping the above standards in mind, we turn to the evidence, which we view "in the light most favorable to the juvenile court's judgment to determine whether any rational trier of fact could have found by clear and convincing evidence that the child was deprived." *In the Interest of G. S.*, 270 Ga. App. at 91 (citation and punctuation omitted).

Viewed most favorably to the juvenile court's judgment, the evidence shows that J. C. was born in Baltimore on September 1, 2012, when the mother [\*3] was 23 years old. Before J. C.'s birth, the mother had lived with her own mother, then moved to Baltimore where she lived at various times with her stepfather (who abused her), with a former boyfriend, with female friends, and on the streets working as a prostitute. At the time of J. C.'s birth, the mother lived in a homeless shelter. She did not know with certainty the identity of J. C.'s father but believed he could have been her stepfather.

In November 2012, the mother and J. C. moved into the house of the mother's sister ("the aunt") in Georgia. While living with the aunt, the mother engaged in some cutting behavior. Sometimes she would take J. C. across the street to spend time with neighbors whom the aunt described as "wrong people" because they fought and drank. Occasionally the aunt would see the mother drink alcohol, but she testified that the mother did not drink much. However, the mother smoked marijuana and at some point, at the mother's request, the aunt provided the mother with a urine specimen for a drug test. The mother did not get along with the aunt and planned to move back in with her own mother, but in January 2013 her mother passed away.

In February 2013, the mother [\*4] and the aunt got into a verbal argument, leading the mother to pack her and J. C.'s belongings and leave the house to stay with friends. The mother had no transportation, the weather was very cold, and the aunt did not know where the mother was going. The Department of Family and Children's Services ("DFCS") became involved; the appellate record contains sparse details on this point but does contain an unappealed deprivation order in which the juvenile court pertinently found

that [DFCS] received allegations that the child was being neglected due to the mother's mental instability. The mother [had] recently attempted to leave [the aunt's] home in the rain while holding the child after an argument with [the aunt]. DFCS and law enforcement arrived at the residence and the mother was belligerent and verbally combative. . . . The mother admits to cutting herself. She reports that she yells at the baby but has never physically harmed him.

On March 3, 2013, the mother and DFCS agreed to an "impending danger safety plan" that did not articulate any specific safety threats but stated that J. C. would live with the aunt and the mother would have supervised visits with him at the aunt's home. [\*5]

At a May 14, 2013, adjudicatory hearing the mother, acting pro se, stipulated that J. C. was deprived.[1] (The appellate record does not contain a transcript of that hearing.) On June 6, 2013, the juvenile court entered the above-mentioned unappealed deprivation order that adjudicated J. C. deprived based on four causes: "Perpetration of Domestic Violence"; "Neglect/Lack of Supervision"; "Neglect/Inadequate Housing"; and "Mental/Physical Impairment of Parent." The juvenile court ruled that the mother would retain legal custody and control of J. C. provided that she "comply with the family plan devised by [DFCS[2]] and follow all recommendations and referrals to service providers, including, but not limited to: counseling recommended by [a particular service provider], parenting classes, clean and suitable housing and psychiatric evaluation[.]" The juvenile court held that the aunt would have physical custody of J. C. "until such time as the mother complies with the terms of [the juvenile court's order]" and that "[p]hysical custody of the child shall not return to the mother without prior order of this [c]ourt." The order further stated that it would "expire on May 14, 2014, unless [\*6] sooner terminated by [o]rder of this [c]ourt."

The mother did not appeal from this deprivation ruling. We note, however, that the juvenile court lacked the authority to award physical custody of the child to a person other than the child's legal custodian. See *In the Interest of A. N.*, 281 Ga. 58, 59-61 (636 SE2d 496) (2006) (juvenile court addressing issue of temporary custody was not authorized to impose upon grant of legal custody a condition that physical custody be given to a party of the court's choosing, because the concept of legal custody includes the right to determine where and with whom child shall live); *In re R. R. M. R.*, 169 Ga. App. 373, 374-375 (1) (312 SE2d 832) (1983) (juvenile court addressing issue of

temporary custody was not authorized to grant one person or agency legal custody of child and another person or agency physical custody of child).

Consequently, in the summer of 2013 J. C. remained living with the aunt and initially the mother lived in her truck. She briefly lived with a pimp but denied prostituting for him. She then moved into an agency-operated shelter. The mother began parenting classes and obtained employment, but in August 2013 she sustained an injury that prevented her from working.

On August 16, 2013, a licensed psychologist performed a four-hour psychological/parental fitness [7] evaluation on the mother. The mother was very candid in their interview. She related that she was the victim of childhood sexual abuse, had a history of prostitution, and had a history of difficult relationships with abusive partners. She told the psychologist that she smoked marijuana and consumed two alcoholic drinks a day. She described a criminal history (a burglary conviction with a probated sentence and first offender status ) and a history of cutting behavior as a teenager that she resumed after the argument with the aunt.

The mother told the psychologist that she had completed parenting classes and that she had begun anger management classes but had not returned because she did not like the others in the class and because the leader had said she did not need the classes. The mother appeared to the psychologist to be amenable to therapy and making an effort with it.

The psychologist administered several tests to the mother. These tests reflected that she had an IQ on the lower end of average but not low enough to mentally impair her and that she had a high probability for substance abuse and self-medication. She scored high on tests for trauma, anxiety, depression, and suicidal [8] ideation. Her score on a child abuse potential inventory reflected that she had personality characteristics in common with "people who have typically abused a child." She scored low on an inventory of parenting aspects, and although she had a reasonable understanding of child rearing and parenting principles, the mother's expressed intention of using corporal punishment rather than time-outs to discipline J. C. in the future concerned the psychologist, in light of her other test scores.

Based on his interview and the test results, the psychologist diagnosed the mother with various mental disorders that, in his opinion, affected her functioning and required immediate treatment. He recommended that J. C. not be returned to his mother's care and that she have only supervised contact with him until a therapist deemed her ready for unsupervised contact.

After receiving the psychologist's report, in October 2013, DFCS petitioned to transfer temporary legal custody of J. C. from the mother to the aunt. The mother, at that point represented by counsel, moved to dismiss the petition and for a return of physical custody to her.

On December 10, 2013, the juvenile court held an evidentiary hearing, [9] at which the psychologist testified to the findings from his August 2013 evaluation. As detailed below, various other witnesses testified to actions that the mother had taken since the juvenile court's earlier deprivation finding.

A DFCS case manager testified at the hearing that DFCS had developed a case plan[3] for the mother that set goals for her to continue counseling, attend anger management classes, follow the psychologist's recommendations, and obtain an evaluation from a licensed psychiatrist. The case manager described her knowledge of the mother's progress in these areas: the mother was in the initial phases of individual counseling, she had not finished anger management classes but had expressed her intent to attend a series of classes that had not yet begun, and she had not yet had a psychiatric evaluation. The case manager explained that the mother was responsible for finding her own psychiatrist and that DFCS had not referred the mother to a psychiatrist. The case manager also testified that the mother was working with a new service provider; the new provider had not given DFCS information about the mother's progress and DFCS had not given the new provider the psychologist's [10] August 2013 evaluation.

The DFCS case manager met with the mother regularly. She testified that, at the time of the hearing, the mother was on medical leave from employment and that in September 2013 she had moved into a three-bedroom trailer

J. C.

that was clean and had room for J. C.; she received help in paying her rent and utilities from the agency that operated the shelter where she had stayed. The mother lived alone in the trailer, although sometimes she would have friends visit; the mother introduced her friends to the case manager using nicknames, and the case manager did not know whether or not the mother knew the friends' actual names. The mother had visits with J. C. that were arranged and supervised by the aunt.

The case manager testified that, at some point during the late summer of 2013, a fire erupted while the mother was cooking at the aunt's house. The mother told the case manager that she had momentarily entertained the thought of letting the house burn down but, realizing that J. C. would not have a place to stay, she called the fire department.

When asked why DFCS sought the transfer of temporary custody from the mother to the aunt, the case manager responded: "I feel that [\*11] Mom is not making any behavior change in regards to her parenting skills or her child's well being." She noted that the mother blamed others for DFCS's involvement and had never lived with J. C. on her own. The case manager testified that the mother had stated she did not intend to continue a relationship with J. C. if the aunt was given custody of the boy.

The aunt testified at the hearing that J. C. was living with her, that the mother visited J. C. regularly, and that the mother attended doctor appointments with the boy. The aunt had discretion over the visitation schedule. The relationship between the aunt and the mother was strained, and the aunt testified that the mother had laughed about the household fire incident. However, the aunt helped the mother move into her new residence, which the aunt described as livable and clean. The aunt opined that the mother was unable to care for J. C., noting that the mother had never taken care of the boy without help from others, she was "not stable," and she socialized with undesirable people.

The juvenile court heard testimony from an employee of the agency that operated the shelter where the mother had lived in the summer of 2013 and from [\*12] which the mother continued to receive support. This witness testified that the mother had begun parenting classes, had found stable housing, and had begun individual counseling. She testified that she had seen improvements in the mother's ability to manage anger, noting that the mother had "been through a lot that makes people angry" and describing, as an example of the mother's improved skills in this area, an incident "where a resident [of the shelter] tried to actually fight with her, and instead of fighting with the other resident [the mother] came and told the staff and tried to resolve the situation." In the agency employee's opinion, the mother had "evolved."

A witness who had become a close friend of the mother in the summer of 2013 testified that she spent time with the mother every day, provided her with some financial assistance, and regularly took her to therapy and counseling appointments. She stated that the mother was scheduled to begin anger management classes. Although the mother spoke about her past cutting behavior, the friend saw no evidence of current cutting. The friend had observed the mother interact with J. C. at doctor appointments and the aunt's house, and [\*13] she described the two as having a loving bond. The friend testified to changes she had observed in the mother between the summer of 2013 and the hearing in December 2013. Initially the mother had been very angry, but the witness had seen the mother's personal growth. She had witnessed the mother get frustrated without losing her temper. The friend testified: "[S]he is a very loving person. She has a good heart. She . . . did have trust issues but now she has grown to the point that she does trust. And that's why I feel like with her that she's more like a daughter than just a friend." The friend stated that the mother had a positive support system that included her, the family violence agency employee, and a relative. She testified to her belief that the mother was capable of taking care of J. C. and she committed to help the mother to that end.

The mother testified at the hearing that, since moving out of the aunt's house, she had completed parenting classes and begun counseling. Because J. C. did not live with her, she was not presently eligible for an in-home parenting class. She had an appointment for a psychiatric evaluation set for several days after the hearing and was taking [\*14] prescribed medication for depression. She had registered for a series of anger management classes that would begin the following month, and she also was scheduled to begin substance abuse treatment. The mother presented photographs of her three-bedroom trailer home, in which she had placed a crib and other items for J. C. The mother admitted to one instance of cutting behavior since J. C.'s birth. She admitted to smoking marijuana and



J. C.

described obtaining the drug from strangers outside of convenience stores. Another witness who administered a drug test to the mother testified that she had tested positive for marijuana and cocaine.

At the end of the hearing, the psychologist, who had listened to all of the testimony, returned to the stand and testified that the mother "appears [to be] in a very similar situation" as she was when he evaluated her four months earlier, if not a worse situation due to the positive drug test, although he acknowledged that the mother had developed a support network and begun taking medication for her psychological conditions. He had not had further contact with the mother after the August 2013 evaluation, and he testified that he did not "know for sure" whether [15] her parental fitness had improved or her scores would have changed on the assessment tests he had previously administered. The psychologist testified that he had concerns about J. C. being returned to his mother's care because, without counseling, the mother's condition would not improve. He also testified that the aunt should not supervise contact between the mother and J. C.

On March 5, 2014, the juvenile court entered the order at issue on appeal. In that order, the juvenile court found that J. C. remained deprived "as previously found by this [c]ourt on May 14, 2013, [and] that the [m]other has not yet remedied her issues that resulted in a deprivation finding in May 2013[.]" The juvenile court denied the mother's motion to dismiss and her motion for a return of physical custody, and instead transferred temporary legal custody of J. C. from the mother to the aunt. The mother appeals from this order.

## 2. Present deprivation.

As stated above, for a transfer of even temporary legal custody of J. C. from the mother to the aunt, DFCS was required to show by clear and convincing evidence that J. C. was presently deprived. See *in the Interest of G. S.*, 279 Ga. App. at 91. In his March 5, 2014, order the juvenile court found J. C. deprived [16] because the mother had not remedied the causes of deprivation identified in the earlier deprivation order. See generally *In the Interest of M. T. F.*, 318 Ga. App. 135, 145-146 (1) (733 SE2d 432) (2012) (where child is not in parent's physical custody, DFCS may show present deprivation by showing that, if child were returned to parent at time of hearing, child would be deprived). Those causes were: "Perpetration of Domestic Violence"; "Neglect/Lack of Supervision"; "Neglect/Inadequate Housing"; and "Mental/Physical Impairment of Parent." We must view the earlier, unappealed deprivation order as establishing that those causes of deprivation existed at the time of the earlier order. See *in the Interest of P. D. W.*, 296 Ga. App. 189, 192 (1) (a) (674 SE2d 338) (2009) (unappealed order adjudicating child deprived binds parent to finding that at time of order child was deprived for reasons given therein). Present deprivation "may be established by showing that the conditions upon which an earlier finding of deprivation was based still exist[ed] at the time of the termination hearing." *In the Interest of M. T. F.*, 318 Ga. App. at 146 (1) (citations omitted).

The appellate record, however, offers little meaningful insight into the conditions giving rise to the prior deprivation findings, which the juvenile court entered after a hearing at which the mother stipulated to deprivation [17] without the benefit of counsel. The paucity of the record on this point hampers our ability to determine whether there is evidence that those conditions still existed at the time of the deprivation ruling at issue in this appeal. As detailed below, the record, as it exists, does not contain clear and convincing evidence to support the trial court's conclusion that, in December 2013, J. C. remained presently deprived.

### (a) Perpetration of domestic violence.

The record does not contain clear and convincing evidence that the mother had continued to perpetrate domestic violence. To begin with, the record does not clearly identify the victim of the domestic violence that the juvenile court found the mother to have perpetrated in the May 2013 order. That order refers to the argument between the mother and the aunt and also states that the mother had yelled at the infant J. C., but the order does not describe any acts of violence and the aunt made clear in her later testimony that her argument with the mother was not physical but was "just words."

Regardless of the identity of the victim of the domestic violence initially found by the juvenile court, the record contains no evidence whatsoever [18] that the mother had continued to perpetrate domestic violence against

J. C.

anyone. At the time of the December 2013 hearing, the mother lived alone, there is no evidence that she was involved in a romantic or sexual relationship with anyone, and there is no evidence that she had engaged in any violent acts whatsoever toward the aunt, toward J. C., or toward any other person. At most, the evidence showed that when the household fire erupted the mother briefly entertained the thought of letting the house burn down but did not act on this thought. Even if the mother's initial thought regarding the fire could be construed as an act of "domestic violence," it was a single incident that does not support a finding of present deprivation. See *In the Interest of H. B.*, 324 Ga. App. 36, 38 (1) (749 SE2d 38) (2013) (single incident of domestic violence did not demonstrate deprivation).

(b) *Neglect/lack of supervision.*

The record does not contain clear and convincing evidence that, in December 2013, J. C. was deprived due to lack of supervision. The record does not describe the circumstances that the juvenile court found to constitute lack of supervision in the spring of 2013, and consequently we cannot determine whether there was evidence that those circumstances still [\*19] existed. Similarly, although the psychologist's August 2013 written report included "neglect of child - perpetrator" as one of his diagnostic impressions of the mother, neither his report nor his testimony identified the specific circumstances that resulted in that diagnosis, and thus we cannot determine if those circumstances persisted in December 2013.

The juvenile court's order also does not explain how the mother would fail to supervise J. C. if he were returned to her care. The order included some factual findings critical of the mother's previous lifestyle, including her cutting behavior, the time she spent with undesirable persons, and her working as a prostitute. But we discern from the record "no evidence of abuse or abandonment," *In the Interest of E. M.*, 264 Ga. App. 277, 281 (590 SE2d 241) (2003) (citations omitted), and the juvenile court did not explain whether or how the mother's earlier behaviors would lead to a failure to supervise the boy. Cf. *In the Interest of D. E. K.*, 236 Ga. App. 574, 577-578 (512 SE2d 690) (1999) (evidence of, among other things, mother's transitory lifestyle, previous drug use, and relationship with abusive husband did not amount to clear and convincing evidence that child was deprived, where uncontroverted evidence showed that mother had cared for child to best of her ability and child's [\*20] basic physical, mental, and emotional needs had been met). Moreover, there was no evidence that these behaviors persisted at the time of the hearing. While the juvenile court noted that the mother had left the aunt's house with J. C. in inclement weather (the act that apparently led to the involvement of DFCS), there was no evidence that this was anything other than an isolated episode or that J. C. suffered any emotional or physical harm from it. See *In the Interest of H. B.*, 324 Ga. App. at 38 (1). Finally, while the juvenile court's order stressed the mother's continued drug use and the fact that she obtained marijuana from strangers, again there was no evidence that her drug use caused J. C. any emotional or physical harm. See *In the Interest of M. L. C.*, 249 Ga. App. 435, 437 (2) (548 SE2d 137) (2001) (reversing finding of deprivation and transfer of temporary custody where there was "little evidence of record indicating how the parents' drug use affected [the child]").

However, there was evidence that the mother was taking steps to care for J. C.'s needs by establishing an appropriate residence, accompanying him on doctor visits, and attending parenting classes. See *In the Interest of G. S.*, 279 Ga. App. at 93 (noting evidence that mother was taking steps to care for child's needs, including scheduling dental and medical [\*21] appointments, in finding there was not clear and convincing evidence of deprivation). Under these circumstances, there was not clear and convincing evidence that J. C. was presently deprived due to the mother's failure to supervise him.

(c) *Neglect/inadequate housing.*

The record does not contain clear and convincing evidence that, in December 2013, the mother had inadequate housing for J. C. To the contrary, the undisputed evidence showed that the mother had obtained suitable housing in the form of a three-bedroom trailer that was clean and livable and contained necessities for the child. See *In the Interest of E. M.*, 264 Ga. App. at 281.

(d) *Mental/physical impairment of parent.*

In both its appellate brief and at oral argument the state emphasized the mother's alleged mental impairment as the primary reason to affirm the juvenile court's ruling. Even if we were to find clear and convincing evidence sufficient to sustain the juvenile court's finding of deprivation caused by mental impairment, that evidence would not support affirming the judgment. The erroneous findings of the juvenile court discussed above would necessitate a remand. See *In the Interest of E. R. D.*, 172 Ga. App. 590 (323 SE2d 723) (1984) (after setting aside as clearly erroneous a finding of the juvenile court that the record did [\*22] not support, reversing a deprivation order and remanding it to the juvenile court for further proceedings because the appellate court could not "determine whether the juvenile court would have found clear and convincing evidence of deprivation based upon the remaining evidence before it") (citation and punctuation omitted). But as detailed below, the record does *not* contain clear and convincing evidence sufficient to support mental impairment as a cause of present deprivation.

In determining whether a child is a "deprived child" under former OCGA § 15-11-2 (b) (A), a court may consider "[a] medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child." Former OCGA § 15-11-94 (b) (4) (B) (i). See *In the Interest of C. D. E.*, 248 Ga. App. 756, 764 (2) (546 SE2d 837) (2001). Although the psychologist opined that the mother had "significant health issues that could negatively affect her ability to parent," for several reasons we find that his opinion was not clear and convincing evidence that the mother had a medically verifiable mental health deficiency of such duration or nature as to render her unable to provide adequately for J. [\*23] C.

The psychologist's opinion did not establish how his diagnostic impressions of the mother related to a finding that the child was deprived. See *id.* As to many of the diagnostic impressions, there was "no discussion of how [they were] relevant to the mother's ability to parent her child." *In the Interest of K. S.*, 271 Ga. App. 891, 893 (611 SE2d 150) (2005). While the psychologist's written report contained a list of "significant issues impairing [the mother's] ability to parent," neither the list nor the psychologist's testimony about that list demonstrated the necessary link between a verifiable mental health deficiency and an inability to provide adequately for the child. The psychologist "did not . . . testify as to the effect of the [mother's conduct] on [J. C.] or state that [he] had been harmed by his [mother's] actions . . . at any other time [and he] gave no specific example of the effect of [the mother's] behavior on the child." *In the Interest of C. L. Z.*, 283 Ga. App. 247, 248 (641 SE2d 243) (2007) (reversing deprivation finding). Compare *In the Interest of M. E.*, 265 Ga. App. 412, 416-417 (1) (593 SE2d 924) (2004) (clear and convincing evidence authorized juvenile court to find child deprived based upon mother's lack of mental ability to care for child where mother's multiple mental health diagnoses had manifested in her fixating on idea that father had abused child, in her repeatedly [\*24] taking child to health care providers with unsubstantiated claims of sexual abuse, in her possibly having harmed child in order to support abuse allegations, and in her having emotionally abused child by failing to control anger).

Some of the items on the significant issues list - for example, that the mother has been "[d]iagnosed with Intermittent Explosive Disorder" - merely restated diagnostic impressions without addressing whether or why these conditions were of such duration or nature as to render the mother unable to parent. Some of the items on the significant issues list - for example, that the mother had an "[i]ncomplete case plan"[4] - did not necessarily follow from any of the specific diagnostic impressions. Some of the items on the significant issues list - for example, that the mother had "[n]o place of her own" and had "[e]ngag[ed] in prostitution while caring for her child" - either directly conflicted with or were not supported by the evidence of record; the undisputed evidence showed that by the time of the hearing the mother did have her own housing, and while there was evidence that the mother had prostituted herself before J. C. was born and briefly had lived with [\*25] a pimp after the juvenile court removed J. C. from her care, there was no evidence that she had prostituted herself during any time when the child was in her care. The psychologist admitted at the hearing that he did not know when the prostitution had occurred. Despite the incompleteness and inaccuracy of the lists found in the psychologist's written report, the juvenile court repeated much of them verbatim in his final order as findings of fact supporting the conclusion that J. C. was deprived. See generally *In the Interest of C. D. E.*, 248 Ga. App. at 763 (2) (juvenile court's inclusion in order of allegations unsupported by evidence suggests that court's ultimate conclusion that children were deprived was based on a flawed view of facts).

J. C.

Even more significantly, the concerns that the psychologist raised in his written report and emphasized in his hearing testimony centered primarily on the mother's past experiences and possible future actions, not on her present ability to care for J. C. The psychologist testified that his "two biggest concerns" were the mother's "ability to control herself from hurting [J. C. and] her previous tendency to pick abusive people to be with." But a transfer of even temporary [\*26] custody from a parent must be due to present deprivation. *In the Interest of G. S.*, 279 Ga. App. at 92. Evidence of a parent's past conduct and the possibility of future deprivation does not support a transfer of custody. See *In the Interest of G. R. B.*, 330 Ga. App. 693, 701 (769 SE2d 119) (2015) (concern over risk that parents - who had troubled, violent relationship - might reunite in future was not evidence of present deprivation); *In the Interest of D. L. T. C.*, 299 Ga. App. 765, 770 (1) (684 SE2d 29) (2009) (while "courts may consider past conduct when determining whether deprivation is likely to continue, . . . a finding of parental unfitness must be based on present circumstances") (citation and punctuation omitted). See generally *In the Interest of C. D. E.*, 248 Ga. App. at 765-766 (2) (distinguishing between future risk and present danger). This is particularly true where, as here, there is no showing of any previous physical or emotional harm to the child. See *In the Interest of H. S.*, 285 Ga. App. 839, 842 (648 SE2d 143) (2007) (reversing award of temporary custody from father to other relatives; despite some evidence of instance of domestic violence between parents, there was no evidence that child suffered any emotional or physical harm). Compare *In the Interest of T. S.*, 310 Ga. App. 100, 103 (1) (712 SE2d 121) (2011) (finding sufficient evidence of deprivation where mother, who was in anger management counseling, twice previously had injured children, and psychologist working with mother testified that it was unwise to return children to her until she [\*27] sought further counseling); *In the Interest of R. M.*, 276 Ga. App. 707, 716 (624 SE2d 182) (2005) (while children's future risk of contracting tuberculosis from parents might not have constituted deprivation under different circumstances, where another child in the household already had died from the disease and parents nevertheless had refused to comply with treatment to mitigate risk, there was evidence of present deprivation).

Consequently, the mother's history of choosing abusive partners, and the psychologist's concern that she might choose another abusive partner in the future, did not demonstrate J. C.'s present deprivation. See *In the Interest of C. D. E.*, 248 Ga. App. at 761-762 (1) (possibility that mother, who was a past victim of domestic violence, might enter into another abusive relationship in the future was not a ground for taking custody of child away from her). Likewise, the psychologist's concerns that the mother's psychological makeup and past childhood trauma might predispose her to harm J. C. in the future did not support a finding of present deprivation, where there was no evidence that the mother had ever actually harmed the child. See *id.* at 765-767 (2) (reversing deprivation finding despite psychologist's report that father, who had a bipolar diagnosis, was a "walking time bomb" [\*28] who presented a risk of danger to his children).

The psychologist also testified that he was concerned that the mother's drug use would impair her ability to parent J. C., stating that "if you have trouble controlling your anger and you're high, then that's a major issue[.]" But again, the psychologist based this recommendation on a concern that the mother might harm J. C. in the future, although there was no evidence that she had at any time harmed the child in connection with her drug use. See *In the Interest of M. L. C.*, 249 Ga. App. at 437 (2).

Without question, the evidence, including the psychologist's opinion, depicted a mother who is struggling with significant mental and emotional challenges. But "[t]he right to the custody and control of one's child is a fiercely guarded right in our society and in our law. It is a right that should be infringed upon only under the most compelling circumstances." *In the Interest of G. S.*, 279 Ga. App. at 94 (citation and punctuation omitted). The evidence in this case showed that the mother had never physically or emotionally harmed her child and that she was working to overcome her mental and emotional challenges. A concern - however well-founded - that she might not succeed in overcoming those challenges simply [\*29] did not establish by clear and convincing evidence the present deprivation required to remove the child from her custody. Accordingly, we reverse the order transferring temporary legal custody of J. C. from the mother to the aunt. (In doing so, we note that the earlier order giving physical custody to the aunt has expired.)

*Judgment reversed. Dillard, J., concurs; Ellington, P. J., concurs in the judgment only.*

[1] The unappealed deprivation order states that the mother waived counsel. From counsels' statements at oral argument, it appears that such waivers, negotiated with DFCS, may be a regular occurrence at adjudicatory

hearings in deprivation cases in some jurisdictions.

Although the propriety of this waiver of counsel is not raised on appeal, we note that Georgia law entitled the mother to legal representation, including court-provided counsel if she were found indigent, and Georgia law required the juvenile court to ascertain that the mother was aware of this right. Former *OCGA* § 15-11-6 (b). A waiver of this statutory right to counsel must be both knowing and voluntary. *In the Interest of B. B.*, 267 Ga. App. 360, 362 (2) (599 SE2d 304) (2004), and it must be made on the record. *In the Interest of J. M. B.*, 296 Ga. App. 786, 788 (676 SE2d 9) (2009). Proceedings that might lead to the termination of a parent-child relationship also can implicate [\*30] due process concerns. See generally *Lassiter v. Dept. of Social Svcs.*, 452 U. S. 18, 31-32 (1) (C) (101 SCt 2153, 68 LE2d 640) (1981) (adopting standards for determining whether due process entitled parent to counsel in termination proceeding).

The instant case offers an example of the significant, detrimental effect of a parent's lack of counsel in deprivation proceedings. In the earlier proceeding the mother, without benefit of counsel, stipulated that the child was deprived, that the attendant circumstances (such as alleged cutting behavior) constituted deprivation, and that the child could be removed from her care for up to a year. These stipulations have limited to some degree the arguments the mother has been able to make in later stages of the proceedings, including in this appeal. In fact, the state has emphasized the mother's stipulations in its appellate arguments, asserting that, "about six months prior to the hearing on [DFCS's] motion to transfer custody, [the mother] had stipulated to the fact that J. C. was deprived due to her mental instability and consented to placing him in the physical custody of his maternal aunt."

