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State Bar of Georgia Young Lawyers Division

THE YLD REVIEW

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Working for the Profession and the Public

Women's History Month



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From the President

The Role of Mentorship to Achievement



Brittanie Browning

For this edition of *The YLD Review*, we are celebrating Women's History Month. For those not familiar with this celebration, "Since 1995, presidents have issued a series of annual proclamations designating the month of March as 'Women's History Month.' These proclamations celebrate the contributions women have made to the United States and recognize the specific achievements women have made over the course of American history in a variety of fields."¹ While acknowledging the extraordinary efforts of Americans throughout the year with various monthly celebrations, it is important to acknowledge the role of the support system around those individuals. Former Justice Sandra Day O'Connor, who was the first female justice on the U.S. Supreme Court, said, "We don't accomplish anything in this world alone ... and whatever happens is the result of the whole tapestry of one's life and all the weavings of individual threads from one to another that creates something." This beautiful image of a tapestry shows the importance of community.

An important factor to anyone obtaining any achievement is mentorship. "Mentor" is defined as "a trusted counselor or guide."² As a lawyer, I have relied upon my mentors throughout my professional career and for my personal growth. My mentors are certainly trusted counselors who shared their wisdom and their own experiences to help me as I navigated job changes, especially as a first-generation attorney. Having a mentor, who has been where you are now before or they are where you hope to go, can help guide you on your journey. Mentors come in all shapes and sizes. Mentors can change throughout your professional career as you grow. In my experience, mentorship relationships develop organically through Bar

involvement and making those connections. One way that I found those connections was through networking and volunteering with the State Bar of Georgia. It is one of the best benefits from getting more involved with the State Bar (which was the topic of my February *Bar Journal* article).

I turn to my mentors to discuss challenges in the practice, or even in leadership, to move toward the desired results and destination. For instance, as I began my journey in leadership for the YLD, I had a mentor tell me to say, "yes!" to new opportunities, which gave me the push to run for YLD Secretary. I am very glad that I listened to and leaned into that advice. The advice to go for it and quell any doubts has led to achievements in my personal and professional life.

Those personal connections found through service in leading allowed me new opportunities to meet more people and even a new mentor. I regularly encourage YLD members to come to our events, to make new friends and to build their networks. As we are now in 2024, I encourage the YLD members to make a resolution to get (more) involved, volunteer and perhaps find a mentor. As we celebrate the achievements of one another during this month, it is through the tapestry of our relationships and mentorships that we can go even farther. YLD

Brittanie Browning in an associate at Akerman LLP and president of the Young Lawyers Division of the State Bar of Georgia.

Endnotes

1. Women's History Month, <https://www.womenshistorymonth.gov/> (last accessed Jan. 27, 2024).
2. Mentor, <https://www.merriam-webster.com/dictionary/mentor> (last accessed Jan. 27, 2024).

From the Editors

Women's History Month



**Jena
Emory**

This edition of *The YLD Review* celebrates Women's History Month and we are excited to highlight women in this profession. The YLD is proud to have many rockstar female attorneys among its ranks. Currently, five of the seven YLD officers are women. Both editors of *The YLD Review* are female, and in this issue, eight of the articles were written by women.

In this special Women's History Month edition, we were able to highlight two female jurists who were trailblazers on their respective courts. Supreme Court of Georgia Justice Carla Wong McMillian, who was the first Asian American serving on a state supreme court in the South; and Hon. Nancy G. Abudu, U.S. Court of Appeals for the Eleventh Circuit. Abudu is the first Black woman to sit on that court. Coincidentally, both McMillian and Abudu were interviewed by women as well.



**Siena
Gaddy**

While you read this issue, we hope that you are inspired by the stories of Justice McMillian and Judge Abudu. As a young attorney, it can be easy to become discouraged and bogged down by the practice of law and the problems that you face every day. We hope that while you read this issue and learn about the lives of the many fantastic women in the YLD, you are reminded of the good in this world. While these women did face hardship, they also overcame. Their stories should give all of us hope. *YLD*

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YLD Committee Spotlight

Judicial Law Clerk Committee

The Judicial Law Clerk Committee (JLCC) has been busy this Bar year, hosting both a hike and a 4-hour CLE. The JLCC is well on the way to accomplishing its goal of connecting and encouraging clerks from across Georgia both personally and professionally. We look forward to offering more activities in the spring.

The year began on a high note with a hike co-hosted with the YLD Wellness Committee