[2] This family plan is not in the appellate record.

[3] It is not clear if this is the "family plan" to which the juvenile court referred in his earlier [\*31] deprivation order; in any event, this plan is not part of the appellate record.

[4] It is important to note that the "case plan" to which the psychologist referred - which is not in the record - could not have been a reunification plan, because at the time the child was in the legal custody of the mother. In any event, at the time the psychologist identified "incomplete case plan" as a significant issue, no more than a few months had passed since the plan's development, and there was undisputed evidence at the hearing that the mother had actively worked toward the plan's goals. Cf. *In the Interest of J. H.*, 310 Ga. App. 401, 403-404 (713 SE2d 472) (2011) (reversing juvenile court's determination that child was deprived where, among other things, there was "no evidence that [mother's] failure to readily accept [DFCS's] advice and assistance resulted in any harm to [the child]").

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To: The Advisory Committee on Legislation  
From: The Georgia Association of Counsel for Children  
Date: November 23, 2015  
Re: Proposed Revisions to O.C.G.A. Section 15-11-35 and 15-11-103

The Georgia Association of Counsel for Children (GACC) is writing to express its support for proposed legislation submitted to you by the Child Protection and Advocacy Section.

O.C.G.A. Section 15-11-35

GACC supports the proposed revision to O.C.G.A. Section 15-11-35 to clarify the duty of a juvenile court to continue regular statutory reviews of placement, services, and permanency planning for a dependent child during the pendency of an appeal.

Because of the unique nature of dependency proceedings, an adjudication of dependency and initial disposition of a child are deemed a "final" order for purposes of appeal. Nevertheless, a child's placement, service needs, and best interests are not static but continually evolving, and the continuation of the statutory process for court oversight is necessary to protect the safety and well being of the child.

While most Georgia juvenile courts continue regular, statutory judicial reviews during pendency of an appeal, some do not.

The proposed revision to O.C.G.A. Section 15-11-35 would add language to clarify that judicial oversight of a child's protection and care must continue during a dependency appeal.

This change, we believe, would enhance the safety of Georgia's children, and support consistency of practice across the state.

O.C.G.A. Section 15-11-103

GACC supports the proposed revision of O.C.G.A. Section 15-11-103 to codify existing case law and to ensure that waivers of the right to counsel in dependency cases are knowing and voluntary.

Recently, Court of Appeals Judge Christopher McFadden noted, despite the fact that a parent's lack of counsel may have a "significant, detrimental effect" in dependency cases, waivers of counsel "negotiated with DFCS, may be a regular occurrence at adjudicatory hearings...in some jurisdictions." In the Interest of J.C., Georgia Court of Appeals No. A15A1144, 2015 Ga. App. LEXIS 679 (Nov. 16, 2015) footnote 1.

This practice highlights concern that some juvenile courts are not adequately ensuring the waiver of counsel in dependency proceedings is knowing and voluntary.

The right to legal representation for all parties in dependency proceedings is codified in O.C.G.A. Section 15-11-103(a), but “A party other than a child shall be given an opportunity to... Waive the right to an attorney.” O.C.G.A. Section 15-11-103(g)(3).

Case law establishes that “A waiver of this statutory right to counsel must be both knowing and voluntary [Citations omitted.], and it must be made on the record. [Citations omitted.]” *Id.*

The proposed revision to O.C.G.A. Section 15-11-103(g) would add language to clarify that a waiver of counsel must be determined by the court, on the record, to be knowing and voluntary.

This change, we believe, would provide important support for the critical right to legal counsel in dependency proceedings and encourage consistency of practice around the state.

Thank you for giving us the opportunity to comment on these important legislative proposals, and please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Jane Okrasinski, Attorney  
Executive Director, GACC  
[jane.okrasinski@gmail.com](mailto:jane.okrasinski@gmail.com)  
706-614-7792

**Nicki Vaughan (Public Defender)**

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**Subject:** FW: Attachments left off original email regarding request to ACL

**From:** Regina Quick [mailto:rmqpc@mindspring.com]  
**Sent:** Monday, November 30, 2015 10:07 AM  
**To:** Nicki Vaughan (Public Defender)  
**Subject:** RE: Attachments left off original email regarding request to ACL

The Family Law Section supports the proposal.

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**From:** Nicki Vaughan (Public Defender) [mailto:nvaughan@hallicounty.org]  
**Sent:** Saturday, November 28, 2015 12:28 PM  
**To:** rmqpc@mindspring.com  
**Subject:** FW: Attachments left off original email regarding request to ACL

Hi, Regina—

I hope you had a nice Thanksgiving. Attached are documents presented by the Child Protection and Advocacy Section to the ACL last week regarding a legislative proposal, the second document attached, "Waiver of Counsel Amendment." The fourth attachment is our memo regarding the change. The Court of Appeals opinion that just came out week before last, *In the Interest of E.C.*, which is also attached, is what precipitated the proposed modification of the law. We just happened to be having an Executive Committee meeting last Friday, so we addressed it and approved it unanimously. The Georgia Association of Counsel for Children supports the bill and presented it to our EC. I anticipate that the Children and the Courts Committee, which meets next week, will send a memo of support. Although I cannot imagine that the Family Law Section would not support it, I would appreciate your feedback and your sharing it with your EC to see if you can support it, so that I can report your response to the ACL.

Thank you for your input and look forward to seeing you again soon.

Nicki



**Thomas Worthy**

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**From:** kygrier@grierlawofficepc.com  
**Sent:** Tuesday, October 20, 2015 10:06 AM  
**To:** Thomas Worthy  
**Cc:** Nathan Hayes; Pinckney, Stacey; Norman, James; Kirsten Widner; Jane Okrasinski; Peggy Walker; Nicki (Public); LTanya Keith Robinson; kygrier@grierlawofficepc.com  
**Subject:** RE: Call for Legislative Proposals for the Advisory Committee on Legislation  
**Attachments:** Juvenile Court appeals superseadeas as approved by CPA 10-16-15 to worthy for ACL.pdf; Juvenile Court appeals superseadeas as approved by CPA 10-16-15 to worthy for ACL.docx



Dear Thomas:

I hope you are well. On behalf of the Child Protection and Advocacy Section of the State Bar of Georgia, I write to submit the attached proposed revision to O.C.G.A. § 15-11-35 for consideration by the Bar's Advisory Committee on Legislation at the second and final ACL Meeting that will take place on **Tuesday, December 8, at 10:00 am in Meeting Room 1 of the State Bar Center.**

The purpose of the proposed bill is to clarify that juvenile court judges have the authority to continue to conduct any hearings that are needed in a particular case and that are already authorized in the juvenile court code during the time that an appeal is pending.

Please let me know if you have any questions regarding the proposed legislation or need any additional information.

Sincerely,

Karlise Y. Grier  
Vice Chair, Child Protection and Advocacy Section

Karlise Y. Grier, Esq.

Certified by the National Association of Counsel for Children as a  
Child Welfare Law Specialist

15-11-35

(a) In all cases of final judgments of the juvenile court, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the superior court. ~~However, no such judgment or order shall be superseded except in the discretion of the trial court; rather, t~~

(b) The judgment or order of the juvenile court shall stand until superseded or modified by the juvenile court, or reversed or modified by the reviewing court.

(c) Except as provided in subsection (d), while any appeal is pending, the juvenile court shall continue to conduct any hearings and to make any orders otherwise consistent with this Title.

(d) The appeal of an order granting a petition for termination of parental rights shall stay any adoption related to the child that is the subject of the order until the order is affirmed on appeal and the parent's right to any further appeals has been exhausted or expired.

# Legislative Proposal and Accompanying Report

Of

## Ad Hoc Benefit Corporation Committee

Executive Committee | Business Law Section | State Bar of Georgia

November 30, 2015

### Executive Summary

The Ad Hoc Benefit Corporation Committee (the “Committee”)<sup>1</sup> hereby recommends and submits to the Executive Committee of the Business Law Section of the State Bar of Georgia proposed legislation to permit benefit corporations<sup>2</sup> to incorporate in Georgia. The recommended legislation amends the Georgia Business Corporation Code and is comparable to laws previously adopted in thirty other states and the District of Columbia. The Committee continues to believe<sup>3</sup> that Georgia benefit corporation legislation is desirable for the following reasons:

- Although the flexibility afforded by Georgia’s limited liability company and partnership statutes largely makes benefit corporation status unnecessary for privately-held entities, such status nevertheless may be desirable in certain circumstances, especially in the context of widely-held or publicly-held corporations.
- As a competitive matter, with so many other states, including Delaware, authorizing benefit corporations, Georgia should have its own benefit corporation statute to encourage Georgia residents (i) to use Georgia business entities, (ii) to allow business disputes involving Georgia resident business entities to be litigated in Georgia, and (iii) to permit Georgia lawyers to offer the same business entity choices to their clients as lawyers in other states.

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<sup>1</sup> The members of the Committee are as follows: Chair, Edward J. Hardin (Rogers & Hardin LLP); Reporter, Professor Cassidy V. (“Cass”) Brewer (Georgia State University College of Law); Bob Bryant (King & Spalding LLP); Jason Goode (Alston & Bird LLP); Sonjui L. Kumar (Kumar, Prabhu, Patel & Banerjee, LLC); Lee Lyman (Carlton Fields Jordan Burt PA); Tom McNeill (Bryan Cave LLP); Robyn Miller (Pro Bono Partnership of Atlanta); Ryan Germany (Georgia Secretary of State); David G. Thunhorst (Rogers & Hardin LLP); and Jeff D. Woodward (Taylor English Duma LLP).

<sup>2</sup> See below for a description of benefit corporations.

<sup>3</sup> See Report of Ad Hoc Benefit Corporation Committee, Executive Committee, Business Law Section, State Bar of Georgia (Oct. 7, 2013) (hereinafter the “2013 Report” which is available via the internet at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2401144](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401144)).

**Exhibit A** to this report sets forth the specific statutory amendments recommended by the Committee to authorize benefit corporations under the Georgia Business Corporation Code. In addition, **Exhibit B** to this report contains the Committee’s explanatory comments accompanying each separate provision of the recommended legislation.

### **The Committee’s Proposed Benefit Corporation Legislation**

Most legal entities engaged in commerce in the U.S. are formed either as for-profit organizations or as nonprofit organizations. For-profit organizations are designed to pursue profits and shareholder wealth, while most nonprofit organizations are designed strictly for charitable pursuits and public benefit. Since 2011, however, thirty states plus the District of Columbia have enacted statutes authorizing a hybrid form, the benefit corporation, which is designed to pursue both a for-profit business purpose and a beneficial humanitarian and/or environmental purpose.

In 2013 the Committee studied benefit corporation and other hybrid business entity laws across the U.S. and concluded that Georgia should adopt benefit corporation legislation.<sup>4</sup> This report builds upon the 2013 Report and makes specific legislative recommendations. The specific aspects of the benefit corporation legislation that the Committee recommends for Georgia may be summarized as follows:

- *Purpose:* In addition to any other business purpose set forth in its articles of incorporation, a Georgia benefit corporation would be required to “have an additional purpose of pursuing or creating a public benefit.”
- *Name:* A Georgia benefit corporation would be permitted, but not required, to include within its name the phrase “benefit corporation” or “public benefit corporation” or the abbreviation “BC” or “PBC.”
- *Reporting:* A Georgia benefit corporation would be required to provide an annual report to all of its shareholders and to any other person upon request. The annual report would be a self-evaluation by the benefit corporation against performance standards adopted by the corporation’s board of directors.
- *Performance Standards:* Unless provided otherwise in its articles of incorporation or bylaws, a Georgia benefit corporation would not be required to measure and report its performance against a third-party standard (as required by some other states). Instead, a Georgia benefit corporation would be required to measure and report its performance against standards developed and adopted by its board of directors.

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<sup>4</sup> *Id.* The benefit corporation form as well as certain other hybrid business entity forms are discussed in detail in the 2013 Report.

- *Remedies:* A Georgia benefit corporation would be subject to the same rules as other Georgia corporations regarding derivative actions and judicial dissolution.
- *Director Protections:* Unless provided otherwise in its articles of incorporation, a Georgia benefit corporation and its directors would have no monetary liability for any action taken or inaction in connection with the pursuit of the public benefit set forth in its articles of incorporation. In particular, neither a failure to pursue the general or specific public benefit nor the balance struck between pursuing said public benefit and shareholder pecuniary interests would constitute “intentional misconduct or knowing violation of law” with respect to a director or officer of a benefit corporation.
- *Electing or Terminating Benefit Corporation Status:* The approval of two-thirds of the shareholders would be required to elect into or out of benefit corporation status. This two-thirds voting threshold would be required to be met regardless of whether the election or termination of Georgia benefit corporation status occurs by amendment to the corporation’s controlling governing document or by a major transaction such as a merger, conversion, sale or exchange of assets, or liquidation.

### **Committee’s Basis for Its Proposed Legislation**

The benefit corporation legislation proposed by the Committee is based upon benefit corporation legislation suggested by the Corporate Laws Committee of the Business Law Section of the American Bar Association.<sup>5</sup> The Committee seriously considered, but ultimately rejected, draft legislation patterned after the so-called “Model Benefit Corporation Legislation”<sup>6</sup> prepared by a Philadelphia-based nonprofit organization, B Lab (the “B-Lab Model”). The Committee’s decision to base its draft on the ABA suggested benefit corporation legislation rather than the B-Lab Model was motivated by two principal considerations:

- The Georgia Business Corporation Code is patterned after the ABA’s Model Business Corporation Act. Therefore, the ABA’s draft of suggested benefit corporation legislation dovetails closely with the Georgia Business Corporation Code, including the Committee’s recommendations from its 2013 Report.
- In the 2013 Report the Committee recommended that Georgia legislation should provide considerable autonomy and self-regulation for benefit corporations rather than adopt a highly regulatory approach. The ABA suggested benefit corporation legislation allows for much greater autonomy and self-regulation than the B-Lab

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<sup>5</sup> See Corporation Laws Committee, ABA Business Law Section, [Benefit Corporation White Paper](#), 69 Bus. Lawyer 1083 (August 2013) (available to Business Law Section members at <http://apps.americanbar.org/dch/committee.cfm?com=CL270000>).

<sup>6</sup> See [http://benefitcorp.net/sites/default/files/documents/Model\\_Benefit\\_Corp\\_Legislation.pdf](http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf) (last visited Nov. 23, 2015).

Model. Moreover, many of states adopting benefit corporation legislation recently (such as Delaware) have opted for statutes that provide more autonomy and self-regulation than the B-Lab Model.

### **Conclusion**

The Committee recommends that the Business Law Section propose to the Advisory Committee on Legislation and the Board of Governors of the State Bar of Georgia that the benefit corporation legislation set forth in **Exhibit A** be enacted during the 2016 Session of the Georgia General Assembly. Questions concerning the proposed legislation or this report may be directed to the Chair of the Committee, Jack Hardin of Rogers & Hardin, LLP, or the Committee Reporter, Cass Brewer, Assistant Professor, Georgia State University College of Law.

Exhibit A

**PROPOSED GEORGIA BENEFIT CORPORATION  
LEGISLATION**

**Title 14  
Corporations, Partnerships, and Associations**

**Chapter 2  
Business Corporations**

**Article 18**

**Benefit Corporations**

**14-2-1801. Application of Business Corporation Code.**

(a) This chapter applies to benefit corporations to the extent not inconsistent with the provisions of this article.

(b) Except as expressly provided in this article, this article does not repeal or modify any statute or rule of law applicable to a corporation that is not a benefit corporation.

**14-2-1802. Definitions.**

(a) As used in this chapter, the term:

(1) “Benefit corporation” means a corporation intended to pursue the public benefit or benefits set forth in its public benefit provision.

(2) “Public benefit” means a positive effect (or reduction of negative effects) on society, on the environment, or on one or more communities or categories of persons, entities, or interests (other than shareholders in their capacity as shareholders) including effects of an artistic, charitable, cultural, economic, ecological, educational, environmental, literary, medical, religious, scientific, social, or technological nature, as measured against a standard or standards adopted by the board of directors as required by Code Section 14-2-1806(a)(ii).

(3) “Public benefit provision” means a provision in a corporation’s articles of incorporation stating that the corporation is a benefit corporation and that a purpose of the corporation is to pursue a public benefit or benefits.

### **14-2-1803. Name**

The name of a benefit corporation shall satisfy the requirements of Code Section 14-2-401; however, in lieu of the use of a word or abbreviation as required by paragraph (1) of subsection (a) of that Code section, the phrase “benefit corporation” or the abbreviation “BC,” or the phrase “public benefit corporation” or the abbreviation “PBC,” may be used.

### **14-2-1804. Stock Certificates.**

Any stock certificate issued by a benefit corporation shall state conspicuously that the corporation is a benefit corporation.

### **14-2-1805. Certain Amendments and Transactions; Votes Required**

(a) In addition to any other requirements of this chapter, without the approval the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a corporation that is not a benefit corporation may not take any of the following actions:

- (1) amend its articles of incorporation to include a public benefit provision;
- (2) transfer property as described in Code Section 14-2-1201(b)(3) if the transferee is a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity; or
- (3) engage in any transaction or series of transactions subject to Article 11 Part 1 of this chapter, Code Section 14-2-1202, or Article 14 Part 1 of this chapter if as a result of such transaction or series of transactions the shareholders of the corporation would own shares or interests in a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity in lieu of all or any part of their shares of the corporation.

(b) In addition to any other requirements of this chapter, without the approval the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a corporation that is a benefit corporation may not take any of the following actions:

- (1) amend its articles of incorporation to delete or substantively modify its public benefit provision;
- (2) transfer property as described in Code Section 14-2-1201(b)(3) if the transferee is not a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity with a public benefit provision in its governing documents substantially similar to the benefit corporation’s public benefit provision; or



(3) engage in any transaction or series of transactions subject to Article 11 Part 1 of this chapter, Code Section 14-2-1202, or Article 14 Part 1 of this chapter if as a result of such transaction or series of transactions the shareholders of the benefit corporation would own, in lieu of all or any part of their shares of the benefit corporation, shares or interests in a domestic or foreign corporation or other entity that is not a benefit corporation, social purpose corporation, or substantially similar entity with a public benefit provision in its governing documents substantially similar to the benefit corporation's public benefit provision.

#### **14-2-1806. Duties and Limitation of Liability of Directors of Benefit Corporation**

(a) In addition to any other duties imposed by this chapter, the board of directors of a benefit corporation (i) shall consider the public benefit or benefits specified in the benefit corporation's articles of incorporation in connection with managing or directing the business and affairs of the benefit corporation and (ii) shall adopt a standard or standards by which to measure the benefit corporation's performance in pursuing the public benefit or benefits specified in the benefit corporation's articles of incorporation.

(b) Notwithstanding Code Section 14-2-1806(a) and any other provision of this chapter, (i) directors of a benefit corporation have no duty to a person on account of any interest of such person in the public benefit or benefits specified in the articles of incorporation, and (ii) unless otherwise provided in the articles of incorporation, directors of a benefit corporation have no monetary liability to any person for (a) any failure to comply with any duty created by this Code section or (b) any failure of the benefit corporation to pursue or create a public benefit or benefits as specified in its articles of incorporation.

#### **14-2-1807. Annual Benefit Reports**

(a) A benefit corporation shall include in every notice of a meeting of shareholders a conspicuous statement to the effect that it is a benefit corporation.

(b) A benefit corporation shall, no less than annually, provide to its shareholders of record (and to any other person who may request a copy in writing) a written report addressing the benefit corporation's performance with respect to its pursuit of the public benefit or benefits specified in its articles of incorporation. The report shall include (i) the objectives the board of directors has established in connection with the pursuit of such public benefit or benefits; (ii) the standard or standards the board of directors has adopted to measure the corporation's progress in pursuing such public benefit or benefits; (iii) factual information responsive to those standards regarding the corporation's success or failure in meeting the objectives for pursuing such public benefit or benefits; and (iv) an assessment of the corporation's success or failure in meeting the objectives and accomplishing such public benefit or benefits.

(c) In addition to complying with Code Section 14-2-1807(b), a benefit corporation may include in its articles of incorporation or bylaws provisions imposing upon the benefit

corporation any or all of the following additional requirements: (i) that the benefit corporation provide its report more frequently than annually; (ii) that the benefit corporation make the report generally available to the public via the internet or other readily accessible means; (iii) that the benefit corporation use a third-party standard in connection with measuring the benefit corporation's progress in accomplishing its stated public benefit or benefits; (iv) that the benefit corporation provide with its report a periodic third-party certification with respect to the benefit corporation's progress in accomplishing its stated public benefit or benefits; or (v) that the report comply with any additional requirements as the board of directors may determine.

#### Conforming Amendments

**In addition, renumber current subsection OCGA § 14-2-1302(a)(5) to OCGA § 14-2-1302(a)(6) and insert the following as new OCGA § 14-2-1302(a)(5):**

“(5) Consummation of an action described in Code Section 14-2-1805(a) or (b).”

**In addition, add the following parenthetical between the words “profit” and “incorporated” in OCGA 14-2-140(13):**

“(including benefit corporation, social purpose corporation, or similar corporation)”

**In addition, add the following terms after the citation “14-2-401” in OCGA § 14-2-1506:**

“or Code Section 14-2-1803”

**Exhibit B**

**PROPOSED GEORGIA BENEFIT CORPORATION  
LEGISLATION**

**Title 14  
Corporations, Partnerships, and Associations**

**Chapter 2  
Business Corporations**

**Article 18**

**Benefit Corporations**

**14-2-1801. Application of Business Corporation Code.**

(c) This chapter applies to benefit corporations to the extent not inconsistent with the provisions of this article.

(d) Except as expressly provided in this article, this article does not repeal or modify any statute or rule of law applicable to a corporation that is not a benefit corporation.

*Comment: Except as expressly provided otherwise in new Article 18 specifically applicable to benefit corporations, Georgia benefit corporations are subject to all the provisions of the Georgia Business Corporations Code (including prior regulatory and case law). In addition, where so specified, the provisions of new Article 18 (e.g., Section 14-2-1805(a)) supersede conflicting provisions of the Georgia Business Corporations Code applicable to regular business corporations.*

**14-2-1802. Definitions.**

(b) As used in this chapter, the term:

(1) “Benefit corporation” means a corporation intended to pursue the public benefit or benefits set forth in its public benefit provision.

(2) “Public benefit” means a positive effect (or reduction of negative effects) on society, on the environment, or on one or more communities or categories of persons, entities, or interests (other than shareholders in their capacity as shareholders) including effects of an artistic, charitable, cultural, economic, ecological, educational, environmental, literary, medical, religious, scientific, social, or technological nature, as measured against a standard or standards adopted by the board of directors as required by Code Section 14-2-1806(a)(ii).

(3) “Public benefit provision” means a provision in a corporation’s articles of incorporation stating that the corporation is a benefit corporation and that a purpose of the corporation is to pursue a public benefit or benefits.

*Comment: To be formed as or to become a Georgia benefit corporation, a Georgia business corporation must expressly so state in its articles. Moreover, as opposed to the sole purpose of benefitting shareholders, a Georgia benefit corporation must adopt a public benefit (or benefits) as a purpose of the corporation. The public benefit purpose so adopted must relate to (but is not limited to) enhancing positive or reducing negative effects on society, the environment, communities, people, entities, or interests other than shareholders in their capacity as such. Further, the stated public benefit purpose of enhancing positive or reducing negative effects may relate to (but is not limited to) matters within the numerous and various areas listed in subparagraph (2) above. Finally, on an annual basis, a Georgia benefit corporation must measure and report its performance with respect to enhancing positive or reducing negative effects against a self-adopted standard or standards.*

#### **14-2-1803. Name**

The name of a benefit corporation shall satisfy the requirements of Code Section 14-2-401; however, in lieu of the use of a word or abbreviation as required by paragraph (1) of subsection (a) of that Code section, the phrase “benefit corporation” or the abbreviation “BC,” or the phrase “public benefit corporation” or the abbreviation “PBC,” may be used.

*Comment: A Georgia benefit corporation is not required to adopt a special designation in its name aside from that required of a regular corporation under the Georgia Business Corporation Code. Nevertheless, if it so desires, a Georgia benefit corporation may adopt one of the indicated phrases or abbreviations as part of its name.*

#### **14-2-1804. Stock Certificates.**

Any stock certificate issued by a benefit corporation shall state conspicuously that the corporation is a benefit corporation.

*Comment: The foregoing provision is self-explanatory and intended to put shareholders and transferees on notice (similar to other provisions in the Business Corporations Code) of a Georgia corporation’s special status as a benefit corporation. See, e.g., OCGA §§ 14-2-627(b) and -910(a).*

#### **14-2-1805. Certain Amendments and Transactions; Votes Required**

(a) In addition to any other requirements of this chapter, without the approval the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a corporation that is not a benefit corporation may not take any of the following actions:

- (1) amend its articles of incorporation to include a public benefit provision;

(2) transfer property as described in Code Section 14-2-1201(b)(3) if the transferee is a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity; or

(3) engage in any transaction or series of transactions subject to Article 11 Part 1 of this chapter, Code Section 14-2-1202, or Article 14 Part 1 of this chapter if as a result of such transaction or series of transactions the shareholders of the corporation would own shares or interests in a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity in lieu of all or any part of their shares of the corporation.

(b) In addition to any other requirements of this chapter, without the approval the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote, a corporation that is a benefit corporation may not take any of the following actions:

(1) amend its articles of incorporation to delete or substantively modify its public benefit provision;

(2) transfer property as described in Code Section 14-2-1201(b)(3) if the transferee is not a domestic or foreign benefit corporation, social purpose corporation, or substantially similar entity with a public benefit provision in its governing documents substantially similar to the benefit corporation's public benefit provision; or

(3) engage in any transaction or series of transactions subject to Article 11 Part 1 of this chapter, Code Section 14-2-1202, or Article 14 Part 1 of this chapter if as a result of such transaction or series of transactions the shareholders of the benefit corporation would own, in lieu of all or any part of their shares of the benefit corporation, shares or interests in a domestic or foreign corporation or other entity that is not a benefit corporation, social purpose corporation, or substantially similar entity with a public benefit provision in its governing documents substantially similar to the benefit corporation's public benefit provision.

*Comment: The most appropriate time to adopt benefit corporation status is at the beginning of a corporation's existence. Therefore, forcing shareholders into holding shares of a benefit corporation or into holding shares of a regular corporation should require a significant level of consensus. Thus, in order for shareholders of a Georgia corporation that is not a benefit corporation to be forced to accept stock in a corporation that is a benefit corporation--through amendment to its articles of incorporation, disposition of substantially all of its assets, merger, or share exchange--a two-thirds vote of approval of each class or series of outstanding stock must be obtained. This two-thirds approval requirement is similar to other provisions of the Business Corporations Code whereby a corporation fundamentally changes its nature to another, special type of corporation. See, e.g., OCGA §§ 14-2-902 (regarding close corporations).*

*Similarly, a two-thirds vote is required to terminate Georgia benefit corporation status by any means. Such a higher-than-normal voting provision for conversion from benefit corporation status to regular corporation status protects shareholders who value the public benefit nature of the corporation as much or more than their pecuniary interest in the corporation. Otherwise, the rights of shareholders primarily interested in the public benefit purpose of a Georgia benefit corporation (and for whom monetary compensation would be an inadequate remedy) could be terminated by a simple majority vote.*

*Finally, regardless of a corporation's conversion to or from benefit corporation status, dissenting shareholders are provided appraisal rights by virtue of a conforming amendment to Section 14-2-1302 (right to dissent) of the Business Corporations Code.*

#### **14-2-1806. Duties and Limitation of Liability of Directors of Benefit Corporation**

(a) In addition to any other duties imposed by this chapter, the board of directors of a benefit corporation (i) shall consider the public benefit or benefits specified in the benefit corporation's articles of incorporation in connection with managing or directing the business and affairs of the benefit corporation and (ii) shall adopt a standard or standards by which to measure the benefit corporation's performance in pursuing the public benefit or benefits specified in the benefit corporation's articles of incorporation.

(c) Notwithstanding Code Section 14-2-1806(a) and any other provision of this chapter, (i) directors of a benefit corporation have no duty to a person on account of any interest of such person in the public benefit or benefits specified in the articles of incorporation, and (ii) unless otherwise provided in the articles of incorporation, directors of a benefit corporation have no monetary liability to any person for (a) any failure to comply with any duty created by this Code section or (b) any failure of the benefit corporation to pursue or create a public benefit or benefits as specified in its articles of incorporation.

*Comment: In addition to their normal duties as directors of a Georgia corporation, directors of a Georgia benefit corporation have additional duties: (i) a duty to consider the public benefit purpose of the corporation and (ii) a duty to adopt standards whereby the benefit corporation's performance in achieving its public benefit purpose is measured. Notwithstanding their normal duties and the foregoing additional duties, however, by default directors of a Georgia benefit corporation have no duty to nonshareholder beneficiaries (e.g., the general public). Furthermore, regardless of the imposition of the foregoing additional duties, by default directors of a Georgia benefit corporation have no monetary liability for failing to fulfill their additional duties or for the corporation's failure to pursue or create a public benefit.*

*Protecting directors of a Georgia benefit corporation from monetary liability with respect to the fulfillment of their additional duties is necessary and appropriate for several reasons:*

- *A director of a Georgia benefit corporation is required to perform the additional duties described above in addition to his or her normal duties. To impose potential monetary liability on directors with respect to these additional duties would be a significant disincentive for individuals to serve as directors of a Georgia benefit corporation. Moreover, it could be a disincentive for a Georgia benefit corporation itself to attempt to address difficult and challenging societal or environmental problems.*

- *Some public benefit issues engender intense passions creating a highly charged atmosphere surrounding the performance of management in addressing those issues. If a director could face monetary liability in such charged circumstances, particularly where the director is serving for the purpose of benefiting society, the environment, and other nonshareholders, potential monetary liability would be an especially strong disincentive to serve as a director of a Georgia benefit corporation.*
- *Exposing a director of a Georgia benefit corporation to potential monetary liability for failing to fulfill a duty or accomplish an objective that by its nature is not subject to measurement strictly in monetary terms (e.g., the general health and welfare of a community) simply is not fair or equitable.*

*Nevertheless, the limitation on the monetary liability of directors of a Georgia benefit corporation does not affect other remedies that may be available against directors of a Georgia corporation and does not affect a director's liability or duties under other provisions of the Business Corporations Code (including regulatory and case law thereunder). Furthermore, a Georgia benefit corporation may reverse the default rules by providing otherwise in its articles of incorporation. A Georgia benefit corporation thus may choose to subject its directors to potential monetary liability to shareholders and nonshareholders for failure to fulfill their additional duties as directors of a benefit corporation, for failure of the corporation to achieve its public benefit purpose, or both.*

#### **14-2-1807. Annual Benefit Reports**

(a) A benefit corporation shall include in every notice of a meeting of shareholders a conspicuous statement to the effect that it is a benefit corporation.

(b) A benefit corporation shall, no less than annually, provide to its shareholders of record (and to any other person who may request a copy in writing) a written report addressing the benefit corporation's performance with respect to its pursuit of the public benefit or benefits specified in its articles of incorporation. The report shall include (i) the objectives the board of directors has established in connection with the pursuit of such public benefit or benefits; (ii) the standard or standards the board of directors has adopted to measure the corporation's progress in pursuing such public benefit or benefits; (iii) factual information responsive to those standards regarding the corporation's success or failure in meeting the objectives for pursuing such public benefit or benefits; and (iv) an assessment of the corporation's success or failure in meeting the objectives and accomplishing such public benefit or benefits.

(c) In addition to complying with Code Section 14-2-1807(b), a benefit corporation may include in its articles of incorporation or bylaws provisions imposing upon the benefit corporation any or all of the following additional requirements: (i) that the benefit corporation provide its report more frequently than annually; (ii) that the benefit corporation make the report generally available to the public via the internet or other readily accessible means; (iii) that the benefit corporation use a third-party standard in connection with measuring the benefit corporation's progress in accomplishing its stated public benefit or benefits; (iv) that the benefit corporation provide with its report a periodic third-party certification with respect to the benefit corporation's progress in accomplishing its stated public benefit or benefits; or (v) that the report comply with any additional requirements as the board of directors may determine.

*Comment: In all notices of shareholders' meetings a Georgia benefit corporation must conspicuously state that it is a benefit corporation. Moreover, a Georgia benefit corporation must provide written, annual reports to its shareholders and any other requesting party concerning its progress toward achieving its public benefit purpose(s). The annual (or more frequent) reports must contain relevant factual information pertaining to the Georgia benefit corporation's progress toward meeting its adopted performance standards and, ultimately, achieving its public benefit purpose. Finally, as provided in paragraph (c) above, a Georgia benefit corporation may (but is not obligated to) self-impose additional requirements concerning its reports.*

#### Conforming Amendments

**In addition, renumber current subsection OCGA § 14-2-1302(a)(5) to OCGA § 14-2-1302(a)(6) and insert the following as new OCGA § 14-2-1302(a)(5):**

“(5) Consummation of an action described in Code Section 14-2-1805(a) or (b).”

*Comment: This conforming amendment insures that a shareholder who dissents from a preexisting Georgia corporation's change in status by any means from a regular corporation to a benefit corporation or from a benefit corporation to a regular corporation may pursue appraisal rights to obtain fair value for his, her, or its shares in the corporation.*

**In addition, add the following parenthetical between the words “profit” and “incorporated” in OCGA 14-2-140(13):**

“(including benefit corporation, social purpose corporation, or similar corporation)”

*Comment: This conforming amendment clarifies that benefit and other hybrid corporations formed under the laws of jurisdictions other than Georgia are nevertheless considered for-profit corporations under the Business Corporations Code, including the provisions governing the qualification of foreign corporations to do business in Georgia.*

**In addition, add the following terms after the citation “14-2-401” in OCGA § 14-2-1506:**

“or Code Section 14-2-1803”



*Comment: This conforming amendment insures that benefit and other hybrid corporations formed under the laws of jurisdictions other than Georgia may register to do business in Georgia even if the suffix to the name of the corporation includes the phrase “Public Benefit Corporation” or an abbreviation thereof.*

**REQUEST FOR CONSIDERATION OF PROPOSED LEGISLATION**

TO: Robert K. Kauffman, Georgia Bar President  
Marc Howard, Chair, Advisory Committee on Legislation  
Thomas Worthy, Director of Governmental Affairs

FROM: Monica Gilroy, Chair, Executive Committee, Real Property Law Section

RE: Proposed Bill to amend O.C.G.A. § 33-23-4(h)(2)

DATE: November 4, 2015

\* \* \*

The Executive Committee, Real Property Law Section, submits this Request pursuant to Section 1.02 (a) (1) of Standing Board Policy 100, as follows:

**(A) Revision and amendment to O.C.G.A. § 33-23-4(h)(2).**

**(i) The specific legislation, if any, which is pending or proposed:**

The attached proposed legislation would revise and amend Section 33-23-4 which sets forth the requirements and exceptions for obtaining a license to sell, solicit, or negotiate insurance. The proposed legislation would create a specific exception to the licensing requirement for Georgia licensed attorneys whom collect premiums on, issue policies of, and otherwise advise as to the advisability or requirement for, title insurance.

**(ii) A statement of the issues addressed by the legislation:**

Georgia real estate attorneys have traditionally not been licensed by the Georgia Office of Insurance and Safety Fire Commissioner in order to issue policies of title insurance and to collect in share in the premiums thereby earned. Consistent with this practice, in April of 2000, the Chief Enforcement Attorney for the Commissioner issued an opinion letter reinforcing O.C.G.A. § 33-23-1(b)(2) and concluding, "(an) attorney would not need to be a licensed agent in order to act as an agent for a title insurance company in the State of Georgia." For the last fifteen years Georgia attorneys have relied on this opinion and, by and large, have not sought licensing from the Commission.

The Commissioner's Office has, however, changed course and now takes the position Georgia attorneys must be licensed in order sell, solicit, negotiate, and collect and share premiums on title insurance. The Real Property Law Section and its members believe a newly imposed licensing requirement would impose an unnecessary burden as Georgia licensed attorneys are already regulated by the State Bar of Georgia.

**(iii) A summary of the existing law:**

The opinions espoused in the April 2000 letter were derived from O.C.G.A. § 33-23-1 which sets forth certain definitions pertaining to who is considered an agent, subagent, and counselor for purposes of issuing policies of insurance. Subsection (b)(1) states that a Georgia licensed attorney shall not be considered an agent, subagent, or counselor as defined therein when “handling the collections of premiums or advising clients as to insurance as a function incidental to the practice of law or who adjusts losses which are incidental to the practice of his or her profession.” Consequently, Georgia attorneys are presumably not required to be licensed by the Commissioner when issuing title insurance.

The Commissioner’s Office now asserts that O.C.G.A. § 33-23-4(a) requires Georgia attorneys obtain a license to issue insurance despite the seeming exception provided in the earlier Code Section. Section 33-23-4(a) states in part that any individual or business entity that sells, solicits, or negotiates insurance in Georgia shall be licensed as an agent and agency, respectively.

The proposed legislation revises and amends Section 33-23-4 consistent with the exception provided in the earlier Definitions Section 33-23-1(b)(2), and thereby eliminates any perceived ambiguity.

**(iv) Principal known proponents or opponents of the legislation and, if possible, a brief statement of the reasons for opposition or support by the other interests:**

Proponents of the proposed legislation include the Real Property Law Section (RPLS) and the Georgia Real Estate Closing Attorneys Association (GRECAA). The RPLS Executive Committee understands that the Office of Insurance and Safety Fire Commissioner will not oppose the legislation. No other proponents or opponents are known at this time.

**(v) A listing of any other committees or sections which may have an interest in the legislation and a certification that any such committees have been provided a copy of the proposal simultaneous to its transmission to the Advisory Committee on Legislation:**

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None.

**(vi) The position which the committee, section or group recommends be adopted by the State Bar:**

The Executive Committee of the Real Property Law Section requests that the State Bar take up this legislation and present it as a bill in the 2016 General Assembly.

A BILL TO BE ENTITLED  
AN ACT

To amend Code Section 33-23-4 of the Official Code of Georgia Annotated, relating to licensing of insurance agents, agencies, subagents, counselors and adjusters, so as to provide that a license as an insurance agent shall not be required for an attorney at law admitted to practice in this state, when handling the collections of premiums or advising clients as to title insurance as a function incidental to the practice of his or her profession or who adjusts title insurance losses which are incidental to the practice of his or her profession; and to provide that such an attorney at law is not soliciting, selling or negotiating insurance when acting in such capacity and that the attorney and/or his or her firm may accept a commission or other valuable consideration when handling the collections of premiums or advising clients as to title insurance as a function incidental to the practice of his or her profession or who adjusts title insurance losses which are incidental to the practice of his or her profession; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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SECTION 1.

Code Section 33-23-4(h)(2) of the Official Code of Georgia Annotated, relating to relating to licensing of insurance agents, agencies, subagents, counselors and adjusters, is amended by adding a new subsection (H) to read as follows:

[(h)(2) A license as an insurance agent shall not be required of the following:]

(H) An attorney at law admitted to practice in this state who quotes premiums for and handles the collections of title insurance premiums, the issuance of title

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insurance, advises clients as to the advisability or requirement to purchase title insurance as a function incidental with the practice of law or who adjusts title insurance losses which are incidental to the practice of his or her profession. The attorney and his or her firm may receive a commission, including a share of such premiums, or other valuable consideration for providing such services without a license as an insurance agent or agency.

(G) A business entity solely owned by an attorney at law admitted to practice in this state, or by a law firm owned by an attorney at law admitted to practice in this state, which quotes premiums for and handles the collections of title insurance premiums, the issuance of title insurance, advises clients as to the advisability or requirement to purchase title insurance as a function incidental with the practice of law or which adjusts title insurance losses which are incidental to the practice of the legal profession. The business entity solely owned by the attorney or by his or her firm may receive a commission, including a share of such premiums, or other valuable consideration for providing such services without a license as an insurance agent or agency.

## SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

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STATE BAR OF GEORGIA  
REAL PROPERTY LAW SECTION  
LEGISLATIVE SUBCOMMITTEE

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Date: November 25, 2015

To: Thomas Worthy

From: Kent Altom, Chair, Legislative Subcommittee of the Real Property Law Section  
David S. Klein, Member, Legislative Subcommittee of the Real Property Law Section

Re: Proposed Amendment to the Lis Pendens Statute (O.C.G.A. § 44-14-610)

- 1) An amendment to O.C.G.A. § 44-14-610 (the lis pendens statute) has been prepared to include arbitration proceedings within the definition of an “action”. A copy of the proposed amendment is attached hereto as Addendum A.
- 2) This amendment will change Georgia law by specifically providing that a notice of lis pendens may be filed in connection with an arbitration proceeding.
- 3) Under current Georgia law, O.C.G.A. § 44-14-610 does not specifically define the term “action.” However, the statute does require that a notice of lis pendens include among other things “the name of the court in which [the action] is pending.” This implies that a notice of lis pendens may only be filed in connection with a civil action. In Georgia, there is no case law examining whether a notice of lis pendens may be filed in connection with an arbitration proceeding. Members of our section report that attorneys already file notices of lis pendens in connection with arbitration proceedings in Georgia. As discussed above, the statute does not define the term “action.” If a notice of lis pendens is filed in connection with an arbitration proceeding, the filing party could subject itself to a slander of title claim. As an alternative method to avoid a potential slander of title claim, members of our section report that attorneys will file a state court action and notice lis pendens, and then move the court to compel arbitration. The filing of a state court action simply to file a notice of lis pendens in a dispute that will ultimately result in arbitration is contrary to the purpose of arbitration and results in a waste of judicial resources. The proposed amendment to O.C.G.A. § 44-14-610 is meant to clarify already existing law and to codify an existing practice by attorneys.
- 4) A notice of lis pendens is only filed in connection with a real property dispute. Therefore, there is no known opposition from other sections of the State Bar at this time.

- 5) The General Practice & Trial Law section may have an interest in the proposed amendment to O.C.G.A. § 44-14-610. The Real Property Law Section will provide the General Practice & Trial Law Section with a copy of this proposal.
- 6) The Real Property Law Section recommends that the State Bar adopt the proposed amendment to O.C.G.A. § 44-14-610.

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Kent Altom  
Chair, Legislative Subcommittee of the Real  
Property Law Section

**Addendum A**

A BILL TO BE ENTITLED  
AN ACT

To amend Article 9 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to suit inoperative as lis pendens as to real property unless notice of suit recorded.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 9 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to suit inoperative as lis pendens as to real property unless notice of suit recorded, is amended by revising Code Section 44-14-610, as follows:

“44-14-610.

(a) No action, whether seeking legal or equitable relief or both, as to real property in this state shall operate as a lis pendens as to any such real property involved therein until there shall have been filed in the office of the clerk of the superior court of the county where the real property is located and shall have been recorded by the clerk in a book to be kept by him for the purpose a notice of the institution of the action containing the names of the parties, the time of the institution of the action, the name of the court forum in which it is pending, a description of the real property involved, and a statement of the relief sought regarding the property.

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(b) For the purpose of this Code section, “action” shall mean a civil action in any of the state or federal courts in this state or an arbitration proceeding.



**SECTION 2.**

This Act shall become effective upon the signature of the Governor and shall apply to all civil actions or arbitration proceedings initiated on or after such date.

**SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.

Section 44-14-13 Definitions; limitations

(a) As used in this Code section, the term:

(1) "Borrower" means the maker of the promissory note evidencing the loan to be delivered at the loan closing.

(2) "Collected funds" means funds deposited, finally settled, and credited to the settlement agent's escrow account.

(3) "Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto.

(4) "Lender" means any person or entity regularly engaged in making loans secured by mortgages or deeds to secure debt on real estate.

(5) "Loan closing" means the time agreed upon by the borrower and the lender when the execution and delivery of loan documents by the borrower occurs.

(6) "Loan documents" means the note evidencing the debt due to the lender, the deed to secure debt or mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as part of the transaction.

(7) "Loan funds" means the gross or net proceeds of the loan to be disbursed by or on behalf of the lender at the loan closing.

(8) "Party" or "parties" means the seller, purchaser, borrower, lender, and settlement agent, as applicable to the subject transaction.

(9) "Settlement" means the time when the settlement agent has received the duly executed deed to secure debt and other loan documents and funds required to carry out the terms of the contracts between the parties.

(10) "Settlement agent" means the lender or an active member of the State Bar of Georgia responsible for conducting the settlement and disbursement of the settlement proceeds.

(b) This Code section shall apply only to transactions involving purchase money loans made by a lender, or refinance loans made by the current or a new lender, which loans will be secured by deeds to secure debt or mortgages on real estate within the State of Georgia containing not more than four residential dwelling units, whether or not such deeds to secure debt or mortgages have a first-priority status. In any such transaction collected funds and settlement proceeds must be deposited, finally settled, credited to and disbursed from either i.) an IOLTA account owned by an active member of the State Bar of Georgia, or ii.) the lender providing the loan funds.



(c) Except as otherwise provided in this Code section, a settlement agent shall not cause a disbursement of settlement proceeds unless such settlement proceeds are collected funds. A settlement agent may disburse settlement proceeds from its escrow account after receipt of any of the following negotiable instruments even though the same are not collected funds:

(1) A cashier's check, as defined in subsection (g) of Code Section 11-3-104, from a federally insured bank, savings bank, savings and loan association, or credit union and issued by a lender for a closing or loan transaction, provided that such funds are immediately available and cannot be dishonored or refused when negotiated or presented for payment;

(2) A check drawn on the escrow account of an attorney licensed to practice law in the State of Georgia or on the escrow account of a real estate broker licensed under Chapter 40 of Title 43, if the settlement agent has reasonable and prudent grounds to believe that the check will constitute collected funds in the settlement agent's escrow account within a reasonable period;

(3) A check issued by the United States of America or any agency thereof or the State of Georgia or any agency or political subdivision, as such term is defined in Code Section 50-15-1, of the State of Georgia; or

(4) A check or checks in an aggregate amount not exceeding \$5,000.00 per loan closing.

For purposes of this Code section, the instruments described in paragraphs (1) through (4) of this subsection are negotiable instruments if they are negotiable in accordance with the provisions of Code Section 11-3-104.

(d) The lender shall at or before the loan closing deliver loan funds to the settlement agent in the form of collected funds or in the form of a negotiable instrument described in subsection (c) of this Code section; provided, however, that in the case of refinancing, or any other loan where a right of rescission applies, the lender shall, prior to the disbursement of the settlement proceeds and no later than 11:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, of the next business day following the expiration of the rescission period required under the federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.), deliver loan funds to the settlement agent in one or more of the forms set forth in this Code section.

(e) Any party violating this Code section shall be liable to any other party suffering a loss due to such violation for such other party's actual damages plus reasonable attorneys' fees. In addition, any party violating this Code section shall pay to the party suffering the loss an amount of money equal to \$1,000.00 or double the amount of interest payable on the loan for the first 60 days after the loan closing, whichever is greater.



(f) Any individual, corporation, partnership, or other entity ~~conducting the settlement and disbursement of loan funds, when he, she, or it is not the settlement agent, acting in violation of this Code section~~ shall be guilty of a misdemeanor.

(g) Nothing contained in this Code section shall prevent a real estate broker or real estate salesperson from exercising the rights and providing the duties and services specified by Chapter 40 of Title 43.

HISTORY: Code 1981, § 44-14-13, enacted by Ga. L. 1990, p. 1653, § 1; Ga. L. 2008, p. 796, § 1/SB 355; Ga. L. 2012, p. 1099, § 15/SB 365.



**D-R-A-F-T**  
**STATE BAR OF GEORGIA**  
**BOARD OF GOVERNORS**  
**MINUTES**  
**Saturday, October 24, 2015**  
**Hyatt Regency Savannah/Savannah, GA**

The 259<sup>th</sup> meeting of the Board of Governors of the State Bar of Georgia was held at the date and location shown above. Robert J. Kauffman, President, presided.

Meeting Agenda

President Bob Kauffman announced that there would be an election for the Office of President-elect following the Rules and Bylaws changes under the Action Items.

Special Recognition

President Bob Kauffman recognized the members of the judiciary, the Past Presidents of the State Bar, and other special guests in attendance.

Roll Call

Secretary Buck Rogers circulated the roll for signature. The list of those in attendance is attached as Exhibit A.

Future Meetings Schedule

President Bob Kauffman referred the Board of Governors to the Future Meetings Schedule.

Minutes of the 257<sup>th</sup> and 258<sup>th</sup> Meetings of the Board of Governors

The minutes of the Board of Governors meetings on June 19 and June 20, 2015, at the Evergreen Conference Center in Stone Mountain, Georgia, were approved, as submitted, by unanimous voice vote.

Appointments to the Commission on Continuing Lawyer Competency (CCLC)

The Board of Governors, by unanimous voice vote, approved the reappointment of Jenny Jensen and the appointment of Virgil L. Adams to the CCLC for three-year terms (2016-2018).

Lawyer Assistance Program (LAP) Proposed Rules Changes

For the benefit of the new Board members, Bill NeSmith explained the procedure for a rules change and the procedure for a bylaws change. Thereafter, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed rules changes to LAP Rules 7-202 and 7-301 as follows:

Rule 7-202. Volunteers. The Committee may establish a network of attorneys and lay persons throughout the state of Georgia who are experienced or trained in

impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

Rule 7-301. Contacts Generally. The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-202, or by any other procedure through which appropriate counseling or assistance to such attorneys may be provided.

#### Elections Committee Proposed Bylaws Changes

Following a report by Bill NeSmith, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia the following proposed revisions to Rule 1-204 (Good Standing) as shown below and to Rule 1-501 (License Fees) attached as Exhibit B, and by unanimous voice vote, approved proposed revisions to Bylaw Article VII (Nominations and Elections) attached as Exhibit C.

#### Rule 102-4 Good Standing

No lawyer shall be deemed a member in good standing:

- (a) while delinquent after September 1 of any year for nonpayment of the annual license fee and any costs or fees of any type as prescribed in Chapter 5, Rule 1-501 (a)-(c) hereof;
- (b) while suspended for disciplinary reasons;
- (c) while disbarred;
- (d) while suspended for failure to comply with continuing legal education requirements;
- (e) while in violation of Rule 1-209 for failure to pay child support obligations.

#### Office of President-elect

President Bob Kauffman reported on his appointment of Treasurer Patrick T. O'Connor to fill the vacancy in the office of president-elect from the date of Rita Sheffey's resignation until today's Board meeting. Following the report and a motion and second for nominations for president-elect, the Board of Governors received the following nomination, and there being no others, declared the nominations closed.

<u>Office</u>	<u>Nominator</u>	<u>Nominee</u>
President-elect	Damon E. Elmore Sally Brown Akins (Seconding)	Patrick T. O'Connor

Pursuant to Article XI, Section 1, the Board of Governors, by unanimous voice vote, elected Patrick T. O'Connor to serve as president-elect through June 2016, in addition to his office as Treasurer. He will not automatically succeed to the office of president, as that office will be filled by majority vote of the membership, after nominations provided in Article VII, during the election process in the spring.

Following his election, Patrick T' O'Connor was sworn into office by Presiding Justice P. Harris Hines, Supreme Court of Georgia.

Advisory Committee on Legislation (ACL)/Legislative Proposals

For the benefit of the new Board members, Paula Frederick explained the requirements of the Keller decision, the process of voting on legislative matters, and reminded everyone that the legislative program is funded through voluntary contributions and not through Bar dues. Thereafter, the Board of Governors took the following action on proposed legislation presented by Elena Kaplan, Vice Chair of the ACL, and Rusty Sewell, the State Bar contract lobbyist.

<u>Legislative Proposal</u>	<u>Germane to Purposes of the Bar</u>	<u>Support on Merits 2/3 Majority</u>
Committee to Promote Inclusion in the Profession		
1) Funding Request for Legal Representation for Victims of Domestic Violence	Passed by unanimous voice vote	Passed by unanimous voice vote
Georgia Public Defenders Standards Council & Prosecuting Attorneys Council		
1) Pay Parity for Assistant Public Defenders and Assistant District Attorneys	Passed by unanimous voice vote	Passed by unanimous voice vote
Family Law Section		
1) SB 64 - Repeal of Administrative Legitimation	Passed by unanimous voice vote	Passed by unanimous voice vote

The Board of Governors received a copy of the minutes of the Advisory Committee on Legislation Meeting on September 15, 2015.

### Report of the President

President Bob Kauffman recognized Michelle Garner, Director of Meetings, for her dedication and work on behalf of the State Bar of Georgia while undergoing cancer treatment. Thereafter, he reported on the creation of the Attorney Wellness Task Force that is being chaired by Ken Hodges and is modeled after a program by the South Carolina Bar (SCB). He introduced Michael Ethridge, Chair of the SCB's wellness initiative called *Living Above the Bar*. Mr. Ethridge reported that the SCB initiative promotes all aspects of lawyer wellness by identifying factors that impact both the emotional and physical well-being of attorneys, as well as educates members of the bench and bar about wellness issues and resources. It launched with events offering guidance and support on nutrition, fitness and other issues. It has developed a statewide speaker's bureau for presentations on wellness topics and works within communities to identify fitness partners for SCB members. Thereafter, Ken Hodges reported that the Attorney Wellness Task Force has created the following subcommittees: Mental Health, Physical Well-Being, Social Well-Being, YLD Initiatives, Technology and Branding. He encouraged Board members to contact him with suggestions for the name of the Bar's initiative and if they would like to serve on a subcommittee. He announced that there will be a 3-hour CLE program on wellness at the Midyear Meeting, and that the Task Force is asking the Commission on Continuing Lawyer Competency to consider offering CLE credit for mental health and wellness programs.

### Disciplinary Rules and Procedures Committee

John Haubenreich reported that the Disciplinary Rules & Procedures Committee's is undertaking an extensive review of the disciplinary process in an effort to ensure that the process is fair and expedient. Recognizing that there is a perception by both lawyers and the public that the system is ineffective and inefficient, it is examining everything from the intake process to the final resolution, and will eventually be presenting concrete proposals to the Board of Governors for its consideration.

### Treasurer's Report

Treasurer Patrick T. O'Connor reported on the Bar's finances and investments. The Board of Governors received copies of the Operations and Bar Center Consolidated Revenues and Expenditures Report as of June 30, 2015; Income Statement YTD for the Twelve Months Ended June 30, 2015; Bar Center Revenues and Expenditures Summary for the Twelve Months Ended June 30, 2015; State Bar Balance Sheet for June 30, 2015; and the Summary of Selected Payment Information for May-April 2014-2016.

### Audit Report

Chris Phelps reported that the State Bar changes audit firms every five years as a best practice. Following a search, the Audit Committee is recommending that Mauldin & Jenkins LLC be designated as the State Bar's new auditing firm. The Board of



Governors, by unanimous voice vote, approved retaining Mauldin & Jenkins LLC as the State Bar's audit firm for a five-year period.

#### Young Lawyers Division (YLD) Report

YLD President Jack Long reported on the activities of the Young Lawyers Division. He announced that the YLD and the Texas Young Lawyers Association are working together to create a consumer pamphlet for divorcing military spouses, and he is also planning a regional summit next year with the South Carolina, Florida, Alabama, North Carolina and Tennessee young lawyers to share ideas. He reported that this year's Legal Food Frenzy has a goal of raising over 1 million pounds of food for Georgia's food banks. He asked Board members to encourage those lawyers in their communities that are winding down their practices to reach out to the YLD Succession Planning Program. He announced that the Annual Signature Fundraiser will take place on January 23, 2016. This year's beneficiary is Camp Lakeside, which enables children with all levels of disabilities and illnesses an opportunity to enjoy a typical summer camp experience. He stated that the YLD was recognized in all five award categories in Division 1A of the ABA YLD annual Awards of Achievement Program, which is a testament to all of the hard work done under the direction of last year's YLD President Sharri Edenfield and the YLD committees.

The Board of Governors received a written report on the YLD committees, programs and projects for the 2015-16 Bar year.

#### Activities in the Circuit

Susan Cox, Ogeechee Circuit Board of Governors representative, reported on the circuit and the Bulloch County Bar Association.

John Bell Manly, Eastern Circuit Board of Governors representative, reported on the circuit and the activities of the Savannah Bar Association.

#### Executive Committee Minutes

The Board of Governors received copies of the minutes of the Executive Committee meetings held on May 15, June 24, and August 14, 2015.

#### Office of the General Counsel

The Board of Governors received a written Report of the Office of the General Counsel.

#### Lawyers Helping Lawyers – Policies and Guidelines

The Board of Governors received a copy of the *Lawyers Helping Lawyers* Policies and Guidelines for the LAP's volunteer peer program.

Military Legal Assistance Program

The Board of Governors received a written 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.

Committee to Promote Inclusion in the Profession

The Board of Governors received a written report on the activities of the Committee to Promote Inclusion in the Profession Committee.

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.

ABA Bar Leader Article

The Board of Governors received an *ABA Bar Leader* article on *Legal Zoom, other companies: Friends or Foes*.

Media Report

The Board of Governors received a copy of the 2015-16 Media Report.

Old Business

There was no old business.

New Business

There was no new business.

Remarks, Questions/Answers, Comments/Suggestions

The President opened up the meeting for questions and comments.

Adjournment

There being no further business, the meeting was adjourned to begin the Strategic Planning Session.

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Brian D. (Buck) Rogers, Secretary

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Robert J. Kauffman, President

1

1 **RULE 4-227 PETITIONS FOR VOLUNTARY DISCIPLINE (red-line version)**

2 (b) Prior to the issuance of a formal complaint, a respondent may submit a petition  
3 for voluntary discipline seeking any level of discipline authorized under these rules.

4 (1) Those petitions seeking private discipline shall be ~~filed with~~ served on the  
5 Office of General Counsel and assigned to a member of the Investigative Panel.  
6 The Investigative Panel of the State Disciplinary Board shall conduct an  
7 investigation and determine whether to accept or reject the petition as outlined at  
8 Bar Rule 4-203(a)(9).

9

10 **RULE 4-227 PETITIONS FOR VOLUNTARY DISCIPLINE (clean version)**

11 (b) Prior to the issuance of a formal complaint, a respondent may submit a petition  
12 for voluntary discipline seeking any level of discipline authorized under these rules.

13 (1) Those petitions seeking private discipline shall be served on the Office of  
14 General Counsel and assigned to a member of the Investigative Panel. The  
15 Investigative Panel of the State Disciplinary Board shall conduct an investigation  
16 and determine whether to accept or reject the petition as outlined at Bar Rule 4-  
17 203 (a) (9).

1

1 **Rule 1-203. Practice by Active Members; Nonresidents. (red-line version)**

2 No person shall practice law in this ~~S~~state unless such person is an active member of the  
3 State Bar of Georgia in good standing; except as provided below:

4 (a) A person who is not a member of the State Bar of Georgia, but who is licensed to  
5 practice in a state or states other than Georgia, and is in good standing in all states in which such  
6 person is licensed, may be permitted to appear in the courts of this state in isolated cases in the  
7 discretion of the judge of such court; or

8 (b) A person who is not a member of the State Bar of Georgia, but who is licensed to  
9 practice in a state or states other than Georgia, and is in good standing in all states in which such  
10 person is licensed, may be permitted to appear in the courts of this state if such person:

11 (1) is enrolled in a full time graduate degree program at an accredited law school in  
12 this state; and

13 (2) is under the supervision of a resident attorney; and  
14 (3) limits his or her practice to the appearance in the courts of this state to the extent  
15 necessary to carry out the responsibilities of such graduate degree program.

16 (c) A person who is admitted to the Bar as a foreign law consultant pursuant to Part E  
17 of the Rules Governing the Admission to the Practice of Law as adopted by the Supreme Court  
18 of Georgia, Ga. Ct. & Bar Rules, p. 12-1 et seq., may render legal services in the state of Georgia  
19 solely with respect to the laws of the foreign country (i.e., a country other than the United States  
20 of America, its possessions and territories) where such person is admitted to practice, to the  
21 extent provided by and in strict compliance with the provisions of Part D of the Rules Governing  
22 Admission to Practice, but shall not otherwise render legal services in this Sstate.

23 (d) Persons who are authorized to practice law in this Sstate are hereby authorized to  
24 practice law as sole proprietorships or as partners, shareholders, or members of:

- 25 (1) partnerships under O.C.G.A. § 14-8-1 et. seq.; or
- 26 (2) limited liability partnerships under O.C.G.A. § 14-8-1 et. seq.; or
- 27 (3) professional corporations under O.C.G.A. § 14-7-1 et. seq.; or
- 28 (4) professional associations under O.C.G.A. § 14-10-1 et. seq.; or
- 29 (5) limited liability companies under O.C.G.A. § 14-11-100 et. seq.

30 (e) A person who is not a member of the State Bar of Georgia, but who is allowed to  
31 practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV,  
32 Rules 91-95, *Student Practice Rule*.

33 (f) A person who is not a member of the State Bar of Georgia, but who is allowed to  
34 practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI  
35 Rule 121, *Provision of Legal Services Following Determination of Major Disaster*.

36

37 **Rule 1-203. Practice by Active Members; Nonresidents. (clean version)**

38 No person shall practice law in this state unless such person is an active member of the  
39 State Bar of Georgia in good standing; except as provided below:

40 (a) A person who is not a member of the State Bar of Georgia, but who is licensed to  
41 practice in a state or states other than Georgia, and is in good standing in all states in which such  
42 person is licensed, may be permitted to appear in the courts of this state in isolated cases in the  
43 discretion of the judge of such court; or

44 (b) A person who is not a member of the State Bar of Georgia, but who is licensed to  
45 practice in a state or states other than Georgia, and is in good standing in all states in which such  
46 person is licensed, may be permitted to appear in the courts of this state if such person:

47 (1) is enrolled in a full time graduate degree program at an accredited law  
48 school in this state; and

49 (2) is under the supervision of a resident attorney; and

50 (3) limits his or her practice to the appearance in the courts of this state to the  
51 extent necessary to carry out the responsibilities of such graduate degree program.

52 (c) A person who is admitted to the Bar as a foreign law consultant pursuant to Part E  
53 of the Rules Governing the Admission to the Practice of Law as adopted by the Supreme Court  
54 of Georgia, Ga. Ct. & Bar Rules, p. 12-1 et seq., may render legal services in the state of Georgia  
55 solely with respect to the laws of the foreign country (i.e., a country other than the United States  
56 of America, its possessions and territories) where such person is admitted to practice, to the  
57 extent provided by and in strict compliance with the provisions of Part D of the Rules Governing  
58 Admission to Practice, but shall not otherwise render legal services in this state.

59 (d) Persons who are authorized to practice law in this state are hereby authorized to  
60 practice law as sole proprietorships or as partners, shareholders, or members of:

61 (1) partnerships under O.C.G.A. § 14-8-1 et. seq.; or

62 (2) limited liability partnerships under O.C.G.A. § 14-8-1 et. seq.; or

63 (3) professional corporations under O.C.G.A. § 14-7-1 et. seq.; or

64 (4) professional associations under O.C.G.A. § 14-10-1 et. seq.; or

65 (5) limited liability companies under O.C.G.A. § 14-11-100 et. seq.

66 (e) A person who is not a member of the State Bar of Georgia, but who is allowed to  
67 practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV,  
68 Rules 91-95, *Student Practice Rule*.

69 (f) A person who is not a member of the State Bar of Georgia, but who is allowed to  
70 practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI,  
71 Rule 121, *Provision of Legal Services Following Determination of Major Disaster*.

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73

74

1 **RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS (red-line version)**

2 (a) In representing a client, a lawyer shall not use means that have no substantial  
3 purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining  
4 evidence that violate the legal rights of such a person.

5 (b) A lawyer who receives a document or electronically stored information relating to  
6 the representation of the lawyer's client and knows or reasonably should know that the document  
7 or electronically stored information was inadvertently sent shall promptly notify the sender.

8

9 The maximum penalty for a violation of this Rule is a public reprimand.

10

11 Comment

12 [1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of  
13 the client, but that responsibility does not imply that a lawyer may disregard the rights of third  
14 persons. It is impractical to catalogue all such rights, but they include legal restrictions on  
15 methods of obtaining evidence from third persons and unwarranted intrusions into privileged  
16 relationships.

17 [2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored  
18 information that was mistakenly sent or produced by opposing parties or their lawyers. A  
19 document or electronically stored information is inadvertently sent when it is accidentally  
20 transmitted, such as when an email or letter is misaddressed or a document or electronically  
21 stored information is accidentally included with information that was intentionally transmitted. If  
22 a lawyer knows or reasonably should know that such a document or electronically stored  
23 information was sent inadvertently, then this Rule requires the lawyer to promptly notify the  
24 sender in order to permit that person to take protective measures. Whether the lawyer is required  
25 to take additional steps, such as returning the document or electronically stored information, is a  
26 matter of law beyond the scope of these Rules, as is the question of whether the privileged status  
27 of a document or electronically stored information has been waived. Similarly, this Rule does not  
28 address the legal duties of a lawyer who receives a document or electronically stored information  
29 that the lawyer knows or reasonably should know may have been inappropriately obtained by the  
30 sending person. For purposes of this Rule, "document or electronically stored information"  
31 includes, in addition to paper documents, email and other forms of electronically stored

32 information, including embedded data (commonly referred to as “metadata”), that is subject to  
33 being read or put into readable form. Metadata in electronic documents creates an obligation  
34 under this Rule only if the receiving lawyer knows or reasonably should know that the metadata  
35 was inadvertently sent to the receiving lawyer.

36

37 **RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS (clean version)**

38 (a) In representing a client, a lawyer shall not use means that have no substantial  
39 purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining  
40 evidence that violate the legal rights of such a person.

41 (b) A lawyer who receives a document or electronically stored information relating to  
42 the representation of the lawyer’s client and knows or reasonably should know that the document  
43 or electronically stored information was inadvertently sent shall promptly notify the sender.

44

45 The maximum penalty for a violation of this Rule is a public reprimand.

46

47 **Comment**

48 [1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of  
49 the client, but that responsibility does not imply that a lawyer may disregard the rights of third  
50 persons. It is impractical to catalogue all such rights, but they include legal restrictions on  
51 methods of obtaining evidence from third persons and unwarranted intrusions into privileged  
52 relationships.

53 [2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored  
54 information that was mistakenly sent or produced by opposing parties or their lawyers. A  
55 document or electronically stored information is inadvertently sent when it is accidentally  
56 transmitted, such as when an email or letter is misaddressed or a document or electronically  
57 stored information is accidentally included with information that was intentionally transmitted. If  
58 a lawyer knows or reasonably should know that such a document or electronically stored  
59 information was sent inadvertently, then this Rule requires the lawyer to promptly notify the  
60 sender in order to permit that person to take protective measures. Whether the lawyer is required  
61 to take additional steps, such as returning the document or electronically stored information, is a  
62 matter of law beyond the scope of these Rules, as is the question of whether the privileged status



63 of a document or electronically stored information has been waived. Similarly, this Rule does not  
64 address the legal duties of a lawyer who receives a document or electronically stored information  
65 that the lawyer knows or reasonably should know may have been inappropriately obtained by the  
66 sending person. For purposes of this Rule, “document or electronically stored information”  
67 includes, in addition to paper documents, email and other forms of electronically stored  
68 information, including embedded data (commonly referred to as “metadata”), that is subject to  
69 being read or put into readable form. Metadata in electronic documents creates an obligation  
70 under this Rule only if the receiving lawyer knows or reasonably should know that the metadata  
71 was inadvertently sent to the receiving lawyer.

72

1 **RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS (red-line**  
2 **version)**

3

4 With respect to a nonlawyer employed or retained by or associated with a lawyer:

5 (a) a partner, and a lawyer who individually or together with other lawyers  
6 possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the  
7 firm has in effect measures giving reasonable assurance that the person's conduct is compatible  
8 with the professional obligations of the lawyer;

9 (b) a lawyer having direct supervisory authority over the nonlawyer shall make  
10 reasonable efforts to ensure that the person's conduct is compatible with the professional  
11 obligations of the lawyer;

12 (c) a lawyer shall be responsible for conduct of such a person that would be a  
13 violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

14 (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies  
15 the conduct involved; or

16 (2) the lawyer is a partner in the law firm in which the person is employed,  
17 or has direct supervisory authority over the person, and knows of the conduct at  
18 a time when its consequences can be avoided or mitigated but fails to take  
19 reasonable remedial action; and

20 (d) a lawyer shall not allow any person who has been suspended or disbarred and  
21 who maintains a presence in an office where the practice of law is conducted by the lawyer,  
22 to:

- 23 (1) represent himself or herself as a lawyer or person with similar status; or  
24 (2) provide any legal advice to have any contact with the clients of the lawyer  
25 either in person, by telephone or in writing; or  
26 (3) ~~make reasonable efforts to ensure that the suspended or disbarred~~  
27 ~~person's conduct is compatible with the professional obligations of the lawyer~~  
28 ~~have any contact with persons who have legal dealings with the office either in~~  
29 ~~person, by telephone or in writing.~~

30

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

32

33 Comment

34 [1] Lawyers generally employ assistants in their practice, including secretaries, investigators,  
35 law student interns, ~~suspended or disbarred persons~~ and paraprofessionals. Such assistants,  
36 whether employees or independent contractors, act for the lawyer in rendition of the lawyer's  
37 professional services. A lawyer should give such assistants appropriate instruction and  
38 supervision concerning the ethical aspects of their employment, particularly regarding the  
39 obligation not to disclose information relating to representation of the client, and should be  
40 responsible for their work product. The measures employed in supervising nonlawyers should  
41 take account of the fact that they do not have legal training and are not subject to professional  
42 discipline.

43

44 [2] Paragraph (a) requires lawyers with managerial authority within a law firm to make  
45 reasonable efforts to establish internal policies and procedures designed to provide reasonable  
46 assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of  
47 Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who  
48 have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the  
49 circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a  
50 violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer.

51

52 [3] The prohibitions of paragraph (d) ~~apply to professional conduct and not to social~~  
53 ~~conversation unrelated to the representation of clients or legal dealings of the law office, or the~~

54 ~~gathering of general information in the course of working in a law office. The thrust of the~~  
55 ~~restriction is~~ are to prevent the unauthorized practice of law in a law office by a person who  
56 has been suspended or disbarred. A lawyer who allows a suspended or disbarred lawyer to  
57 work in a law office must exercise special care to ensure that the former lawyer complies with  
58 these rules, and that clients of the firm understand the former lawyer's role.

59

60 **RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS (clean**  
61 **version)**

62 With respect to a nonlawyer employed or retained by or associated with a lawyer:

63 (a) a partner, and a lawyer who individually or together with other lawyers  
64 possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the  
65 firm has in effect measures giving reasonable assurance that the person's conduct is compatible  
66 with the professional obligations of the lawyer;

67 (b) a lawyer having direct supervisory authority over the nonlawyer shall make  
68 reasonable efforts to ensure that the person's conduct is compatible with the professional  
69 obligations of the lawyer;

70 (c) a lawyer shall be responsible for conduct of such a person that would be a  
71 violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:

72 (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies  
73 the conduct involved; or

74 (2) the lawyer is a partner in the law firm in which the person is employed,  
75 or has direct supervisory authority over the person, and knows of the conduct at  
76 a time when its consequences can be avoided or mitigated but fails to take  
77 reasonable remedial action; and

78 (d) a lawyer shall not allow any person who has been suspended or disbarred and  
79 who maintains a presence in an office where the practice of law is conducted by the lawyer,  
80 to:

81 (1) represent himself or herself as a lawyer or person with similar status; or

82 (2) provide any legal advice to the clients of the lawyer either in person, by  
83 telephone or in writing.

84

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

86

87 Comment

88 [1] Lawyers generally employ assistants in their practice, including secretaries,  
89 investigators, law student interns, and paraprofessionals. Such assistants, whether employees  
90 or independent contractors, act for the lawyer in rendition of the lawyer's professional services.  
91 A lawyer should give such assistants appropriate instruction and supervision concerning the  
92 ethical aspects of their employment, particularly regarding the obligation not to disclose  
93 information relating to representation of the client, and should be responsible for their work  
94 product. The measures employed in supervising nonlawyers should take account of the fact  
95 that they do not have legal training and are not subject to professional discipline.

96

97 [2] Paragraph (a) requires lawyers with managerial authority within a law firm to make  
98 reasonable efforts to establish internal policies and procedures designed to provide reasonable  
99 assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of  
100 Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who  
101 have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the  
102 circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a  
103 violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer.

104

105 [3] The prohibitions of paragraph (d) are to prevent the unauthorized practice of law in a law  
106 office by a person who has been suspended or disbarred. A lawyer who allows a suspended or  
107 disbarred lawyer to work in a law office must exercise special care to ensure that the former  
108 lawyer complies with these rules, and that clients of the firm understand the former lawyer's  
109 role.

110

1 **Rule 4-210 Powers and Duties of Special Masters (red-line version)**

2 In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have  
3 the following powers and duties:

4 ...

5 (10) to make findings of fact and conclusions of law as hereinafter provided  
6 and to submit his or her findings for consideration by the Review Panel or the  
7 Supreme Court in accordance with Bar Rule 4-217;

8 ...

9 **Rule 4-210 Powers and Duties of Special Masters (clean version)**

10 In accordance with these Rules a duly appointed Special Master or Hearing Officer shall have  
11 the following powers and duties:

12 ...

13 (10) to make findings of fact and conclusions of law as hereinafter provided  
14 and to submit his or her findings for consideration by the Review Panel or the  
15 Supreme Court in accordance with Bar Rule 4-217;

16 ...

17

1 **RULE 8-106 HOURS AND ACCREDITATION (red-line version)**

2 (7) **Trial Observation.** Every trial encompasses many aspects of the practice of law  
3 that are consistently taught in both law school and continuing legal education seminars.  
4 Observing how this education is applied into actual practice in the form of a current trial is, in  
5 and of itself, very educational. Its importance in achieving competency as a lawyer cannot be  
6 emphasized enough. To encourage this, CLE credit for observing trials is available under the  
7 following guidelines

8 a. Jury trials, bench trials, motion hearings and appellate court arguments in  
9 any Federal or State court are eligible. Administrative hearings, trials and probate court,  
10 and mediations/arbitrations are also eligible.

11 b. Proceedings in magistrate court and pro se matters are not eligible.

12 c. Credit is not available for trials in which the member takes an active role  
13 in the trial or any phase thereof.

14 d. The credit shall be treated as In-House and subject to the limitations of  
15 Regulation ~~5e~~ 8(e) under Rule 8-106 (B).

16 e. The credit is not eligible for ethics or professionalism CLE.

17 f. The credit is self-reported to the CCLC and must include:

18 • member's name and bar number

- 19 • the name of the court, parties, date of trial and type of trial
- 20 • the credit applicable (actual time rounded to nearest tenth of an hour)
- 21 • the administrative fee required by Rule 8-103(C)(2) (currently \$5 per
- 22 credit hour)

23

24 **RULE 8-106 HOURS AND ACCREDITATION** (Clean version)

25 (7) **Trial Observation.** Every trial encompasses many aspects of the practice of law  
26 that are consistently taught in both law school and continuing legal education seminars.  
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28 and of itself, very educational. Its importance in achieving competency as a lawyer cannot be  
29 emphasized enough. To encourage this, CLE credit for observing trials is available under the  
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33 and mediations/arbitrations are also eligible.

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36 in the trial or any phase thereof.

37 d. The credit shall be treated as In-House and subject to the limitations of  
38 Regulation 8(e) under Rule 8-106 (B).

39 e. The credit is not eligible for ethics or professionalism CLE.

40 f. The credit is self-reported to the CCLC and must include:

- 41 • member's name and bar number
- 42 • the name of the court, parties, date of trial and type of trial
- 43 • the credit applicable (actual time rounded to nearest tenth of an hour)
- 44 • the administrative fee required by Rule 8-103(C)(2) (currently \$5 per
- 45 credit hour)

46

**State Bar of Georgia 2016-2017 Budget Timetable**  
(as of 10/12/15)

- Tue. - December 1, 2015** Budget Timetable and the Budget Request Forms are sent to President-elect, YLD President-elect, Committee Chairs and Bar staff.
- Fri. - January 8, 2016** **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 2017-2018 budget cycle.**
- Thrs. - January 28, 2016 **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 29, 2016 **Personnel Committee** reviews any new staffing and compensation change requests. Proponents are requested to appear to orally present and justify their requests.
- Thrs. - February 25, 2016 **Finance Committee** reviews the recommendations of the Programs and Personnel Committees (the review is limited to their financial impact on dues and budget) and begins considering the 2016-2017 dues level. Proponents, having already been heard, do not attend.
- (Dates below are determined by the Exec. Comm. meeting schedule and subject to change)*
- TBD - March 2016* **Finance Committee** recommends the 2016-2017 dues level to the Executive Committee for the April 15 Exec. Comm. meeting. *(Note - EC agenda deadline April 6)*
- Fri. - April 15, 2016* **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 2016-2017 dues level to the Board of Governors for the May 7 Board meeting. *(Note - Board agenda deadline is April 18)*
- Sat. - May 7, 2016* **Board of Governors** sets the 2016-2017 dues level at the Spring Board Meeting (Bar Center).
- TBD - early May 2016* **Finance Committee** recommends the final draft budget (if not done earlier) to the Executive Committee.
- TBD - mid May 2016* **Executive Committee** receives final draft budget for its review and recommendation to the Board of Governors for the June 18 Board meeting. *(Note - Board agenda deadline is May 30)*
- Sat. - June 18, 2016* **Board of Governors** receives 2016-2017 final draft budget for approval at the Annual Board Meeting (Omni - Amelia Island, FL).

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.

11/23/2015

**State Bar of Georgia Consolidated Revenues and Expenditures as of October 31, 2015**  
**Operations and Bar Center**

Activity	2015-16 Net Dues	Actual YTD 2015-16			Budget 2015-16	
		# Memb.	Amount	% of Bud	# Memb.	Amount
Active	\$248	36,911	\$9,127,859	99.0%	38,050	\$9,215,600
Inactive	\$124	8,654	\$1,078,036	95.8%	8,975	\$1,125,575
Associates	\$100	15	\$1,400	63.6%	20	\$2,200
Foreign Legal Cnslt	\$248	8	\$1,984	114.3%	7	\$1,736
Students	\$0	162	\$0	0.0%	150	\$0
Emeritus	\$0	1,679	\$0	0.0%	1,750	\$0
Late Fees			\$179,735	69.1%		\$260,000
Prior Years Dues			\$2,889	41.3%		\$7,000
<b>Total License &amp; Dues</b>		<b>45,750</b>	<b>\$10,391,903</b>	<b>97.9%</b>	<b>47,202</b>	<b>\$10,612,111</b>
Bar Center Revenue			\$839,541	23.0%		\$3,652,767
Alloc. Section Fees			\$111,834	100.0%		\$111,834
CSF Expense Reimb.			\$24,333	33.3%		\$73,000
Advertising & Sales			\$28,017	26.3%		\$106,700
Membership Income			\$43,525	28.8%		\$151,000
Interest Income			\$28,285	43.5%		\$65,000
Miscellaneous			\$1,178	39.3%		\$3,000
<b>Total Revenue</b>			<b>\$11,468,616</b>	<b>77.6%</b>		<b>\$14,775,412</b>
<b>Total Expenses</b>			<b>\$5,522,910</b>	<b>35.1%</b>		<b>\$15,741,394</b>
<b>Net Gain (Loss)</b>			<b>\$5,945,706</b>			<b>(\$965,982)</b>

**Board Designated Amounts (Excluding Sections, and Restricted Funds)**

Operating Reserve	\$2,750,000
Bar Center Reserve	2,000,000
Litigation Reserve	250,000
Cornerstones of Freedom	600,000
<b>Total</b>	<u>\$5,600,000</u>
<b>Estimated Surplus (Cash Basis) 6/30/15 SUBJECT TO AUDIT</b>	
<b>Operations</b>	<u>(\$1,372,036)</u>
<b>Bar Center</b>	<u>\$7,715,225</u>
<b>Total Reserves and Surplus</b>	<u>\$11,943,189</u>



**State Bar of Georgia**  
**Summary of Dues and Voluntary Contributions**  
**At November 30**

Total Number of Members at Apr 30 of prev Bar year (active and inactive)	<u>46,113</u>	<u>45,133</u>	<u>44,044</u>
	<b>Dues Season May Through April 2016</b>	<b>Dues Season May Through April 2015</b>	<b>Dues Season May Through April 2014</b>
<b>Dues</b>			
Active - Number Paid	37,376	36,717	36,036
Inactive - Number Paid	<u>8,677</u>	<u>8,608</u>	<u>8,346</u>
Total Number Paid	<u>46,053</u>	<u>45,325</u>	<u>44,382</u>
Percent Paid	<u>99.87%</u>	<u>100.43%</u>	<u>100.77%</u>
Total Amount Paid - Active and Inactive	<u>10,298,822</u>	<u>10,121,731</u>	<u>9,788,915</u>
<b>Georgia Legal Services</b>			
Number Paid	<u>2,289</u>	<u>2,282</u>	<u>2,206</u>
Percent of Total Members Paid	<u>4.97%</u>	<u>5.03%</u>	<u>4.97%</u>
Amount Paid	<u>263,635</u>	<u>254,239</u>	<u>239,786</u>
Average Amount Paid	<u>\$ 115</u>	<u>\$ 111</u>	<u>\$ 109</u>
<b>Legislative</b>			
Number Paid	<u>5,982</u>	<u>6,490</u>	<u>7,209</u>
Percent of Total Members Paid	<u>12.99%</u>	<u>14.32%</u>	<u>16.24%</u>
Amount Paid	<u>563,129</u>	<u>613,625</u>	<u>679,516</u>
Average Amount Paid	<u>\$ 94</u>	<u>\$ 95</u>	<u>\$ 94</u>

**Projected 2015-16 Dues Year Totals Based Upon The Current Participation Percentages (Note: Participation Usually Decreases For Members Who Pay Later):**

<b>Georgia Legal Services</b>	<u>\$ 267,000</u>
<b>Legislative</b>	<u>\$ 585,000</u>

<b>Contribution Amounts by Dues Year (May 1 - April 30)</b>	<b>GLSP</b>	<b>Legislative</b>	
2014 - 2015	<u>\$ 255,713</u>	<u>\$ 640,505</u>	\$100 Contribution
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>\$ 657,626</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

November 23, 2015

**State Bar of Georgia**  
**Income Statement YTD - Operations Only**  
**For the Four Months Ending October 31, 2015**

	YTD Actual	Annual Budget	Ytd % of Bud
<b>Revenues</b>			
Dues - Active	\$ 9,129,843	\$ 9,215,600	99.07
Dues - Inactive	1,078,036	1,125,575	95.78
Dues - Misc. Types	1,400	3,936	35.57
Dues - Late Fees	182,624	267,000	68.40
	<hr/>	<hr/>	
<b>Total Dues &amp; Licenses</b>	<b>10,391,903</b>	<b>10,612,111</b>	<b>97.92</b>
Section Expense Reimb.	111,834	111,834	100.00
CSF Expense Reimb.	24,333	73,000	33.33
Advertising and Sales	28,017	106,700	26.26
Membership Income	24,900	96,000	25.94
Pro Hac Vice Admissions	59,625	195,000	30.58
Pro Hac Vice GBF Contra Acct	(41,000)	(140,000)	29.29
Savannah Misc Income	0	0	0.00
Interest Income	28,285	65,000	43.52
Miscellaneous Revenues	1,178	3,000	39.27
	<hr/>	<hr/>	
<b>Total Revenues</b>	<b>10,629,075</b>	<b>11,122,645</b>	<b>95.56</b>
<b>Expenses</b>			
Administration	688,776	2,105,514	32.71
Management Info Systems	214,825	554,574	38.74
General Counsel	1,230,085	3,782,798	32.52
Consumer Assistance Pgm.	186,868	566,563	32.98
Communications	246,713	835,758	29.52
Fee Arbitration	160,412	534,623	30.00
Law Related Education	111,844	346,205	32.31
Law Practice Management	144,527	443,852	32.56
Coastal Georgia Office	69,051	212,729	32.46
South Georgia Office	50,441	162,433	31.05
Younger Lawyers Division	186,130	529,547	35.15
Unauthorized Practice of Law	258,335	779,147	33.16
Standards of the Profession	66,571	235,968	28.21
High School Mock Trial	21,638	118,816	18.21
Sections	34,738	111,834	31.06
Lawyer's Assistance Pgm	18,333	55,000	33.33
Pro Bono	70,739	212,216	33.33
Fastcase	63,800	191,000	33.40
Officers' Expenses	14,292	134,305	10.64
BASICS Program Contribution	140,000	140,000	100.00
Resource Center Contribution	110,332	110,332	100.00
Military/Vets Pro Bono	34,579	103,742	33.33
Other Expenses	163,002	718,032	22.70
	<hr/>	<hr/>	
<b>Total Expenses</b>	<b>4,286,031</b>	<b>12,984,988</b>	<b>33.01</b>
	<hr/>	<hr/>	
<b>Net Income</b>	<b>\$ 6,343,044</b>	<b>\$ (1,862,343)</b>	<b>(340.59)</b>

11/23/2015

**State Bar of Georgia - Bar Center  
Revenues and Expenditures - Executive Summary  
For the Month Ended October 31, 2015**

Activity	YTD 10/31/15		Budget FY 16
	Actual	% Budget	
<b>Income and Cash Receipts</b>			
CCLC Contribution	\$0	0.0%	\$1,300,000
Interest Income	\$4,988	24.9%	\$20,000
Member Assessment	\$232,651	80.2%	\$290,000
Room Rentals and Various Charges	\$11,231	40.0%	\$28,100
Parking Revenues	\$81,784	33.9%	\$241,133
Rental Income	\$313,383	26.4%	\$1,187,023
Operating Budget Transfer	\$195,504	33.3%	\$586,511
<b>Total Income and Cash Receipts</b>	<b>\$839,541</b>	<b>23.0%</b>	<b>\$3,652,767</b>
<b>Expenses and Cash Disbursements</b>			
Building Rehabilitation	\$30	0.0%	\$75,000
Conference Floor Renovations	\$0	0.0%	\$20,000
Tenant Improvements	\$416,304	277.5%	\$150,000
Furniture and Equipment	\$5,879	60.0%	\$9,800
Architect and Design	\$21,605	0.0%	\$10,000
Parking Deck Enhancements	\$0	0.0%	\$125,000
Median and Landscaping	\$0	0.0%	\$5,000
Woodrow Wilson Exhibit and Law Museum	\$7,157	51.1%	\$14,000
President's Conference Room	\$976	19.5%	\$5,000
Law Related Education	\$6,490	24.5%	\$26,500
Conference Center Operating Expenses	\$136,774	31.5%	\$433,567
Third Floor Contingency	\$0	0.0%	\$25,000
Building Operating Expenses	\$560,415	35.8%	\$1,565,898
Parking Deck Operating Expenses	\$81,249	27.9%	\$291,641
Legal and Due Diligence Fees	\$0	0.0%	\$0
<b>Total Expenses and Cash Disbursements</b>	<b>\$1,236,879</b>	<b>44.9%</b>	<b>\$2,756,406</b>
<b>Net Cash Flow</b>	<b>(\$397,338)</b>		<b>\$896,361</b>

**State Bar of Georgia**  
**Balance Sheet**  
**October 31, 2015**

ASSETS - Current Assets

Total Cash & Short-Term Investments 21,788,604

Investment - Merrill Lynch 2,158,849

Investment - Fidelity 9

Investment - Georgia Banks 1,006,201

Total Long-Term Investments 3,165,059

Accounts Receivable 48,245

Accrued Interest Receivable 7,508

Due from Related Orgs/Emp (139,260)

Prepaid Expenses 541,461

Bar Center Prepaid Expenses 55,204

Total Other Assets 513,158

Total Current Assets 25,466,821

Fixed Assets

Furniture & Equipment 6,049,850

Bar Center 26,004,590

Accum. Depreciation (17,475,688)

Total Fixed Assets 14,578,752

Total Assets \$ 40,045,573

LIABILITIES AND CAPITAL

Accounts Payable \$ 360,298

Other Current Liabilities 494,329

Vacation & Pers Day Accrual 483,630

Due to Client Security Fund 2,184,741

Deferred Income 47,278

C&W - Cushman Accounts Payable 69,657

BC-Accrued Expenses 6,526

C&W - Deferred Rent Income 22,752

Total Current Liabilities 3,669,211

Total Long Term Liabilities 0

Fund Balances - Beg. of Year

Total Fund Balances - Beg. of Year 29,409,575

YTD Activity 6,966,776

Total Liabilities & Capital \$ 40,045,562



Board of Governors  
State Bar of Georgia  
104 Marietta Street  
Atlanta, Georgia 30303

Re: January 7-9, 2016 Report to the Board of Governors

It is my privilege to report to the Board on the activities of the State Bar of Georgia YLD. The YLD is committed to continually promoting the mission of our Bar through its younger members, who number more than 10,000. Though it is still early in the Bar year, the YLD has been busy both continuing already great programs and projects and improving initiatives begun by our Immediate Past President, Sharri Edenfield. This report will bring you up to date on our activities and accomplishments so far this year.

### **Signature Service Projects**

The YLD 10<sup>th</sup> Annual Signature Fundraiser will be held January 23, 2016 at the Biltmore in Midtown Atlanta. Proceeds from the fundraiser will benefit Camp Lakeside. The project is a dynamic partnership between Children's Hospitals of Georgia and the Family Y, which will result in the construction of a state-of-the-art facility for children with chronic and terminal illnesses and healthy children alike to experience a fun, safe, and memorable camping experience. When completed, Camp Lakeside will be able to provide services to children across the state of Georgia.

The YLD has a goal of raising at least \$100,000 to support this worthy cause, and we need your help in order to succeed. To purchase tickets, make a donation, or sponsor the event, please visit [www.georgiayld.org](http://www.georgiayld.org).



*YLD Officers attend the 2015 Signature Fundraiser.*

In addition, the YLD is in the process of organizing its fifth annual Legal Food Frenzy in conjunction with the Office of the Attorney General. The Food Frenzy has a 2016 goal of raising over 1 million pounds of food for Georgia's needy, making a cumulative total raised of more than 5 million pounds of food over the course of the project's first five years in existence. All donations will not only stay in Georgia, but will directly benefit the local community food banks where the donations are made. Lawyers across the state will compete for who raises the most food and dollars for their local community food bank. Participation from all bar members will ensure this project's success.



*Tamara Branch (left) Tifton Circuit Bar President and bar member Jody Snow collected food for the 2015 Legal Food Frenzy (LFF) to benefit local food banks.*

These two major service projects not only benefit our State as a whole and our local communities, they show the public that Georgia lawyers care more about their contribution to society than the billable hour. *I am asking each of you, as members of our Board of Governors, to support our mission of public service, and personally contribute your time, talent, or financial resources towards one or both of these signature public service events.*

**YLD Committees**

Since my last report to you, the YLD has continued to work diligently to ensure that the legal profession maintains its public reputation as a high calling and that we provide relevant, quality programming for our membership.



*YLD Committee Chairs Jennifer Fleeman Weaver (left) and Kerry Nicholson make plans for the Public Interest Internship Committee during the 2015 YLD Orientation.*

Just some of the work in which the more than thirty YLD committees have been actively engaged include:

- **Advocates for Students with Disabilities**  
**Co-Chairs: Clayton Adams & Susan Haynes**  
Historically, the aim of the YLD Advocates for Students with Disabilities Committee has been to provide support and networking opportunities for attorneys and advocates who represent students with disabilities. The chairs are working both to continue with these efforts and to give the committee some new direction, by providing better resources for technical assistance and pro bono opportunities to its membership. The YLD Advocates for Students with Disabilities Committee held a well-attended kickoff happy hour on Sept. 17 from 5:30-7 p.m. at Cabbage Pie, to get to know each other and discuss plans for the year. The Committee also held a business lunch meeting on Oct. 15 & Nov. 12 from 12-2 p.m. at the Bar Center in the YLD Presidents Boardroom. Four other meetings are scheduled both at the Bar Center and outside the metro Atlanta area. In addition, the Committee is working to co-sponsor an event with the Center for Law Health and Society at Georgia State University's School of Law.
- **Appellate Admissions**  
**Co-Chairs: Bryan Schivera & Rachel Hudgins**  
The Appellate Admissions Committee will organize a mass swearing in ceremony in the spring of 2016 for new admittees to the Supreme Court of Georgia and Georgia Court of Appeals. The previous ceremony was held in the spring of 2015. Standard procedures in preparation of the ceremonies will be conducted.
- **Aspiring Youth Program**  
**Co-Chairs: LaToya Bell & Alexia Davis**  
Under new leadership, the Aspiring Youth Program decided to implement Project LYFE – Lifting Youth for Future Empowerment -- at Youth Detention Centers across the State

of Georgia. This program will focus on a curriculum designed for building skills necessary for re-entry into society after a child's release from a YDC facility. The programming will be held on a quarterly basis, and will teach re-entry skills such as interviewing, dress, etiquette, goal setting and stress management. The Committee has also been working on creating a Georgia Substance Abuse Awareness brochure to be distributed statewide in DJJ facilities.

- **Business Law**

- **Co-Chairs: Alex Bartko & Ryan Ingram**

- The Business Law Committee is in the process of planning a number of events to appeal to transactional lawyers and commercial litigators alike. A lunch and learn event was held on October 8, 2015, where former in-house counsel for Enron spoke. They hosted a happy hour on Nov. 12 at 5:30 p.m. at TAP in Midtown, featuring an open bar and hors d'oeuvres. Everyone enjoyed the opportunity to have some good food and drinks, as well as get to know one another. Future events include networking happy hours, CLE programming, and a community service event.

- **Community Service Projects**

- **Co-Chairs: Kimberly Bourroughs & Zach Howard**

- The YLD Community Service Projects Committee started the new Bar year by hosting a mentoring lunch on July 25 at Georgia State University in conjunction with Fulton County DFCS, where members provided lunch to teens as part of a mentoring and enrichment program. This committee also held their first business meeting of the year on Sept. 9 at 12 p.m. at the Bar Center, where they had lunch and discussed plans for the upcoming year.

One of the first upcoming events of the CSPC will be to assist and co-sponsor Georgia Legal Services Program's "Ask a Lawyer Day." On Thursday, October 29, the committee assigned— in conjunction with the Savannah Bar Association's YLD – volunteers to each of the eleven counties assigned to GLSP's Savannah Regional Office to take part in the program and provide an opportunity for residents in each county to speak with a lawyer or lawyers to answer basic questions about legal problems and services available to them. GLSP staff will be available to assist and provide intake services for residents who have more involved legal needs. The program promises to be a great way to give back to the community, introduce rural residents to GLSP and its purpose, and provide an opportunity for those residents to get a more thorough understanding of the justice system and the role of lawyers. Once locations and times for the "Ask a Lawyer Day" events in the Savannah area are finalized, the Committee will begin coordinating volunteer efforts.

This Committee, along with the YLD's Public Interest Internship program Committee, co-sponsored the "Saturday Lawyer Program" put on by the Atlanta Volunteer Lawyers Foundation on Saturday, November 7, 2015. The Saturday Lawyer Program provides low-income Atlantans with access to volunteer attorneys and offers volunteer attorneys a chance to do meaningful pro bono work. Volunteers who participated had the opportunity to interview potential clients, assess their claims, and determine which cases, if any, they wanted to accept for full representation. The AVLF offers a wide range of training and support for those who are able and willing to accept pro bono cases and, of course, volunteers are under no obligation to accept cases if their schedules do not so permit. The Committee also hosted a wonderful Thanksgiving dinner on Sunday, Nov. 22 for the



International Women's House in Atlanta, which is an emergency shelter for women and children who are escaping domestic violence and sexual abuse. The Committee is also hosting the YLD Suit & Cell Phone Drive and is collecting suits and cell phones for shelters in the Atlanta area, with a deadline of Midyear Meeting to accept donations.

- **Criminal Law Committee**

**Co-Chairs: C. Brock Brockington & Ryan English**

So far this year, the Criminal Law Committee hosted a joint social in Atlanta with the Solo/Small Firm Committee and the Family Law Committee. This event was held on Thursday, Sept. 10, 2015. Programming in planning for the Bar year includes a social event to be held in Macon, as well as a criminal law "primer" CLE.

- **Disaster Legal Assistance**

**Chair: Erika D. Robinson**

This committee provides free legal assistance to persons affected by presidentially declared major disasters. Disaster Legal Assistance (DLA) is a federal disaster assistance program operated by the American Bar Association Young Lawyers Division and executed throughout the country by each state's YLD pursuant to a memorandum of understanding with FEMA. DLA connects those in need to free legal services on legal matters that arise directly from major disasters. This Committee stands ready if anything were to happen.

- **Estate & Elder Law**

**Co-Chairs: Brandon D. Elijah & Amanda N. Moyer**

This committee is currently planning three Wills Clinics for 2016, at least one networking event for committee members and a complete rewrite of the Senior Handbook and a brochure titled, "Selecting a Personal Care Home." This guide will help practitioners and pro se parties alike in guiding the elderly on the topics of residential care and treatment.

- **Ethics & Professionalism**

**Co-Chairs: Matthew L. Jones & Alisha Marie Scott**

The YLD Ethics & Professionalism Committee held a well-attended kickoff lunch meeting on Sept. 3, 2015 at the Bar Center to plan their year of meetings, events and possible CLE topics. The Committee also held a business lunch meeting on Oct. 1 from 12-2 p.m. at the Bar Center in the Presidents Boardroom. They held a conference call on Nov. 5 and discussed upcoming projects. They met on Nov. 21 for a community service project with Tree's Atlanta, where they met in Buckhead and planted trees for a few hours. They held a lunch meeting on Dec. 3 at the Bar Center in Room 1. They are also planning an Ethics CLE to be held at Mercer Law School in the Spring of 2016 and creating a YLD Ethics Booklet that will be viewable on the YLD website.

- **Family Law**

**Co-Chairs: Katie Kiihnl & Jonathan Brezel**

The YLD Family Law Committee is one of the most active YLD Committees, and held a kickoff social on Aug. 12 in Atlanta to plan the new Bar year and watch a Braves game. They also held a well-attended mix and mingle happy hour on Sept. 10 at 6 p.m. at Stillhouse with the YLD Criminal Law Committee and the YLD Solo-Small Firm Committee where complimentary appetizers were served and everyone got to relax and network. The Committee has held monthly meetings since, and recently hosted a Meet

the Judges Happy Hour on Sept. 23 in Decatur, an evening where young lawyers got to meet the judges of DeKalb County in a relaxed and informal setting and network outside the courtroom. A packed schedule of future meetings and networking events is planned for the rest of the year.

In a joint partnership with the Military Support Committee and the Texas Young Lawyers Association, the Committee is in the process of creating a booklet designed to assist family law practitioners and pro se parties alike in identifying the issues unique to divorcing military spouses. Members of the Committee are also encouraging young lawyers to participate in the Child Support Helpline, an initiative of the Child Support Commission and the State Bar Family Law Section.

On October 22, 2015, the Committee hosted its annual Supreme Cork silent auction and wine tasting. The event was held at 5 Seasons Brewery Westside in Atlanta, benefiting the Guardian ad Litem and Domestic Violence programs of AVLF. They also held a well-attended committee meeting on Dec. 1 at Stern & Edlin.

- **High School Mock Trial**

- **Co-Chairs: Adam Hebbard & Elizabeth Johnson**

- The YLD High School Mock Trial Competition held their annual Law Academy Sept. 24-27, at the Bar Center, where mock trial participants from across Georgia learned the ins and outs of trial preparation and trial skills along with visits to the Georgia Supreme Court and the Georgia Court of Appeals. They are currently looking for volunteer attorneys to act as judges and evaluators for this season's competitions. Regional competitions will be the weekend of January 30, 2016 in 16 locations around the state. They have more than 1,100 spots to fill for the weekend. This is a great chance for volunteers to be inspired by students who have put a lot of time and energy into bringing a case to trial and who want to show off their work to those who get to do this every day. Also, District competitions will be the weekend of February 27, 2016 in 8 locations. Finally, the State Finals Competition will be Saturday, March 19, 2016 in Lawrenceville. Also, be on the lookout for May 2019, when, due to the hard work of Michael Nixon and Kevin Epps, the National High School Mock Trial Championship will be held in Athens at the Classic Center and the University of Georgia School of Law.

- **Inclusion in the Profession**

- **Co-Chairs: Amanda N. Heath & Titus T. Nichols**

- This committee held a service project on Dec. 12 from 9 a.m. – 12:30 p.m. for the Atlanta Volunteer Lawyers Foundation Saturday Lawyer Program, which was well-attended. The committee is hosting a CLE centered on same-sex marriage issues in GA as a result of the SCOTUS ruling in June 2015. All the speakers have been confirmed and the CLE will take place on Friday, Jan. 8. at Lake Lanier. The Committee is planning various events in Augusta, Macon and Savannah for 2016.

- **Intellectual Property Law**

- **Co-Chairs: Sonia Lakhany & Tiffany Logan**

- The Intellectual property committee hosted a happy hour on Oct. 13 in Atlanta that was well-attended. They also volunteered with the Georgia Lawyers for the Arts (GLA) during their annual gala on Dec. 10 from 7-10 p.m. at Greystone in Piedmont Park.

- **Intrastate Moot Court Competition**

- **Co-Chairs: William A. Alexander & Mary Weeks**

- This Committee is in the process of planning the next Intrastate Moot Court Competition, scheduled for April 2016. They held a committee planning session on Oct. 21, 2015 that was well-attended. This annual event will include a happy hour for competitors and a dinner and reception for the volunteer judges. The 2016 Competition will be held in Athens, Georgia, where we will host 2 teams from each of 6 law schools within the State of Georgia.

- **Judicial Law Clerk**

- **Co-Chairs: Chris Perniciaro & Lucy Dodd Roth**

- The YLD Judicial Law Clerk Committee held a well-attended kickoff happy hour on Aug. 25, 2015, which was held immediately after the Judicial Law Clerk CLE hosted by the ICJE. This committee is seeking to promote networking and collegiality among the law clerks in various courts across the state, as well as to build relationships with other practicing attorneys. They hope to schedule more events in 2016.

- **Juvenile Law**

- **Co-Chairs: Araceli Jacobs & Deidre' Merriman**

- The YLD Juvenile Law Committee held a well-attended lunch meetings on Aug. 18, 2015 at the Bar Center, where guest speaker Judge Sumner presented and the members had a chance to begin planning their committee year. This committee also held a lunch meeting on Sept. 15 at the Bar Center, featuring guest speaker Judge Lovett and a lunch meeting on Oct. 20 at the Bar Center, featuring a discussion with guest speaker Office of the Child Advocate Director, Ashley Willcott. They held a well-attended lunch meeting on Nov. 17 from 12-2 p.m. at the Bar Center, Presidents Boardroom, featuring guest speaker Brad Bryant. They also hosted a Holiday Gift Drive Happy Hour on Dec. 18 from 6-8 p.m. at Manuel's Tavern that was fun and festive and raised toys for foster youth.

- **Labor & Employment Law**

- **Co-Chairs: Alyssa Peters, John Weltin & Lisa Simpson**

- The YLD Labor & Employment Committee held a well-attended committee meeting on July 1, 2015 at Troutman Sanders, where special guest speaker Charlie Hawkins gave a presentation on practical advice regarding non-competes. On July 15 they hosted a happy hour in Atlanta to promote networking and collegiality, and celebrate a successful 2014-2015 Bar year. The Committee held a complimentary luncheon on Sept. 28 from 12-1 p.m. at Fisher & Phillips, which featured guest speaker Jennifer Sandberg, who presented "How to Conduct a Harassment Investigation." They hosted a happy hour on Oct. 28 at 6:30 p.m. at Front Page News in Midtown that went well.

- **Law-Related Education**

- **Co-Chairs: Janene D. Browder & Shiriki L. Cavitt**

- This committee oversees the iCivics program and curriculum to Georgia middle and high schools. iCivics is a nonprofit organization, founded and championed by Justice Sandra Day O'Connor, that is designed to (1) teach students about American government and civil society, (2) invigorate students' civic learning through interactive and engaging learning resources, and (3) inspire students to be active participants in our democracy. The YLD LRE Committee works to ensure that the iCivics Program is a great success by

placing lawyers who are willing to work hands-on with local teachers in classrooms throughout participating Georgia school systems. Volunteers serve as presenters to the students (1-2 sessions a month as needed) on various legal and governmental topics as determined by the respective teacher in the classroom in which the volunteer is placed. Topics include discussing the importance of the Constitution; the differences between the legislative, executive and judicial branches of government; presenting pivotal cases on any of the topics presented in the curriculum; or talking to the students about the path to becoming a lawyer, judge, legislator, etc. New iCivics program training has already started in Richmond County as well as other counties across the state.

- **Law School Outreach Program**

**Director of LRO: Dustin Davies; Law School Fellows Program Chair: Terri Benton**

Our Director of Law School Outreach, Dustin Davies, has coordinated outreach events with each of Georgia's law schools to educate law students about the benefits of state bar involvement, particularly in the YLD. First on the list was Atlanta's John Marshall Law School on Aug. 27, 2015, where the YLD provided information to law students at a career fair. On September 1, 2015, the YLD hosted a well-attended lunch at Georgia State University College of Law, where YLD Past President Michael Geoffroy and YLD President Jack Long provided a talk to 2L & 3Ls. On September 8, 2015, President Jack Long visited Mercer School of Law and hosted another well-attended event. On September 9, he went to Emory University School of Law and on Sept. 23 he visited the University of Georgia School of Law. In addition, a law school outreach event was held in Birmingham, Alabama for Alabama law students who are seeking to take the Georgia bar. These outreach events are important to bridge the gap between law students and young lawyers, and promote involvement and leadership in our profession. The committee also will host the law school fellows from each Georgia law school at the Midyear Meeting for a lunch meet and greet on Friday, Jan. 8.

- **Leadership Academy**

**Co-Chairs: Ron E. Daniels, M. Anne Kaufold-Wiggins & Sarah F. Kjellin**

Founded in 2006, the YLD Leadership Academy is a program for young lawyers who are interested in developing their leadership skills as well as learning more about their profession, their communities and their state. The Leadership Academy counts more than 400 alumni. Those alumni members include solo practitioners, judicial law clerks, partners in large and small law firms, assistant district attorneys, public defenders, nonprofit lawyers, ADR specialists and in-house counsel for Fortune 500 companies. The benefits of having a friend and legal resource in practically every corner of the state and in any practice area cannot be overestimated. This committee just finished the grading and selection process for the 2016 Class. The Class of 2016 begins in January 2016 and meets once a month for six months. Participants who attend all six sessions will receive 12 CLE credit hours, including 1 Professionalism, 1 Ethics and 3 Trial.

- **Leadership Academy Alumni**

**Chair: Corey Aitken**

This committee provides continuing leadership development, community service, pro bono opportunities and networking opportunities for Leadership Academy (LA) alumni. The committee annually hosts the LA Holiday Luncheon and other events and programs to encourage members to sustain the relationships formed with their LA class, as well as forge new relationships with other LA alumni while serving the community. Members

must be LA graduates. The LA Holiday Luncheon was held on Dec. 17 and was well-attended and enjoyed by all.

- **Legal Food Frenzy**

**Co-Chairs: Justin L. Oliverio, Lisa G. Robinson, Daniel Burroughs & W. Justin Purvis**

This committee coordinates with the Office of the Attorney General to host the statewide "Legal Food Frenzy," a food drive and fundraiser competition among Georgia's law firms, law schools and other legal organizations. The committee partners with community legal leaders across the state to spread awareness about Georgia's hunger problems, and to make a significant impact by gathering both canned food donations and monetary donations to help those affected by hunger in the state. This competition is held in the spring, and since its inception, has raised more than 3.5 million pounds of food.

- **Legislative Affairs**

**Co-Chairs: William W. Fagan & D. Bobo Mullens**

This committee hosted their annual "Lawyers in Public Service" Cocktail Hour on Nov. 13 at 5:30 p.m. at The Chatham Club in Savannah, GA, giving guests a chance to network with U.S. Representatives, Assistant U.S. Attorneys and lawyers in appointed and elected public service positions throughout the Savannah area and the state.

- **Litigation Committee**

**Co-Chairs: Edwin Cook & Jake Evans**

The YLD Litigation Committee held a well-attended College Football Kickoff Happy Hour on Sept. 3, 2015 and provided networking opportunities. Their first business meeting of the year will be held on Sept. 10, 2015 at Bryan Cave's office in Midtown Atlanta for a lunch, guest speaker presentation, and a discussion about plans for the upcoming year. The Committee also held a business lunch meeting on Oct. 8 from 12:30-1:30 p.m. at the Bar Center in Room SB-2, and the YLD Business Law Committee helped sponsor the lunch. They hosted a luncheon on Nov. 12 from 12:30-1:30 p.m. at the Bar Center, Room 1, featuring guest speaker Robert W. Kamerschen, In-House Counsel at Aaron's Inc. that was very well attended. They hosted their annual Clerk's Luncheon at Maggiano's Little Italy in Buckhead on Dec. 2 from 12:30-1:30 p.m. This luncheon honored the Law Clerks in Georgia and benefitted Youth Villages, a charity that assists children who face behavioral challenges, as well as their families. They also collected monetary donations for Youth Villages. This luncheon was very well attended, with over 60 guests. They also hosted a Holiday Happy Hour on Dec. 10 at 6:30 p.m. at Front Page News in Midtown as an opportunity to network with fellow young litigators and enjoy free drinks and food. It was also a Tacky Sweater / Holiday Gift Drive Happy Hour, so everyone was encouraged to wear a tacky sweater and bring a \$5 suggested donation for Youth Villages. Their next lunch meeting will be on Jan. 21 from 12:30-1:30 p.m. at the Bar Center, Presidents Boardroom.

- **Long Range Planning**

**Co-Chairs: Josh I. Bosin & Brantley C. Rowlen**

This committee identifies issues and trends affecting young lawyers and the practice of law and the operation of the YLD. It makes recommendations to the YLD president and YLD Executive Committee.

- **Military Support**  
**Co-Chairs: Kathleen Dod & Quentin Marlin**  
 The YLD Military Support Committee is currently conducting a service project for “Homeless Veterans Stand Down,” an initiative created to meet the needs of homeless veterans. On October 17, 2015 young lawyers volunteered at Fort McPherson’s clinic to assist these individuals and bring them into the fold of the Atlanta Veterans Affairs Medical Center, so they could receive the care they need and deserve. YLD volunteers handed out essential supplies to the veterans. In a joint partnership with the Family Law Committee and the Texas Young Lawyers Association, they are in the process of creating a booklet designed to assist family law practitioners and pro se parties alike in identifying the issues unique to divorcing military spouses.
- **National Moot Court Competition**  
**Co-Chairs: Cara M. Convery & Norbert D. Hummel**  
 This committee conducts the Region V competition of the National Moot Court Competition. They held their annual competition, Nov. 20-21, at the US Bankruptcy Courthouse, with a reception to follow at the Glenn Hotel. The competition included 13 teams from 9 different law schools in Florida, Georgia and South Carolina. This event is held annually and the Georgia YLD sponsors and hosts on odd numbered years while the University of Florida hosts on the even numbered years.
- **Non-traditional Legal Careers**  
**Chair: Christopher R. Breault**  
 This Committee partnered with the YLD Women in the Profession Committee for a joint cooking class, titled the “Art of Entertaining” on Nov. 18 from 6-9 p.m. at Preserving Place. Martha McMillin, lawyer-turned-successful-entrepreneur and owner of Preserving Place hosted this special class where guests learned how to set a beautiful table, plate food, master a few recipes and then dine.
- **Public Interest Internship Program**  
**Co-Chairs: Jennifer Weaver & Kerry Nicholson**  
 The YLD Public Interest Internship Program Committee held a well-attended lunch meeting on Aug. 19, 2015 at the Bar Center, where they discussed plans for the next reception to celebrate the 2015 PIIP grant recipients and prepare to receive 2016 grant applications. The Committee will host a Finalists Reception to honor the 2015 Top Ten Finalists on Oct. 28 from 5:30-7:30 p.m. in the Bar Center Gallery. This reception features a guest speaker and words from our grant recipients and will serve wine and cheese and celebrate public interest work while giving guests the opportunity to network with fellow public interest colleagues.
- **Real Estate Law**  
**Co-Chairs: Tawny D. Mack & J. Taylor Sellers**  
 This committee promotes communication among young lawyers practicing in the various areas of real estate law as well as networking with other practice groups to enhance the availability of business opportunities. The committee provides CLE programs as well as social activities that promote networking and Bar participation. This committee hopes to host several events in the New Year, including a joint happy hour with another YLD committee, a networking happy hour with a professional organization outside the legal

field, such as the Georgia Board of Realtors, a seminar with the Savannah Bar Association and a happy hour with the Legal Food Frenzy.

- **Signature Fundraiser**

**Co-Chairs: Ashely A. Akins & Elizabeth Pool O'Neal**

This committee organizes and orchestrates an annual fundraising event to raise money to support a designated charitable organization. Since its inception 10 years ago, the YLD Signature Fundraiser has donated more than \$400,000 to several worthy causes. This year's 10th Annual YLD Signature Fundraiser is a black-tie gala taking place at the Biltmore on January 23, 2016. This year's event raises money for Camp Lakeside, to ensure that children of all abilities have access to life-changing outdoor recreation and therapeutic programs. This event features live music, dancing, open bar, food, silent auction and more! This committee hopes to raise over \$100,000, the most ever raised in the history of the fundraiser.

- **Solo Practice/Small Firm**

**Co-Chairs: Samantha A. Holloway & Jacob W. Poole**

This committee held a well-attended mix-and-mingle happy hour on Sept. 10 at 6 p.m. at Stillhouse with the YLD Criminal Law Committee and the YLD Family Law Committee where complimentary appetizers were served and everyone got to relax and network. They also hosted a conference call on Nov. 20 at 2 p.m. This call centered on the topic of law firm partnerships. The panelists included Constancia Davis of The Wilson Davis Firm, LLC and David McCain of Childers & McCain, LLC. They discussed their experience in establishing successful law firm partnerships. The Committee is planning additional webinars for other topics that solos have requested, including: marketing/branding, law practice management, law practice accounting (especially trust accounts) and how (and when) to enter partnerships with other firms/solos. The Committee is also pondering the "Office in a Flash" project suggested by President Jack, which may work well with the webinar idea.

- **William W. Daniel National Invitational Mock Trial**

**Chair: Matthew T. Jones**

This committee hosts an annual criminal mock jury trial competition among law students. The talented competitors are law students hailing from law schools across the country. All Georgia law schools are also invited to participate. Every summer, the William W. Daniel National Invitational Mock Trial Committee sends hundreds of applications to ABA accredited law schools. Over 40 schools throughout the country applied and only 18 schools are invited to compete in this well-known competition named in honor of the late Judge William W. Daniel of the Superior Court of Fulton County. They held a successful competition this year Nov. 20-22 at the Fulton County Courthouse.

- **YLD Women in the Profession**

**Co-Chairs: Morgan Clemons & Danielle Russell**

The YLD Women in the Profession Committee held a kickoff happy hour at the Brazilian Steakhouse Chama Gaucha on Sept. 24 from 6-8 p.m. for a time of fun, networking and discussion of events and programs for this Bar year.

The Committee also met for a professional development book reading of “Fast Forward: How Women Can Achieve Power & Purpose” on Oct. 22 at 7 p.m. at the Carter Presidential Library & Museum Lobby.

They held a well-attended Beer and Fashion Event on Nov. 12 from 6-8 p.m. at Table 1280 Lounge and the High Museum of Art. This event included imported beer at Table 1280 from 6-7 p.m. and a special, behind-the-scenes look at the High's first fashion exhibit by Iris Van Herpen, from 7-8 p.m.

They partnered with the YLD Nontraditional Legal Careers Committee for a joint cooking class, titled the “Art of Entertaining” on Nov. 18 from 6-9 p.m. at Preserving Place. Martha McMillin, lawyer-turned-successful-entrepreneur and owner of Preserving Place hosted this special class where guests learned how to set a beautiful table, plate food, master a few recipes and then dine. They partnered with Ann Taylor in Midtown for a Private Shopping Event on Dec. 6 from 6-8 p.m., located in Atlantic Station, which included refreshments and a 20% discount on all items.

Plans are already in progress for a seminar to be presented by the Committee next year.

### **Quarterly Meetings**

In addition to the work load of our many committees, YLD members gather four times over the course of the Bar year during quarterly meetings to report on their committee work, socialize, and plan and organize division-wide projects. The YLD Summer Meeting took place August 20-23, 2015 at the Ritz-Carlton Lodge at Reynolds Plantation in Greensboro, Georgia. It featured food, fellowship, and our first business meeting of the year. In addition, our members had the opportunity to attend a CLE entitled “Practicing in the Sticks: Candid Advice From Rural Jurists.” The CLE included a panel discussion among local judges practical tips and professional advice to the attendees. For the first time, both the CLE and General Session were simulcast over the internet so that members who could not make it to the meeting in person could participate; each of our future meetings this Bar year will have this feature to attract more registrants. I am proud to report that all events were well attended with the highest number of in-person registrants in the last five years; nearly double that of last year’s Summer Meeting.

The YLD also held a successful Fall Meeting Nov. 5-8, 2015, at The Greenbrier in White Sulphur Springs, WV. Events included a welcome reception, CLE, bunker tour, group dinner, General Session and a service project.





YLD President Jack Long (left) with judges and moderators from the YLD's Summer Meeting CLE: Practicing in the Sticks: Candid Advice From Rural Jurists. (L-R) Judge Rizza O'Connor, Judge John Flythe, Judge Hal Hinesley, Judge Kristina Cook Graham, ShaMiracle Johnson and Sutton Connelly.

Our other meetings promise similar results, at exciting destinations both in-state and abroad. Our future YLD meetings schedule is as follows:

Midyear Meeting (held in conjunction with the State Bar Midyear Meeting)  
Jan. 7-9, 2016  
The Legacy Lodge at Lake Lanier Islands  
Buford, Georgia

YLD Spring Meeting  
March 10-13, 2016  
The Cosmopolitan Hotel  
Las Vegas, NV

If you are so inclined, we would love to have you join us for a CLE or service project at any of these meetings.

I hope the Board shares in my enthusiasm for the great work the YLD does. Please let me know if I can be of service to you in any way.

Truly Yours,

Jack Long  
2015-16 YLD President

**STATE BAR OF GEORGIA  
EXECUTIVE COMMITTEE  
MINUTES  
September 11-12, 2015  
Barnsley Gardens/Adairsville, GA**

Members Participating:

Robert J. Kauffman, President; Rita A. Sheffey, President-elect; Patrick T. O'Connor, Treasurer; Brian D. (Buck) Rogers, Secretary; Patrise M. Perkins-Hooker, Immediate Past President; John R.B. Long, YLD President; Jennifer Campbell Mock, YLD President-elect; V. Sharon Edenfield, YLD Immediate Past President (by phone); Thomas R. Burnside, III; Elizabeth Louise Fite; Kenneth B. Hodges, III; Phyllis Holmen; David S. Lipscomb (by phone); and Nicki Vaughn.

Staff Participating:

Sharon Bryant, Chief Operating Officer; Jeff Davis, Executive Director; Paula Frederick, General Counsel; Steve Laine, Chief Financial Officer; Bill NeSmith, Bar Counsel; and Thomas Worthy, Director of Governmental Affairs.

Future Meetings Schedule

President Bob Kauffman announced that the Strategic Planning Session on Saturday, October 3 has been eliminated. Thereafter he referred the Executive Committee to the Future Meetings Schedule.

Executive Committee Minutes

The minutes of the August 14, 2015 Executive Committee Meeting were approved, as revised, by unanimous voice vote.

Members Requesting Resignation

Pursuant to State Bar Rule 1-208, the Executive Committee, by majority voice vote, approved the following resignation requests: Martin Craig Dishner, 222691; Alyse Beth Heyman, 003330; Carolyn A. Farris, 545218; Donnika D. Stance, 131022; Bobby Gay Kirby, 422845; Sonia A. Bacchus, 030345; Michael J. Schwarz, 631275; Aufrea H. Finlay, 261448; Gary Michael Berkson, 054775; David J. White, 000440; David F. Dorsey Jr., 226296; F. Rodger Wrege, 777550; Martin Silfen, 645978; George W. Jordan III, 142193; Rex Berry, 055626; Tracy Hannan, 100143; Mark H. Taupeka, 699123; Leon K. Oxley, 558350; Dianne Smith Coscarelli, 949644; Mark Rubin, 618450; Edward M. Wayland, 522341; Susan Bass Bolch, 065765; Corey Steinberg, 118208; Joanne B. Brown, 045730; Britton Richardson, 603812; Frank Joseph Sparti, 669966; Carla Casas, 515074; David G. Gentry, 319609; Rebecca Wilson, 916729; Ester N. Leibfarth, 417183; Marsha A. Sajer, 622228; Michael P. Kennedy, 415004; David G. Fawcett, 256459; Linda Lofton, 462358; Garland Roy Miller, 506567; Mark A. Westhafer, 749735; Katherine Martinez, 474766; Louisa H. Warren, 738419; Betty Patricia Sinback, 648849

### Members Requesting Disabled Status

Pursuant to State Bar Rule 1-202, the Executive Committee, by unanimous voice vote, approved the following requests for disabled status: Ted H. Reed, 597837; Carol Duvic Niven, 544708; Deborah A. Finnerty, 261578; Dena G. George, 297337; Charles B. Zirkle Jr., 785975; Mary Kathryn Davis, 212025; Stanley Calhoun, 142078

David Lipscomb asked that any resignation request that comes from a third party be documented. Jeff Davis reported that hereinafter those requests will be noted with an asterisk.

### Approval of Members' Requests

The Executive Committee, by majority voice vote, approved a motion accepting Bar staff's recommendations for requests for waiver of late fees as follows:

- 1) Denied a waiver of late fee for Robert Coleman; and
- 2) Approved a waiver of late fee for Cynthia Roseberry; Stephen Vogt; Kirk Quillian; Diana Slocumb; and Charlotte Winkler.

### Lawyers Helping Lawyers Policies and Guidelines – LAP

Following a report by Paula Fredrick, the Executive Committee, by unanimous voice vote, approved the proposed *Lawyers Helping Lawyers Policies and Guidelines* (Exhibit A) for the Lawyer Assistance Program's new peer volunteer program initiative. They will be included in the Fall Board of Governors agenda as an information item.

### Parking Deck Proposed Improvement Efforts

Following a report by Jeff Davis, the Executive Committee, by unanimous voice vote, approved an additional \$13,103 in revised bids and equipment maintenance agreement for the parking deck improvements. He reported that improvements to the Spring Street entrance may not be as extensive as first anticipated. He announced that Spring Street is now reopened, and that Spring Street between Whitehall Street to West Peachtree Street has been renamed Ted Turner Boulevard.

### Legislative Contracts

Following a report by Thomas Worthy, the Executive Committee, by unanimous voice vote, approved legislative consultant contracts with Meredith Hobbs and Roy Robinson for the 2016 Regular Session of the Georgia General Assembly (January 1 through April 30, 2016). Each will be compensated \$48,000 for their services. The costs will be paid from voluntary contributions in the Legislative and Public Advocacy Fund.

### Sponsorship Request

Following a report by Nicki Vaughan, the Executive Committee, by unanimous voice vote, approved a \$2,500 request from the Indigent Defense Committee for a luncheon celebrating the 10<sup>th</sup> anniversary of the formation of the statewide public defender system.

### Consumer Pamphlet's

Jeff Davis reported on the Bar's consumer pamphlets series. Updating the pamphlets to ensure accurate information is an ongoing challenge, and requests for the brochures continues to decline. YLD President Jack Long reported that they are used extensively in his area and that the YLD is in the process of rewriting the Senior Citizens Handbook and Choosing a Nursing Home. He said he would be happy to reach out to other YLD Committees for updating purposes. Since one of the functions of the Bar is public education, it was the consensus of the Executive Committee that the Bar convert into digital format those brochures that do not discuss specific areas of the law and to look at websites of other law-related organizations to see if they offer similar, but updated information that the Bar could hyperlink to. Whenever another brochure is updated and reviewed it can then be posted online. It was also suggested that solicitations to Bar members asking for volunteers to provide updates should go out under the President's signature.

### President's Report

President Bob Kauffman reported that the Wellness Task Force, chaired by Ken Hodges, held its first meeting this week. Ken Hodges reported that the following subcommittees were formed: 1) Mental Health co-chaired by Javoyne Hicks White and Bill NeSmith, 2) Physical Well-Being co-chaired by Judge Elizabeth Branch and Laura Speed, 3) Social Well-Being co-chaired by Joyce Gist Lewis and Nicki Vaughan, 4) YLD Initiative chaired by Julia Bowen, 5) Technology chaired by Jeff Kuester, and 6) Branding chaired by Justice Harold Melton.

### YLD Report

YLD President Jack Long reported on the activities of the Young Lawyers Division. The August 20-23 Summer Meeting at Greensboro and was the highest attended summer meeting in the history of the YLD and featured a CLE on the nuances of practicing law outside of the Atlanta metropolitan area. For the first time ever, the CLE and General Session were broadcast live via the internet for those who could not attend in person. He announced that the YLD and the Texas Young Lawyers Association are working together to create a consumer pamphlet for divorcing military spouses. The YLD is also planning a regional summit next year with the South Carolina, Florida, Alabama, North Carolina and Tennessee young lawyers to share ideas. The summit will be held at the Bar Center and there is ABA grant money available to help defray some of the costs. Tentatively, the Annual Signature Fundraiser will take place on January 23, 2016. This year's beneficiary is Camp Lakeside that enables children with all levels of disabilities and illnesses an opportunity to enjoy a typical summer camp experience. Through the YLD's law school

outreach efforts, to date programs have been held at Mercer, Emory, University of Georgia, Georgia State University, and Atlanta's John Marshall. All of the programs have been well attended and 80-90% of the attendees have signed up to be YLD affiliate members. President Bob Kauffman reported that he was contacted by the chair of the Bar's Law School Outreach Committee to report that the YLD is doing such a great job with its law school outreach efforts that the Special Committee is no longer needed.

#### Executive Director's Report

Jeff Davis reported that the Criminal Justice Coordinating Council's construction build out is ongoing. He reported that Bar staff is excited about the wellness program and what it means for them, and that there is a health fitness screenings for staff later this month. President-elect Rita Sheffey reported that 88 out of 90 Bar employees responded to the Strategic Planning survey and believes it would be a nice gesture for the Executive Committee to let them know it was noticed and appreciated. The Executive Committee granted authority to Jeff Davis and Paula Frederick to give staff an extra "personal" day for their efforts.

#### Approval of Budget Overruns

Treasurer Pat O'Connor reported on the following 2014-15 budget overruns: 1) Tifton overage of \$5,582 due to videoconferencing equipment upgrades, 2) TILPP overage of \$5,476 due to budgeting error, 3) Savannah overage of \$23,707 due to video conferencing equipment upgrades and building insurance increases, 4) YLD overage of \$7,740 due to departure of PT employee and converting position to FT, and 5) Conference Center overage of \$146,482 due to video conferencing equipment upgrades. Immediate Past President Patrise Perkins-Hooker went on record to state that the original motion and the accompanying laundry list that was approved by the Executive Committee for the video conferencing upgrades, was approved as coming out of the capitol funds reserve so she has a problem with it now being expensed to individual departments. Steve Laine reported that he will go back and debit the Bar Center unrestricted funds reserve for the Tifton, Savannah, and Bar Center video conferencing upgrade costs.

Thereafter, the Executive Committee, by unanimous voice vote, approved the following budget overruns 1) TILPP overage of \$5,476, 2) Savannah overage of \$2,020 (building insurance), and the 3) YLD overage of \$7,740.

#### Replenishment of Restricted Funds for Meetings

Following a report by Treasurer Pat O'Connor, the Executive Committee approved utilizing \$6,074.18 from the Bar's surplus to bring the restricted Meetings Account back to a zero balance.

### Audit Selection

Treasurer Pat O'Connor reported that the Audit Committee will meet later this month to bring a recommendation on the new financial audit firm for the next three to five years. The recommendation will be presented to the Board of Governors at the Fall Board Meeting.

### Year End Financials

Treasurer Pat O'Connor presented the June 30, 2015 year end financials, which included the 1) Consolidated Revenue and Expenditures as of June 30, 2015 (Operations and Bar Center), 2) Summary of Dues and Voluntary Contributions May through April 2014-2016, 3) Income Statement YTD for the Twelve Month Ending June 30, 2016 (Operations Only), 4) Bar enter Revenues and Expenditures for the Twelve Months Ended June 30, 2015, and the 5) State Bar Balance Sheet June 30, 2015.

### Executive Session

The Executive Committee, by unanimous voice vote, approved a motion to go into Executive Session to discuss litigation and other matters. Thereafter, the Executive Committee, upon a motion and second, moved out of Executive Session.

### Old Business


There was no old business.

### New Business

Immediate Past President Patrise Perkins-Hooker disseminated a Charitable Donation Agreement prepared by the State Bar for Lawyers for Equal Justice. She stated that the funding approved by the Board of Governors in June for the law school incubator project in the amount of \$85,000/year for three years did not require any formal agreement or any other qualifiers, but the Lawyers for Equal Justice was presented with a Charitable Donation Agreement in order to receive the funds. She is concerned about the precedent of Bar staff to redirect and redefine what the Board of Governors voted to do. A motion asking that funding be mandated as directed by the Board of Governors without the Charitable Donation Agreement, or the deletion in the Agreement of the phrase in paragraph 9 that reads "this is not a project of the State Bar," failed for lack of a second.

### Adjournment

There being no further business the Executive Committee, by unanimous voice vote, adjourned the Executive Committee meeting to begin the Executive Committee Retreat.



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Brian D. (Buck) Rogers, Secretary

Approved:



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Robert J. Kauffman, President

**STATE BAR OF GEORGIA  
EXECUTIVE COMMITTEE  
MINUTES  
October 2, 2015  
State Bar Building/Atlanta, GA**

Members Participating:

Robert J. Kauffman, President; Patrick T. O'Connor (by phone), Treasurer; Brian D. (Buck) Rogers, Secretary; Patrise M. Perkins-Hooker, Immediate Past President; John R.B. Long, YLD President; Jennifer Campbell Mock, YLD President-elect; V. Sharon Edenfield (by phone), YLD Immediate Past President; Thomas R. Burnside, III; Kenneth B. Hodges, III; Phyllis Holmen; David S. Lipscomb; and Nicki Vaughn.

Members Absent:

Rita A. Sheffey, President-elect; Elizabeth Louise Fite.

Staff Participating:

Sharon Bryant, Chief Operating Officer; Jeff Davis, Executive Director; and Bill NeSmith, Bar Counsel.

Proposed Rules Changes - Lawyer Assistance Program (LAP)

Following a report by Bill NeSmith, the Executive Committee, by unanimous voice vote, approved recommending to the Board of Governors the following proposed changes to LAP Rules 7-202 and 7-301:

Rule 7-202. Volunteers. The Committee may establish a network of attorneys and lay persons throughout the state of Georgia, who are experienced or trained in impairment counseling, treatment or rehabilitation, who can conduct education and awareness programs and assist in counseling and intervention programs and services. The Committee may also establish a network of peer-support volunteers who are members of the State Bar of Georgia who are not trained in impairment counseling, treatment or rehabilitation, who can provide support to impaired or potentially impaired attorneys by sharing their life experiences in dealing with (a) mental or emotional health problems, (b) substance abuse problems or (c) other similar problems that can adversely affect the quality of attorneys' lives and their ability to function effectively as lawyers.

Rule 7-301. Contacts Generally. The Committee shall be authorized to establish and implement procedures to handle all contacts from or concerning impaired or potentially impaired attorneys, either through its chosen health care professional source, the statewide network established pursuant to Rule 7-~~4~~202, or by any other procedure through which appropriate counseling or assistance to ~~an impaired~~ such attorneys may be provided.



Fastcase v. Casemaker

President Bob Kauffman reported that the Member Benefits Committee, which recently reviewed a proposal from Casemaker, recommended that the State Bar work to get pricing reductions from Fastcase at a level that would allow the Bar to contract with both providers. Casemaker is offering to provide the Casemaker service to the State Bar free for six months with no obligation to continue the service after the free period. After the free period, Casemaker would offer the State Bar a two-year contract at a rate of \$4,500 per month, and following that, an additional two-year contract at \$5,000 per month. Natalie Kelly reported that Casemaker has improved its interface and that it is relatively comparable to Fastcase with its premium plan, but expressed some members may have concerns as to the way it looks. Jeff Davis reported that since we were one of the first State Bars to adopt Fastcase, Fastcase has always provided us with a lower rate than that of other Bar associations. The Executive Committee, by unanimous voice vote, approved a motion to retain Fastcase and to reject the proposal from Casemaker.

Sponsorship Request – Voices for Georgia’s Children, Inc.


Following a report by President Bob Kauffman, the Executive Committee, by unanimous voice vote, approved a \$2,500 sponsorship request for Voices for Georgia Children’s *Big Voice for Children Awards Celebration* on November 6, 2015. Presiding Justice P. Harris Hines is being honored at the event.

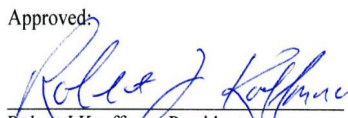
Commission on Continuing Lawyer Competency (CCLC) Appointment.

The Executive Committee, by unanimous voice vote, appointed Kenneth B. Hodges, III to the CCLC Board of Trustees for a one-year term commencing January 1, 2016.

Adjournment

There being no further business the meeting was adjourned by unanimous voice vote.

  
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Brian D. (Buck) Rogers, Secretary

Approved:  
  
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Robert J. Kauffman, President

**STATE BAR OF GEORGIA  
EXECUTIVE COMMITTEE  
MINUTES**

**November 13, 2015**

**Mercer University Water F. George School of Law/Macon, GA**

Members Participating:

Robert J. Kauffman, President; Patrick T. O'Connor, President-elect and Treasurer; Brian D. (Buck) Rogers, Secretary; Patrise M. Perkins-Hooker, Immediate Past President; John R.B. Long, YLD President (by phone); Jennifer Campbell Mock, YLD President-elect; Thomas R. Burnside, III; Elizabeth Louise Fite (by phone); Kenneth B. Hodges, III; David S. Lipscomb; and Nicki Vaughn.

Members Absent:

V. Sharon Edenfield, YLD Immediate Past President; and Phyllis Holmen.

Staff Participating:

Sharon Bryant, Chief Operating Officer; Jeff Davis, Executive Director; Steve Laine, Chief Financial Officer; Bill NeSmith, Bar Counsel; and Thomas Worthy, Director of Governmental Affairs.

Future Meetings Schedule

The Executive Committee received a copy of the Future Meetings Schedule.

Executive Committee Minutes

The minutes of the September 11-12, 2015 and the October 3, 2015 Executive Committee Meetings were approved, as submitted, by unanimous voice vote.

Members Requesting Resignation

Pursuant to State Bar Rule 1-208, the Executive Committee, by unanimous voice vote, approved the following resignation requests: Brooke Sealy Rupert-414722, Christina M. Summer-378730, James C. Banks-036225, Sarah Kirk-817029, Elizabeth Smith Ritter-313687, Matthew J. Peed-100112, Lawrence D. Sanders-625711, Katherine Smith Davis-661140, John J. Knowles-822695, Carol S. Sheppard-000540, Richard Weaver-743325, Jennifer Gillon Gale-295210, Yancey F. Langston-436855, Joyce R. Abrams-001375, Gwilym E. Brick-080430, Daniel Calnan-100149

Members Requesting Disabled Status

Pursuant to State Bar Rule 1-202, the Executive Committee, by unanimous voice vote, approved the following requests for disabled status: Debra B. Duncan-233415, William D. Edwards-241767, Diane Gillian LeRoy-447020, Brian L. Daly-203741, Thomas J. Shoener-643763, Robert Stephens McKinney-495750

### Treasurer's Report

Treasurer Patrick T. O'Connor reported on the Bar's finances and investments. The Executive Committee received copies of the Operations and Bar Center Consolidated Revenues and Expenditures Report as of September 30, 2015; Income Statement YTD for the Three Months Ended September 30, 2015; Bar Center Revenues and Expenditures Summary for the Three Months Ended September 30, 2015; State Bar Balance Sheet for September 30, 2015; and the Summary of Dues and Voluntary Contributions at October 1, 2015.

### Sponsorship Requests

Following a report by President Bob Kauffman, the Executive Committee, by unanimous voice vote, approved the following sponsorship requests: 1) \$2,500 for the Gate City Bar Association's Hall of Fame Gala, 2) \$2,000 for the Urban League of Greater Atlanta's 54<sup>th</sup> Annual Equal Opportunity Day Dinner, 3) \$5,000 for the 11<sup>th</sup> Circuit Judicial Conference, and 4) \$5,000 for the YLD Annual Signature Fundraiser.

### Special Master Findings and Recommendations Regarding James H. Dickey

Following a report by Bill NeSmith, the Executive Committee, by unanimous voice vote, approved the recommendations of the Special Master in the case of James H. Dickey (Exhibit A).

### Rules Changes

Following a report by Paula Frederick, the Executive Committee took the following action on the proposed rules changes:

<u>Rule</u>	<u>Action</u>
Rule 9.1 Reporting Requirements	Took no action
Rule 4-227 Petitions for Voluntary Discipline (Exhibit B)	Approved recommending to the Board of Governors by unanimous voice vote
Rule 1-203 Practice by Active Members; Nonresidents (Exhibit B)	Approved recommending to the Board of Governors by majority voice vote
Rule 4.4 Respect for Rights of Third Persons (Exhibit B)	Approved recommending to the Board of Governors by unanimous voice vote
Rule 5.3 Responsibilities Regarding Nonlawyer Assistants (Exhibit B)	Approved recommending to the Board of Governors by unanimous voice vote
Rule 4-210 Powers and Duties of Special Masters (Exhibit B)	Approved recommending to the Board of Governors by unanimous voice vote

Rule 1.7 Conflict of Interest; General Rule Took no action

#### President's Report

President Bob Kauffman reported that his speech at the joint luncheon of the Executive Committee and the Macon Bar Association, which preceded this meeting, took the place of this report. He commented that the Attorney Wellness Task Force and the Disciplinary Rules and Procedures Committee are hard at work on their respective projects.

#### YLD Report

YLD President Jack Long reported on the activities of the Young Lawyers Division. He announced that \$15,000 was raised for the Atlanta Volunteer Lawyers Foundation at the recent Supreme Cork fundraiser. He reported that the YLD meetings continue to be well attended, and at the Fall YLD meeting all attendees wrapped over 1,000 toys for disadvantaged children. Plans are being finalized for the annual Signature Fundraiser on January 23, 2016 at the Biltmore. He announced that the Legal Food Frenzy will take place in the spring and he would like 100% participation by the Executive Committee through either monetary donations or canned food. He stated that Attorney General Sam Olens has a goal of raising 5 million pounds of food in five years.

#### Executive Director's Report

Jeff Davis reported that the Public Defenders Standards Council and the Criminal Justice Coordinating Council are fully moved into their expanded space. The Bar continues to look at renting the 5<sup>th</sup> floor to a data storage center. He announced that the parking deck improvements are scheduled to start soon.

#### Office of General Counsel Report

Paula Frederick briefly reported on activities on the Office of General Counsel.

#### July 2015 Georgia Bar Examination Results

The Executive Committee received a copy of the July 2015 Georgia Bar Examination General Statistics Summary.

#### Senate-Approved Plan Would Promote Legal Services for Low-Income Californians

The Executive Committee received a copy of an *Asian Journal.com* news article about the passing of a senate bill by California lawmakers that allows the California State Bar to collect unclaimed funds in lawyers trust accounts to support a loan-assistance program for public interest attorneys.

#### LegalZoom and North Carolina

The Executive Committee received a copy of a *Globe Newswire* article about a consent judgment resolving litigation between LegalZoom and the North Carolina State Bar that allows Legal Zoom to offer its two prepaid legal service plans to North Carolina

residents.

Using Technology to Bring Court Services to Remote Areas

The Executive Committee received a copy of an *ABA Journal* article about the Mohave County Superior Court setting up remote kiosks with video chat access to bring court services to remote areas in Arizona.

Old Business

There was no old business.

New Business


There was no new business.

Executive Session

There was no Executive Session.

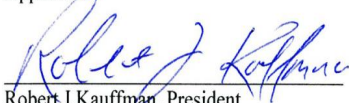
Adjournment

There being no further business the meeting was adjourned by unanimous voice vote to begin a Strategy Adjustment Session.



Brian D. (Buck) Rogers, Secretary

Approved:



Robert J. Kauffman, 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 17, 2015  
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 2015 the OGC sent 239 Grievance forms to members of the public and received 137 filed Grievances. The Supreme Court of Georgia entered orders in three disciplinary cases during the month. The Year-to-Date Report on Lawyer Regulation (covering the period May 1, 2015 through November 30, 2015) appears at page 4 of this memorandum.

Rules Changes:

- The following proposed changes were approved by the Board of Governors on June 20, 2015. A notice of motion to amend the rules appeared in the October 2015 issue of the Georgia Bar Journal. The Motion to Amend the Rules was filed with the Supreme Court of Georgia on December 18, 2015:
  - A proposed amendment to Rule 5.5 adds cross-references to Supreme Court Rules that allow law students and non-Georgia lawyers to practice law in Georgia under specified circumstances.
  - Proposed revisions to Part VII of the Rules set forth confidentiality obligations of lawyers volunteering with the Peer Network of the Lawyers Assistance Committee.
  - A proposed revision to Rule 10-103 will increase the limit that the Clients' Security Fund trustees may spend in any year from \$350,000 to \$500,000.
- Proposed changes to Rules 1-204, 1-501, 7-202 and 7-301 were approved by the Board of Governors on October 24, 2015. A notice of motion to amend the rules was published in the December 2015 issue of the Georgia Bar Journal. We anticipate this motion being filed with the Supreme Court of Georgia on or after January 29, 2016.

- The Board will consider proposed revisions to several rules at their January 2016 meeting:
- GRPC 4.4. Respect for Rights of Third Persons
  - GRPC 5.3. Responsibility Regarding Nonlawyer Assistants
  - Rule 4-227(b). Petitions for Voluntary Discipline
  - Rule 8-106(a)(7)(d). Hours and Accreditation
  - Rule 1-203. Practice by Active Members; Nonresidents
  - Rule 4-210. Powers and Duties of Special Master
  - Bylaws Article VII. Nominations and Elections

#### Formal Advisory Opinion Board:

The Formal Advisory Opinion Board will meet Tuesday, January 26, 2016. There are two new requests pending and several other opinions in process:

- Formal Advisory Opinion Request No. 14-R3 - Ethical propriety of an attorney employed as a part-time prosecutor serving as counsel in other criminal and/or civil matters.

The Board has referred this matter to the Disciplinary Rules & Procedures Committee and has suspended its work on drafting a proposed opinion until it hears from the DRPC.

- Formal Advisory Opinion Request No. 15-R1 - Whether a Georgia Bar Member's use of the word "group" in his or her firm's name is misleading or violates any Georgia State Bar Disciplinary Rules if there is only one attorney in the firm.

The Board has determined that the question presented should not be limited to the "group" category, but the extent to which the opinion will apply to other categories, such as "associates," will be determined through the drafting process. The Board is in the process of drafting a proposed opinion.

- Formal Advisory Opinion No. 03-2 – Does the obligation of confidentiality described in Rule 1.6, Confidentiality of Information, apply between two jointly represented clients?

This opinion has been redrafted in light of subsequent revisions to the Rules of Professional Conduct. It was published in the October 2015 issue of the Georgia Bar Journal and no comments were received. At their next meeting the Board will determine whether to approve the proposed redrafted opinion for second publication and filing with the Supreme Court of Georgia.

- Formal Advisory Opinion No. 10-2 – May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child’s objection?

The Formal Advisory Opinion Board redrafted this opinion in light of recent amendments to the Bar Rules. The redrafted opinion was published in the Bar Journal for comment and no comments were received. The Board will determine whether to approve the proposed redrafted opinion for second publication and filing with the Supreme Court of Georgia at their next meeting.

Pro Hac Vice Admission: Between October 1 and December 17, 2015 the Bar processed 126 *pro hac vice* applications and collected a total amount of \$54,075.00. Of the total collected the Bar paid \$46,200.00 to the Georgia Bar Foundation and retained \$7,785.00 to cover its costs.

Lawsuits: There are five lawsuits pending against the State Bar of Georgia, its staff, and/or officers. Please contact Bar counsel if you would like more information about any matter that is in litigation.

Continuing Legal Education: OGC staff has spoken at 16 CLE programs since my last report.

Bar Committees:

The **Disciplinary Rules & Procedures Committee** has begun its review of the disciplinary process. It will meet in conjunction with the Savannah Board of Governors meeting and plans to meet monthly throughout the year. We welcome your thoughts about needed revisions to the procedural rules for disciplinary cases.

The **Insurance Committee** has recommended the Bar retain a new insurance broker for the 2016-2017 Bar year. It has also recommended that the Bar hire a security consultant to review security protocol for the Bar Center and the satellite offices.



**Year-to-Date Report on Lawyer Regulation  
 May 1, 2015 through November 30, 2015**

Grievance forms requested and sent to public .....	1,827
Grievance forms sent back to Office of General Counsel for screening .....	1,464
Grievances pending as of 4/30/2015.....	<u>349</u>
TOTAL.....	1,813
Grievances referred to State Disciplinary Board members.....	130
Grievances being screened by Grievance Counsel (GC) .....	318
Grievances closed by Grievance Counsel.....	1,341
Grievances moved to moot status by GC after attorney was disbarred .....	<u>24</u>
TOTAL.....	1,813

**Regulatory Action May 1, 2015 through November 30, 2015**

	<u>Attorneys</u>	<u>Cases</u>
Letters of Admonition Accepted	14	14
Investigative Panel Reprimands Administered	7	8
Review Panel Reprimands	3	3
Public Reprimands	3	3
Suspensions	16	19
Disbarments/Voluntary Surrenders	<u>20</u>	<u>31</u>
TOTAL	63	78
Reinstatements Granted	4	
Reinstatements Denied	0	

**State Bar of Georgia Coastal Georgia Office Statistics January 2014 to November 2015**

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	3- VC	3	0	3-VC	20	130
February	5	3	3	0	4	15	114
March	8	2	2	0	10 2-VC	22	227
April	3	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 12	5 1-VC	5	1	5	24	203
October	2-VC	2	8	0	6	28	156
November	3	7 5	5	0	10	25	163
December	8	5 2-VC	2	0	8	23	118
<b>Year Total:</b>	<b>83</b>	<b>61</b>	<b>47</b>	<b>4</b>	<b>57</b>	<b>252</b>	<b>1737</b>
<b>Attorney Locations For 2014:</b> Savannah, Atlanta, Marietta, Augusta, Waycross, Statesboro, Brunswick, Lawrenceville, Macon, Richmond Hill, Hinesville (SC), St. Simons Is., Pooler, Valdosta, Tampa(FL), Sylva, Rincon, Decatur, Springfield, Homerville, Hawkinsville, Alpharetta, Kingsland, Roswell, Stone Mtn., Corpus Christi (TX), Milledgeville, Carrollton, Cordele, Canton, Covington, Lexington, Tucker							

Month	Client/Misc Mtgs	Depositions	Mediation/ Arbitration	Walk-ins	CLE Opportunities/ Training	Total Events	Total Number of People Using Facility (Clients and Attorneys)
Jan-15	7 9	9 2-VC	1	0	7 2-VC	24	129
February	1-VC	1	4	0	10 14	24	166
March	11	4	2	0	2-VC	31	242
April	12	3	3	3	8 2-VC	29	174
May	5 13	7 7	4 4	0	4 2-VC	20	151
June	1-VC	3-VC	2	0	4 1-VC	26	123
July	5	8	4	0	0	17	86
August	7	4 1-VC	4	0	1	16	71
September	9 15	6	5	0	3 3-VC	23	118
October	1-VC	6	2	0	4	27	130
November	5	3 2-VC	0	0	6 2-VC	14	68
December	TBD						
<b>Year Total:</b>	<b>98</b>	<b>58</b>	<b>31</b>	<b>3</b>	<b>61</b>	<b>251</b>	<b>1458</b>

**Attorney Locations For 2015:** Savannah, Atlanta, Pooler, Rincon, Alpharetta, Milledgeville, St. Simons Island, Tampa (FL), Darien, Mt. Pleasant (SC), Statesboro, Lawrenceville, San Francisco (CA), LaGrange, Albany, Brunswick, Columbus, Richmond Hill, Hinesville, Jacksonville (FL), Macon, Wrightsville, Claxton, Springfield, Woodstock, Athens, Waycross, Augusta, Valdosta, Marietta, Tucker, Metter, Cordele, Sylvania, Lexington, Canton, Covington, Hagan, Douglasville, Dublin.

2015 Month	Mis.Mtgs	Depos	Mediate	Walk-ins	CLE	Events	*Total
January	4	2	5	6	19	52	
February	4	3	5	6	22	102	
March	3	4	3	11	21	97	
April	5	6	6	3	20	92	
May	6	7	1	4	18	68	
June	5	1	5	11	24	89	
July	5	1	1	10	17	44	
August	5	2	7	0	19	51	
Sept.	4	8	9	1	22	104	
October	3	7	8	6	24	84	
Nov.	3	4	10	7	28	<u>106</u>	
						<u>889</u>	

\*Does not include consumers served by phone or mail.

**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, 2015**

**SUBJECT Status of the Military Legal Assistance Program**

**Background and Overview of Work:** As reported separately to Eric Ballinger and other Bar leaders instrumental in creating and continuing the State Bar of Georgia's Military Legal Assistance Program (MLAP), today marks the sixth anniversary of its establishment. I submit that a great deal has been accomplished, and together with the MLAP Committee, the goals that Bar leaders had envisioned at the time are being achieved.

The main objective of the program has been and remains to connect lawyers with service members and veterans who need legal assistance. Thus far, 1,539 have been so connected as shown below. Here are additional highlights concerning what has been accomplished:

- Along with Mike Monahan, Pro Bono Director of Georgia Legal Services, helped recruit and maintain a cadre of volunteer lawyers, initially at 750, now totaling 913, to provide direct legal consultations with service members and veterans.
- Drafted a set of MLAP guidelines for participating attorneys that was formally approved by the Board of Governors on August 12, 2010.
- Expanded a series of CLE programs with ICLE in Georgia to qualify lawyers to process VA benefit award matters. In early 2010, there were 160 lawyers in Georgia accredited to practice before the VA; now there are 748, nearly five times as many. As Larry Jones and Steve Harper can attest, the returned evaluations of these programs have been among the highest that GA ICLE receives. Keynote speakers at these programs have included (former Chief) Judge William P. Greene, Jr., U.S. Court of Appeals for Veterans Claims; (former Chief) Judge Bruce E. Kasold, U.S. Court of Appeals for Veterans Claims; Will A. Gunn, former General Counsel of the U.S.

Department of Veterans Affairs; Major General (Ret.) William K. Suter, retired Clerk of the United States Supreme Court and former Acting Judge Advocate General of the Army (who spoke at the CLE program on November 5, 2015, **Attachment A**); 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.

- Contacted initially and have maintained communication with local bar organizations and the principal staff judge advocates at Georgia military installations concerning the nature and benefits of the MLAP. The installations in Georgia include Army Forts Benning, Gillem, Gordon, and Stewart; Hunter Army Airfield; Air Force Bases Dobbins, Moody, and Robins; Naval Submarine Base Kings Bay; and Marine Corps Logistics Base Albany. In Georgia, there are about 115,000 active duty personnel, National Guard members, and active Reservists; and about 765,000 veterans. Thus, when considering that Georgia has a population of about nine million, about 10% of Georgia residents are either presently in the military or were formerly in the military.
- Organized a symposium in May 2015 concerning military legal assistance programs across the country which was attended by representatives from 13 states. The purpose of this symposium was to share information about legal assistance programs and other support programs those states offer to military service members and veterans. In part, this appears to have been a factor, if not an impetus, for the ABA to host a summit this Winter or Spring about the possibility of creating a nationwide Military Network for certain assistance purposes.
- Along with (principally) Cary King, current chair of the Military and Veterans Law Section, helped facilitate establishment of legal clinics at VA Medical Centers (with formal memoranda of understanding adopted) in Augusta (January 2014) and Decatur (January 2013) and at VA medical facilities in Carrollton (May 2014), Fort McPherson (February 2014), and Rome (August 2015). Additional legal clinics are also being considered for Athens, Dublin, Macon, and Savannah.
- Along with Charles Shanor, Lane Dennard, and Drew Early at Emory University; and Steve Kaminshine, Roy Sobelson, Patricia Shewmaker, and Steve Shewmaker at Georgia State University, helped facilitate establishment of legal clinics in the law schools at Emory (February 2013) and Georgia State

(November 2014). Clinics are also being planned or considered at the University of Georgia (August 2016) and Mercer University.

- Helped coordinate (and participated in some) military Stand Down events at Columbus, Decatur, Fort McPherson, Macon, and Milledgeville that have each attracted 500 to 2,500 veterans, mostly who are homeless. At Stand Down events, vets typically receive free medical and dental care, clothing and shoes, haircuts and personal hygiene support, human resources counseling, resume help and job counseling, legal assistance, and consideration of minor court cases before judges where those cases are pending, many of which may be *nol prossed* or dismissed.

Additional information about the nature and benefits of one such Stand Down event conducted October 7, 2015, in part, by Emory Law School students, the Young Lawyers Division, and representatives of MLAP and the Mil/Vets Law Section, recently appeared in the December 2015 issue of the *Georgia Bar Journal* (**Attachment B**).

- Helped organize an eight-day trip to Paris and Normandy, France, in April/May 2014 on the occasion of the 70<sup>th</sup> Anniversary of the D-Day Landings. Seventy lawyers and spouses or their guests attended; also created a special challenge coin commemorating this trip.
- Wrote four articles for the *Georgia Bar Journal*: "Military Legal Aid Tops 500 in Two Years" (February 2012); "A Thousand Military Cases for Georgia Lawyers" (June 2013); "Honoring Attorney William John Camp for Work with MLAP" (February 2014); "Georgia Hosts National Symposium on Military Legal Assistance Programs" (August 2015). Also formally introduced U.S. Senior Circuit Judge Phyllis A. Kravitch when she was recognized at the State Bar's 2012 Annual Meeting with the "Tradition of Excellence Award". That introduction appeared in written form in *Calendar Call* (Fall 2012), a publication of the General Practice and Trial Section. Also collaborated on the publication of two additional articles: one appeared in the *Georgia Bar Journal* "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Have Served" (February 2014); and the other in *The Army Lawyer*, "A Few Minutes of Your Time Can Save Your Client's Dime: Obtaining Pro Bono Assistance for Legal Assistance Clients" (June 2015).

- Designed and arranged production of a (1) tri-fold brochure about the MLAP that is regularly distributed at military bases, VA medical facilities, some bar offices, and other organizations where referrals to lawyers are made; (2) lapel pin of recognition presented to lawyers who accept referrals of MLAP cases; and (3) challenge coin presented to lawyers and others who provide special services and support to the MLAP and to the Military and Veterans Law Section.

A word of special appreciation must be extended to leaders of the Bar who have faithfully and energetically supported the MLAP and other programs devoted to helping service members in our State: State Bar Presidents Jeff Bramlett, Bryan Cavan, Lester Tate, Ken Shigley, Robin Clark, Buck Ruffin, Patrise Perkins-Hooker, and Bob Kauffman; State Bar Executive Directors: Cliff Brashier (of blessed memory) and Jeff Davis; ICLE in Georgia Executive Directors Larry Jones and Steve Harper; MLAP Committee Chairs: Buck Ruffin; Lynn Adam, and Eric Ballinger; Military and Veterans Law Section Chairs: Melinda Hart, Kent Shelton, John Camp, Drew Early, Jeff Arnold, and Cary King.

Five other lawyers who have aided significantly include Jay Elmore, who along with Jeff Bramlett, conceived the idea of an MLAP and brought it to fruition in Georgia; Rick Menson, who brought the idea of legal clinics to law schools in Georgia; Lane Dennard, who along with Charles Shanor, started the legal clinic at Emory, and has personally handled many difficult cases affecting veterans; and Mike Monahan, who has maintained the roster of volunteer lawyers not only for MLAP but also for his own program and has helped support MLAP in many other beneficial ways.



A summary of cases processed by the MLAP by category is as follows:

Family Law	781
Contested Divorce	306
Uncontested Divorce	17
Divorce Enforcement	15
Child Support	105
Guardianship/Adoption	75
Visitation	32
Child Custody	172
Consumer Law	102
Housing/Property	93
Foreclosure	24
Veterans Benefits/Disability	212
Wills/Estates/Probate	80
Employment/USERRA/SCRA	43
Bankruptcy	22
Insurance	19
Personal Injury	37
Property Damage	3
Worker's Compensation	2
Contract	5
Medical Malpractice	5
Toxic Substances	5
Other	<u>106</u>
	1,539

Attachments:

A- GA ICLE Flyer, VA Accreditation program, November 5, 2015

B- Article, "Volunteer Attorneys Assist Homeless Veterans", *Georgia Bar Journal*, December 2015

# VA ACCREDITATION

## FEATURED SPEAKER



### Major General William K. Suter

After a career in the U.S. Army, culminating as Acting Judge Advocate General with the rank of major general, Suter served two decades as Clerk of the U.S. Supreme Court. Among his many important military assignments, he served as staff judge advocate of the 101st Airborne Division. On February 1, 2015, Suter celebrated his 20th year as clerk, the 19th in the court's history. The clerk manages the court's docket and calendar and coordinates the compiling of briefs and certiorari petitions, and the organizing of the court's heavy paperwork demands. As an officer of the court, Suter appeared in morning suit when the court was in session and was seated to the left of the bench. He and his staff guided new lawyers facing their first Supreme Court argument through the system, preparing them early and attending to their needs on argument day. About Suter, retired Justice Sandra Day O'Connor who calls herself an enthusiastic fan, said, "He is the clerk at the court. It's a hard job. He is the court's interface with the public and with lawyers." "He's an ambassador to the court," said Supreme Court litigator Tom Goldstein; "he carries himself like a real general. Dealing with other clerk's offices are sometimes impossible, but his place runs like no other office in the world."

## PREREQUISITE FORM

If you have not already done so, you must complete and submit a **VA Form 21a** to the Department of Veterans Affairs as a prerequisite for the accreditation process. Simply go online and print a copy of the form at:

<http://www.va.gov/vaforms/va/pdf/VA21a.pdf>

Co-sponsored by:



**Military Legal Assistance Program,  
State Bar of Georgia**

**Military/Veterans Law Section  
State Bar of Georgia**

**7 CLE Hours including**

**1 Ethics Hour • 1 Professionalism Hour • 2 Trial Practice Hours**

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### 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.

# ATTACHMENT A

# 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: **Cary S. King**, Program Co-Chair; Chair, Military and Veterans Law Section, State Bar of Georgia; Jacobs & King, LLC, Atlanta  
**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

<p>7:30 <b>REGISTRATION AND CONTINENTAL BREAKFAST</b> (All attendees must check in upon arrival. A jacket or sweater is recommended.)</p> <p>7:55 <b>WELCOME AND PROGRAM OVERVIEW</b> <i>Steven P. Shewmaker</i></p> <p>8:00 <b>VA CASE LAW UPDATE</b> <i>Drew N. Early</i>, Of Counsel, Shewmaker &amp; Shewmaker, LLC, Atlanta</p> <p>9:15 <b>DEPENDENCY INDEMNITY COMPENSATION</b> <i>Victoria H. Watkins</i>, Attorney at Law, Marietta</p> <p>10:00 <b>BREAK</b></p> <p>10:15 <b>RIGHT TO APPEAL AND DISABILITY COMPENSATION</b> <i>Drew N. Early</i></p> <p>11:30 <b>LUNCHEON</b> (Included in registration fee) <b>Section Meeting</b> <i>Cary S. King</i></p> <p>12:15 <b>PROFESSIONALISM AND LEADERSHIP FOR LAWYERS</b> <i>Maj. Gen. William K. Suter</i>, Retired Clerk of the Court, U.S. Supreme Court, Alexandria, VA</p>	<p>1:00 <b>REPRESENTATION BEFORE THE VETERANS ADMINISTRATION, CLAIMS PROCEDURES AND BASIC ELIGIBILITY</b> <i>Douglas Sullivan</i>, McElreath &amp; Stevens, LLC, Atlanta</p> <p>2:00 <b>ETHICS</b> <i>George E. Bradford, Jr.</i>, Attorney at Law, Atlanta</p> <p>2:45 <b>BREAK</b></p> <p>3:00 <b>PENSION</b> <i>Patricia A. "Patty" Elrod-Hill</i>, Vice Chair, Military and Veterans Law Section, State Bar of Georgia; The Elrod-Hill Law Firm, LLC, Norcross</p> <p>3:45 <b>PANEL DISCUSSION ON GEORGIA VETERANS LEGAL ASSISTANCE PROGRAMS; CLIENT MANAGEMENT</b> <b>Moderator:</b> <i>Norman E. Zoller</i> <b>Panelists:</b> <i>Eric A. Ballinger</i>, The Law Office of Eric A. Ballinger LLM PC, Canton <i>Frederick S. Jones</i>, Jones &amp; Associates, McDonough <i>Drew N. Early</i> <i>Cary S. King</i> <i>Patricia D. Shewmaker</i>, Shewmaker &amp; Shewmaker, LLC, Atlanta</p> <p>4:45 <b>ADJOURN</b></p>
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**THREE WAYS TO REGISTER:** check the ICLE schedule on the web at [www.iclega.org](http://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](http://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 5, 2015 • 9019

**EARLY REGISTRATION: \$155**  
**ON-SITE REGISTRATION: \$185**

**I would like program materials:**

- In print only  
 On USB drive only

- 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 \_\_\_\_\_

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# Volunteer Attorneys Assist Homeless Veterans

by Angie Thompson

**G**eorgia attorneys and law students were among scores of volunteers who assisted hundreds of veterans at the Homeless Veterans Stand Down held at Ft. McPherson in October. Stand Downs for homeless veterans are held throughout the United States. Ft. McPherson, a long-time military installation in Eastman, recently closed. Buildings there were renovated for Veterans Affairs to use. The line of homeless veterans waiting on services at the event stretched half of the length of a city block at one point.

“Georgia has a high concentration of veterans,” said Katie Dod, director of Military Support for the Young Lawyers Division (YLD) of the State Bar of Georgia. “There is so much work young lawyers can do for them.”

Dod said veterans face challenges, both physical and mental, that are a direct result of their military service.

The Stand Down provided veterans access to resources they needed to secure housing and employment. Also available were medical, mental health



(Left to right) YLD member Mandy Moyer and volunteer David Dod gave each veteran who did not qualify for VA services a camo backpack at a station during the Stand Down at Ft. McPherson.

Photos by Angie Thompson

and substance abuse screenings, and referrals for veterans who needed additional care. Clothing, hygiene items, haircuts and other essentials were also provided, as well as a hot meal and a DJ playing music from the 60s and 70s.

YLD members, students of Emory Law School's Clinic, and representatives of the Bar's Military Legal Assistance Program and Military/Veterans Law Section volunteered their Saturday for service. Some worked at stations where beverages and food were being served. Others handed camouflage backpacks stuffed with blankets to veterans deemed ineligible to receive VA services. Others assisted veterans as they progressed through registration and on to their medical screenings.

Dod assisted a homeless, 61-year-old wheelchair-bound veteran through the entire line of services. He told Dod he was a U.S. Marine who served from 1972-76. He said he avoided the Vietnam battlefield and was stationed in Japan because he scored high on an examination following basic training.

"God has recently blessed me with an apartment," the veteran said.

He said he has lived in housing provided by two prison ministries, but both of those closed and he was left homeless. He said his work with both of the ministries was fulfilling.

"I have been able to see nearly 500 incarcerated men make a decision to accept Christ," he said.

He said he is taking online college classes and plans to graduate in April with a B.A. in Criminal Justice. He hopes to use his degree to work with young people.

Dod's father, Robert Sullivan, first peaked her interest in working with veterans. "He just retired as an administrative judge for the VA and now I'm accredited to practice in front of judges like him."

Dod said the YLD's Military Support Committee won awards for its work with veterans in every category possible from the



(Left to right) Jared Parrish, Will Davis, Patrick McShane, Andrew Becker and Katie Kinhl were several YLD members who assisted veterans with legal issues in the Stand Down's court.



A volunteer attorney assists a homeless U.S. Marine veteran through the line of services offered to him at Stand Down.

American Bar Association last year. "We would really like to expand the work this committee can do, but the only way we can do that is if we have young lawyers willing to get involved."

Because the work is so rewarding, Dod is confident no one who gets involved will regret it.

Cary King, chair of the Military/Veterans Law Section of the Bar, is a combat veteran of Vietnam. King

is the founder of the pro bono clinic at the VA Medical Center. The clinic provides legal assistance to hundreds of service members and veterans on a variety of civil and criminal law matters. He also works with the Bar's Military Legal Assistance Program. Norman Zoller, the program's director, said that in the six years of the program's operation, 850 volunteer attorneys have assisted approximately 1,500 military service members.

King briefed YLD volunteers and the Emory law clinic student volunteers prior to the opening of "court" at the Stand Down. Attorneys assisted veterans in the areas of family law, landlord/tenant issues, debtor/creditor issues, bankruptcy, VA benefits and claim denials, wills, guardianships, probate issues, VA military pension issues and minor criminal issues.

"We just want them to know there is a solution," King said. "They know what the problem is, but they aren't quite sure how they got here. Some veterans can't get a driver's license. We discover that they might have traffic tickets outstanding or that they lost their licenses because of failure to pay child support."

Katie Willett, a member of YLD's Service Projects Committee, partnered with Dod to plan the YLD's participation in Stand Down. She was one of the volunteer attorneys who assisted veterans in the court. She said her biggest surprise was the large number of homeless veterans in attendance at the event.

"I still cringe when I put 'homeless' and 'veteran' together in a sentence," she said. "It broke my heart to see hundreds of veterans at the event. While I was proud to volunteer, I came away from the Stand Down knowing there is much more work to do for our country's veterans."

Other volunteers who worked at Stand Down include young lawyers Alla Raykin, Jarred Parrish, Will Davis, Patrick McShane, Katie Kiihnl, Mandy Moyer, Helen Peters, Jatreaan Sanders, Mariel Sivley, Andrew Becker



A homeless veteran who sat down for a break displayed her artwork on chairs nearby.



(Left to right) Cary King, chair of the Bar's Military/Veterans Law Section, discusses how veterans' issues would be addressed in Stand Down court with Katie Dod, director of Military Support for the YLD.

and Nicole Lee. Dod's husband, David, also volunteered. Attorney Drew Early, a professor at Emory University School of Law, coordinated student volunteers from the school's clinic who volunteered at Stand Down's court. **CH**



**Angie Thompson** is the office assistant at the State Bar's South Georgia office and a freelance writer. You can reach her at [angiet@gabar.org](mailto:angiet@gabar.org).



(Left to right) YLD Members Andrew Becker and Katie Willett discuss how to resolve an issue for one of the veterans who sought help during Stand Down's court.

**CONSUMER ASSISTANCE PROGRAM**  
**STATE BAR OF GEORGIA**  
December 14, 2015

The Consumer Assistance Program (CAP) continues to serve both the public and members of the Bar, as it has since 1995. Since December 14, 2014, CAP has handled around 10,894 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 78.95% of these contacts. The remaining 21.05 % have been referred to the Office of General Counsel (OGC) for investigation by way of grievances sent to persons with such complaints. 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 working day.

CAP’s two attorneys 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 assert 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 such case during this period.

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 time period there have been no JDPP cases.

CAP remains within its annual budget of \$566,563, and it is anticipated that it will continue to do so.



## Law Practice Management Program

(Abbreviated report for the 2015-2016 Bar Year)

This is a summary of program events scheduled and completed during the period July 1, 2015-December 11, 2015.

### Consultation Report

# of Consultations by City				# of Consultations by Firm Size		# of Consultations by Consultation Type	
Athens	1	Marietta	1	1 Attorney	10	General	10
Atlanta	7	Newnan	1	2-4 Attorney	6	Technical	6
Decatur	1	P'tree Corners	1	5-8 Attorney	0	<b>Grand Total</b>	<b>16</b>
Douglas	1	Statesboro	1	9-15 Attorney	0		
Douglasville	1	Valdosta	1	16+ Attorneys	0		

### Office Visits

LPM distributed **283** *Starting Your Georgia Law Practice* booklets as requested by attorneys. There were **34** startup discussions conducted by the Program via office visits.

### Resource Library

Our lending library has a grand total of **1,425** 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 **167** checkouts by **64** 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 was **2** office visits made to look at software programs in the Software Library.

### Speaking Engagements

There are a total of **13** completed and scheduled programs during this period. The Program's staff has given **10** continuing legal education and special presentations to Georgia lawyers and other related groups. These presentations have been held in various local and national venues. **8** programs are scheduled for future dates.

July 17-18, 2015      Georgia's 2015 Solo and Small Firm Institute and Technology Showcase (sponsored), *Disaster Planning: What to Do in a Small Law Office* (Natalie Kelly); *Plenary: 60 Tips, Sites, and Apps in 60 Minutes* (Natalie Kelly, Patricia Yevics, Reid Trautz, and Charity Anastasio); *Time Management and Productivity* (Natalie Kelly); and *Fastcase* (Sheila Baldwin), Georgia Bar Conference Center, Atlanta, Georgia, **168 attendees**.

- August 18, 2015 TILPP Group Mentoring CLE, *Strategies for Increasing Productivity-Model Mentoring Plan A & C* (Natalie Kelly), Georgia Bar Conference Center, Atlanta, Georgia, 130 attendees.
- August 20, 2015 Atlanta Bar Association Sole Practitioner & Small Firm Breakfast CLE, *Disaster Planning: What to Do in a Small Law Office* (Natalie Kelly), Buckhead Club, Atlanta, Georgia, 27 attendees.
- September 23, 2015 Dougherty Circuit Bar Association, *Law Practice Management and Hot Topics* (Natalie Kelly), Albany, Georgia, 50 attendees.
- September 25, 2015 GABWA Solo and Small Firm Symposium: Tools of the Business and Practice of Law, *Software for Firm Management* (Natalie Kelly), Georgia Bar Conference Center, Atlanta, Georgia, 38 attendees.
- October 22, 2015 ABA Lead Law Conference/ABA Law Practice Fall Meeting, Ask the Experts Panel CLE, *Finance* (Natalie Kelly) and *30 Tips in 30 Minutes* (Natalie Kelly, Sharon Nelson, Tom Mighell, and John Simek), Hyatt Regency Greenville, Greenville, South Carolina, 100 attendees.
- October 29, 2015 Nuts & Bolts of E-Discovery CLE, *Legal Practice Technology for Small Firms* (Natalie Kelly and Michael R. Dunham), Georgia Bar Conference Center, Atlanta, Georgia, 54 attendees.
- November 5, 2015 John Marshall Law School Solo Boot Camp, *Technology for Law Firms* (Natalie Kelly), The Blackburn Center, Atlanta, Georgia, 30 students.
- November 12, 2015 Atlanta Technical College Paralegal Studies Class, *Fastcase* (Sheila Baldwin), Atlanta Technical College Campus, Atlanta, Georgia, 9 attendees.
- November 24, 2015 ABA Law Practice Institute Series Webinar CLE Online Course, *Case Management for Lawyers: How to Organize the Chaos and Make More Time for You!* (Natalie Kelly and Bryan Sims), 17 attendees.

### **Upcoming Speaking Engagements**

- January 7, 2016 State Bar of Georgia's Midyear Meeting, *Law Practice Management CLE: Managing the New Normal: Tips for New and Seasoned Lawyers (sponsored)*, Legacy Lodge Lake Lanier, Buford, Georgia.
- January 12, 2016 ABA Webcast CLE, *Best Free Software and Services for Lawyers* (Natalie Kelly, Sharon Nelson, and Catherine Sanders Reach).
- February 22, 2016 TILPP Beginning Lawyers Program CLE, Georgia Bar Conference Center, Atlanta, Georgia.

- March 1, 2016 Emory University Law School, *Technology in Law Practice* (Natalie Kelly), Atlanta, Georgia.
- March 16, 2016 ABA Bar Leadership Institute CLE, *Managing Technology* (Natalie Kelly, Catherine Sanders Reach, and Jim Calloway), Chicago Marriott Downtown Magnificent Mile Hotel, Chicago, Illinois.
- March 16-19, 2016 ABA TECHSHOW 2016, *Effective Practice Management Systems Yield Focused Lawyering and Android and iOS Apps: Common Grounds* (Moderator: Natalie Kelly), Chicago Hilton Hotel, Chicago, Illinois.
- April 25, 2016 Virginia State Bar Association TECHSHOW, Richmond Convention Center, Fairfax, Virginia.
- July 15-16, 2016 Georgia's 2016 Solo and Small Firm Institute and Technology Showcase (*sponsored*), Georgia Bar Conference Center, Atlanta, Georgia.

### **Fastcase Report**

During this period, a grand total of **19** members and **3** staff have attended Fastcase CLE seminars.

Since the decision was made to transition to Fastcase, **1,417** attorneys and **67** staff members have attended Fastcase live training. Others have taken advantage of webinar training.

### **Fastcase Partner Usage Report for State Bar of Georgia July 1, 2015 – November 30, 2015**

	July	Aug	Sept	Oct	Nov	Total
First Time Logins	168	104	110	128	146	<b>656</b>
Total Logins	18,441	19,561	19,227	18,498	15,995	<b>91,722</b>
Total Users Who Logged In	4,068	4,054	4,020	3,926	3,774	<b>19,842</b>
Searches Conducted	102,641	108,582	104,349	101,586	82,106	<b>499,264</b>
Documents Viewed	149,344	157,466	157,045	147,992	122,997	<b>734,844</b>
Documents Printed	14,718	16,384	14,851	16,608	13,349	<b>75,910</b>
Total Transactions	<b>289,380</b>	<b>306,151</b>	<b>299,602</b>	<b>288,738</b>	<b>238,367</b>	<b>1,422,238</b>

Fastcase Reported Problems	
Member Reported Issue(s)	Fastcase Response / Resolutions
<p><b>7/30/15</b>  <b>Member Reported:</b> 18 members called to notify us that FC was not working.</p>	<p><b>7/30/15</b>  <b>FC Response:</b> FC programmers were working on the system and got it back up within an hour.</p>
<p><b>9/8/15 and 9/9/15</b>  <b>Member Reported:</b> Member called to notify us about the continued malfunction in the Ga Code browse mode.</p>	<p><b>9/9/15</b>  <b>FC Response:</b> Fastcase discovered the problem and corrected it and reached out to the member.</p>
<p><b>11/25/15</b>  <b>Member Reported:</b> OCGA 44-13-100 not current in FC.</p>	<p><b>11/25/15</b>  <b>FC Response:</b> It can be found in the 2015 Acts.  <i>I personally looked and SB 65 is not found which is the bill listed in History that applies.</i></p>
<p><b>12/04/15</b>  <b>Member Reported:</b>  Ga. Code not current. FC has version 2014. “Three different support personnel all give the same info and it does not get me to the 2015 version of the Georgia code”, concerns OCGA 42-8-66.</p>	<p><b>12/5/15</b>  Fastcase reps tell me that if they view in the 2015 Acts it will show the most recent version however that is not my experience. This is consistent with search of OCGA 44-13-100 on 11/25/15.</p> <p><b>12/11/15</b>  Nina is checking into this for us. She agrees it is incorrect.</p>
<p><b>12/10/15</b>  <b>Member Reported:</b>  Case summaries not available.</p>	<p><b>12/10/15</b>  FC developers said that there’s been an ongoing issue with matching the summaries to our cases. This problem should be resolved in the short term and the summaries should begin attaching again soon.</p>



# CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

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Chief Justice, Supreme Court of Georgia  
Atlanta, Georgia

Professor Frank S. Alexander  
Emory University School of Law  
Atlanta, Georgia

Professor Nathan S. Chapman  
University of Georgia School of Law  
Athens, Georgia

Professor Clark D. Cunningham  
Georgia State University College of Law  
Atlanta, Georgia

The Honorable David P. Darden  
State Court of Cobb County  
Marietta, Georgia

Jennifer M. Davis  
Georgia Defense Lawyers Association  
Atlanta, Georgia

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DeCampos Weber & Grayson, LLC  
Atlanta, Georgia

Gerald M. Edenfield  
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Middle Judicial District Superior Court  
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Administrative Assistant

## PRESS RELEASE

For Immediate Release  
December 16, 2015

## CONTACT

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## THE STATE BAR OF GEORGIA AND THE CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM PRESENT THE 17<sup>th</sup> ANNUAL COMMUNITY SERVICE AWARDS

**Atlanta, GA.** The 17th Annual Justice Robert Benham Awards for Community Service will be presented on February 23, 2016 at a special ceremony. Since 1998, these awards have been presented to honor lawyers and judges in Georgia who have made significant contributions to their communities and demonstrate the positive contributions of members of the Bar beyond their legal or official work.

The Lifetime Achievement Award is the highest recognition given by the State Bar of Georgia and the Chief Justice's Commission on Professionalism, co-sponsors of the Justice Robert Benham Awards for Community Service. This year it will be awarded to two outstanding community and public servants, Juanita Powell Baranco of Lithonia and Edward Jackson "Jack" Hardin of Atlanta, Georgia. This award is reserved for a lawyer or judge who, in addition to meeting the criteria for receiving the Justice Robert Benham Award for Community Service, has demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career.

Awards are given to selected attorneys in the judicial districts of Georgia from which nominations were received. This year's other recipients are: T. Mills Fleming, *Savannah*, Camille Hope, *Macon*, Thua G. Barlay, *Conyers*, Hon. Dax E. Lopez, *Decatur*, Michael L. Thurmond, *Stone Mountain*, Harold E. Franklin, Jr., *Atlanta*, Hon. A.J. "Buddy" Welch, Jr., *McDonough*, Damon E. Elmore, *Lithia Springs*, Thomas David Lyles, *Dallas*, and Hon. John J. Ellington, *Soperton*.

These honorees have served a wide range of community organizations, government-sponsored activities, and humanitarian efforts outside of their professional practices and judicial duties. Their fields of service include: youth athletics and mentoring programs, literacy programs, social services, church and religious activities, politics, promotion and support for legal aid programs, community development, education, sports, recreation, and the arts. These awards recognize the commitment of Georgia lawyers to volunteerism, encourage all lawyers to become involved in community service, improve the quality of lawyers' lives through the satisfaction they derive from helping others, and raise the public image of lawyers. All honorees are members of the State Bar of Georgia.

The Awards Presentation is scheduled for Tuesday, February 23, 2016, from 6:00 p.m. to 8:00 p.m. at the State Bar of Georgia Headquarters, 104 Marietta Street N.W., Third Floor, Atlanta, Georgia and a reception will follow. Awards will be presented by Georgia Supreme Court Justice Robert Benham. Chief Justice Hugh P. Thompson and State Bar President Robert Kaufmann will bring special remarks and Bill Liss, Business Editor with WXIA Television News in Atlanta will join in the ceremony. The Selection Committee is chaired by Janet G. Watts of Watts & Watts, Fayetteville, Georgia. The program is free and open to the public, but registration by February 16, 2016 is required.

For more information and to register, contact: Nneka Harris-Daniel, Chief Justice's Commission on Professionalism at (404) 225-5040.

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## 2015-16 Media Report

<b>PUBLISHED ARTICLES</b>			<b>Headline</b>	<b>Circulation</b>
<b>Date</b>	<b>Newspaper</b>			
6/13/2015	Waycross Journal-Herald		Kay Carter Wins Praise	7,244
6/14/2015	Henry Daily Herald, McDonough		Kudos to Henry County Bar Association	2,352
6/17/2015	Chariton County Herald, Folkston		Congratulates Carter	1,970
6/17/2015	North Fulton Neighbor, Alpharetta		Congratulations to Northview mock trial team for placing second in the nation	17,739
6/17/2015	Rockdale Citizen, Conyers		Meyers' appointment a benefit to all of Rockdale County	3,091
6/17/2015	Newton Citizen, Covington		Meyers' appointment a benefit to all of Rockdale County	2,353
6/18/2015	Macon Telegraph		Lifetime of Service	29,220
6/24/2015	Gwinnett Daily Post, Lawrenceville		David Lipscomb Re-Elected to Executive Committee of State Bar of Georgia	67,746
6/24/2015	Savannah Morning News		Savannah attorney named treasurer of Ga. State Bar	37,597
6/24/2015	Augusta Chronicle		Augusta attorney installed as president of young lawyers' group	47,177
6/25/2015	Madison County Journal, Danielsville		Georgia legal community mourns loss of Judge Lindsay Tise	2,983
6/25/2015	Hartwell Sun		Judge Tise mourned	5,271
6/27/2015	Houston Home Journal, Perry		Houston Co. Bar Association honored by State Bar	7,744
6/27/2015	Gwinnett Daily Post, Lawrenceville		Yari Lawson reinstalled as State Bar Young Lawyers Division newsletter co-ed	67,746
6/27/2015	Albany Herald		Appeals Court Chief Judge Herbert Phipps given Marshall and Thrower awards	11,524
6/28/2015	Marietta Daily Journal		Cobb County Bar Association honored	13,393
6/30/2015	Statesboro Herald		Mock, Edenfield lead Georgia Young Lawyers	7,200
6/30/2015	Brunswick News		District Court Judge receives award	13,929
7/1/2015	Commerce News		Piedmont Circuit Bar Association honored	1,415
7/1/2015	Jackson Herald, Jefferson		Piedmont Circuit Bar Association honored by State Bar of Georgia	4,514
7/1/2015	Rockdale Citizen, Conyers		Covington attorney elected to State Bar's Board of Governors	3,091
7/1/2015	Rockdale Citizen, Conyers		Brian Rogers named secretary of State Bar	3,091
7/1/2015	Savannah Herald		Atty. Lester Johnson Receives State Bar of Georgia Professionalism Award	8,000
7/2/2015	Courier-Herald, Dublin		Dublin attorney appointed to Board of Governors of State Bar of Georgia	9,460
7/2/2015	Augusta Chronicle		Elected to serve in State Bar post	47,177
7/2/2015	Newton Citizen, Covington		Gregory Pope elected to policy-making position with State Bar	2,353
7/2/2015	Newton Citizen, Covington		Covington resident named to officer position on State Bar of Georgia	2,353
7/3/2015	Douglas County Sentinel, Douglasville		Kaufman installed as organization's president	2,516
7/3/2015	Atlanta Business Chronicle		Achievements: Mary McAfee	37,000
7/3/2015	Atlanta Business Chronicle		Honors & Awards: Linda Klein	37,000
7/4/2015	Albany Herald		Business Portfolio: Joe Dent	11,524
7/4/2015	Gwinnett Daily Post, Lawrenceville		Gwinnett County Bar Association honored by State Bar	67,746
7/5/2015	Savannah Morning News		Johnson receives professionalism award	37,597
7/6/2015	Macon Telegraph		Macon attorneys honored by State Bar of Georgia	29,220
7/6/2015	Daily Report		Congratulations to New Chief Judge of Court of Appeals	3,247

## 2015-16 Media Report

7/7/2015	Daily Report	Georgia Legal Community Mourns Loss of Rawson Foreman	3,247
7/8/2015	Houston Home Journal, Perry	Congratulations to Judge Turner	7,744
7/8/2015	Early County News, Blakely	Congratulations to Judge Bishop	2,438
7/8/2015	Barrow Journal, Winder	Piedmont Circuit Bar Association honored by State Bar of Georgia	2,154
7/9/2015	Columbus Ledger-Enquirer	Well done	24,932
7/9/2015	Southern Tribune, Cuthbert	Congratulations to Judge Bishop on state appointment	1,200
7/12/2015	Covington News	Covington attorney elected to Board of Governors of State Bar of Georgia	5,500
7/24/2015	Atlanta Business Chronicle	Facing the challenge of lawyer wellness	37,000
7/26/2015	Albany Herald	Albany attorneys, judges chosen for State Bar positions	11,524
7/26/2015	Athens Banner-Herald	ACC attorneys, judges named to State Bar of Georgia committees	12,129
7/27/2015	Islander, St. Simons Island	Local attorneys named to State Bar Committees	3,435
7/28/2015	Herald-Gazette, Barnesville	Georgia legal community mourns loss of Judge Thomas	4,956
7/29/2015	Northeast Georgian, Cornelia	Cornelia attorney named to State Bar Advisory Committee on Legislation	7,370
7/29/2015	Baxley News Banner	Johnson named to State Bar's Children and the Courts Committee	4,600
7/29/2015	Monroe County Reporter, Forsyth	Jenkins appointed to State Bar Committee	4,199
7/29/2015	Calhoun Times	State Bar names Calhoun attorney to UPL Committee for District 7	4,359
7/29/2015	Dodge County News, Eastman	Eastman attorney is named to two State Bar of Georgia committees	4,693
7/29/2015	Dade County Sentinel, Trenton	Congratulations to Judge Ellis	5,700
7/29/2015	Pelham Journal	Congratulations to new Pelham Municipal Court judge	2,500
7/29/2015	Douglas Enterprise	Douglas Attorney Named to State Bar of Georgia Member Benefits Committee	7,432
7/30/2015	Dallas New Era	Dallas Attorney Named to State Bar of Georgia Committees	3,084
8/1/2015	Gwinnett Daily Post, Lawrenceville	Twenty-seven Gwinnett attorneys, judges named to state bar committees	67,746
8/1/2015	Atlanta Inquirer	R. Gary Spencer Elected to Board of Governors of State Bar of Georgia	61,082
8/1/2015	Atlanta Inquirer	Johnson Receives State Bar of Georgia Professionalism Award	61,082
8/2/2015	Times, Gainesville	5 Gainesville attorneys join State Bar committees	61,082
8/4/2015	Johnson Journal, Wrightsville	Summer appointed to serve on Board of Governors of State Bar of Georgia	5,000
8/4/2015	Clayton Neighbor	Clayton County attorneys named to Georgia Bar Association committee	1,181
8/4/2015	Henry Daily Herald, McDonough	Henry County attorneys named to Bar committee	38,400
8/5/2015	Northside Neighbor, Atlanta	Congratulations to attorney on national office	2,352
8/5/2015	Towns County Herald, Hiwassee	Dehler ready for new challenge	16,619
8/5/2015	Milton Herald, Alpharetta	North Fulton attorneys appointed to Georgia Bar committees	3,846
8/5/2015	Daily Report	Congratulations to New JQC Director and Former Bar President	8,500
8/6/2015	Pickens County Progress, Jasper	Jasper Attorneys, Judge Named to State Bar of Georgia Committees	3,247
8/6/2015	Revue & News, Alpharetta/Roswell	NF attorneys appointed to Georgia Bar committees	6,040
8/7/2015	Daily Report	Young Georgia Lawyers Win Top ABA Honors	28,000
8/12/2015	Forsyth Herald, Cumming	North Fulton attorneys named to Georgia Bar committees	3,247
			17,000



## 2015-16 Media Report

8/12/2015	Newton Citizen, Covington	Covington Attorney Named to State Bar of Georgia Committees	2,353
8/12/2015	Milton Herald, Alpharetta	North Fulton attorneys named to Georgia Bar committees	8,500
8/12/2015	Fayette Citizen, Fayetteville	Attorneys named to bar committees	5,000
8/12/2015	Rockdale Citizen, Conyers	Covington Attorney Named to State Bar of Georgia Committees	3,091
8/12/2015	Fayette County News, Fayetteville	Fayette attorneys named to State Bar committees	2,473
8/12/2015	Camilla Enterprise	Judge Bell Named to State Bar of Georgia Advisory Committee on Legislation	1,418
8/12/2015	Pelham Journal	Judge Bell Named to State Bar of Georgia Advisory Committee on Legislation	2,500
8/13/2015	Revue & News, Alpharetta/Roswell	North Fulton attorneys named to Georgia Bar committees	28,000
8/13/2015	Revue & News, Alpharetta/Roswell	Roswell attorney appointed to board of governors of State Bar of Georgia	28,000
8/13/2015	Daily Report	3 Young Georgia Lawyers Chosen for ABA Mentoring	3,247
8/13/2015	Donalsonville News	Judge Bell named to Advisory Committee	3,925
8/13/2015	Daily Report	Georgia Legal Community Mourns Loss of Judge Harris Adams	3,247
8/14/2015	Columbus Ledger-Enquirer	Loss for state, legal profession (Morton Harris)	24,932
8/14/2015	Atlanta Business Chronicle	State Bar of Georgia's Young Lawyers Division Earns Top Awards	37,000
8/14/2015	Daily Report	Congratulations to New ABA President-Elect Linda Klein	3,247
8/17/2015	Macon Telegraph	Macon attorneys named to State Bar committees	29,220
8/18/2015	Statesboro Herald	Six Statesboro attorneys named to State Bar posts	7,200
8/19/2015	Metter Advertiser	Gross named to State Bar committee	2,033
8/26/2015	Gwinnett Daily Post, Lawrenceville	Ga. State Bar remembers Gene Reeves	67,746
9/1/2015	Ft. Lauderdale (FL) Sun Sentinel	People on the Move: Enjolie Avfch (committees)	163,728
9/3/2015	Macon Telegraph	Congratulations (Tormeika Daniel)	29,220
9/10/2015	Daily Report	Congratulations to Legal Aid Director Steven Gottlieb on National Award	3,247
9/14/2015	Savannah Morning News	We are grateful for Sage Brown's lifetime of service	37,597
9/16/2015	Savannah Herald	Georgia Legal Community Mourns Loss of Sage Brown	8,000
9/18/2015	Daily Report	Georgia Legal Community Mourns Loss of Chuck Rice	3,247
9/23/2015	Marietta Daily Journal	7 to serve in YLD Leadership	13,393
9/23/2015	Sandersville Progress	Sandersville attorney named to serve in YLD leadership	4,074
9/24/2015	Daily Report	Congratulations to Perkins-Hooker on Receiving Diversity Award	3,247
9/24/2015	Summerville News	Summerville Attorney Named to Serve in YLD Leadership	6,034
9/26/2015	Gwinnett Daily Post, Lawrenceville	Liburn attorney named to serve in YLD Leadership	67,746
9/26/2015	Clayton News Daily, Jonesboro	Letter to the Editor: Judge Teske	1,688
9/27/2015	Albany Herald	Business Portfolio: Je'Nita Lane	11,524
9/27/2015	Athens Banner-Herald	Local attorneys named to State Bar Committees	12,129
9/28/2015	Macon Telegraph	Five Macon attorneys named to YLD leadership	29,220
9/30/2015	Clinch County News, Homerville	Georgia legal community mourns loss of Chuck Rice	1,448
9/30/2015	Cherokee Ledger News, Woodstock	Congratulations on appointment	40,000
9/30/2015	Savannah Herald	Congratulations to Judge LeRoy Burke on his State Appointment	8,000

## 2015-16 Media Report

10/1/2015	Cobb Business Journal	Seven to serve in YLD Leadership	5,000
10/6/2015	Savannah Morning News	Congratulations to Judge Burke on state appointment	37,597
10/8/2015	Dallas New Era	Congratulations to District Attorney's Office on Work-Based Learning Success	3,084
10/15/2015	Georgia Asian Times	Georgia's first South Asian female judge officially appointed	20,000
10/18/2015	LaGrange Daily News	Courtroom portrait appropriate honor for Judge Keeble	3,837
10/20/2015	Daily Report	(State Bar honors four lawyers and a firm)	3,247
10/20/2015	Clayton News Daily, Jonesboro	Congratulations to local attorney on state appointment	1,688
10/21/2015	Commerce News	Commends public defender on appointment to standards council	1,415
10/21/2015	Jones County News, Gray	Bar president congratulates new DA Bradley	4,175
10/21/2015	Banks County News, Homer	Commends public defender on appointment to standards council	2,073
10/21/2015	Jackson Herald, Jefferson	Governor appoints Seagraves to state (council)	4,514
10/22/2015	Eatonton Messenger	Congratulations to Bradley on appointment as new DA	5,670
10/22/2015	Herald Journal, Greensboro	Congratulations to new Ocmulgee Circuit District Attorney	4,579
10/22/2015	Morgan County Citizen, Madison	Congrats Bradley	4,490
10/22/2015	Monticello News	Congrats! (Stephen Bradley)	2,700
10/23/2015	Lake Oconee News, Greensboro	Congratulations to new Ocmulgee Circuit DA	3,975
10/28/2015	Cairo Messenger	State Bar head congratulates Attorney Conger	6,120
10/28/2015	Savannah Tribune	Mance elected Port City Bar Association President	10,000
10/29/2015	Toccoa Record	Mance praised for lawyer post	4,893
11/1/2015	Savannah Morning News	Congratulations to new Port City Bar Association President	37,597
11/4/2015	Union Recorder, Milledgeville	Congratulations to Stephen Bradley on his appointment	5,162
11/12/2015	Clayton Tribune	Congratulations to Brian Rickman	5,123
11/12/2015	Henry Daily Herald, McDonough	State Bar honors life of attorney	2,352
11/15/2015	Coastal Courier, Hinesville	Legal community mourns loss of Gary Bacon	5,500
11/19/2015	Madison County Journal, Danielsville	Congratulations to Madison Co. native named to Court of Appeals	2,983
11/19/2015	Tribune & Georgian, St. Marys	State bar thanks Bacon for service	5,382
11/26/2015	Savannah Morning News	Congratulations to local attorney on state appointment	37,597
11/26/2015	Marietta Daily Journal	Georgia legal community mourns loss of Jack Mallard	13,393
12/1/2015	Daily Report	Georgia legal community mourns loss of Hal Clarke	3,247
12/7/2015	Savannah Morning News	Jurist in Residence program an appropriate honor for Judge Edenfield	37,597
12/8/2015	Athens Banner-Herald	UGA Jurist in Residence program is fitting honor to Edenfield	12,129
12/13/2015	Statesboro Herald	An appropriate honor for Judge Edenfield	7,200
		<b>TOTAL CIRCULATION</b>	<b>2,209,196</b>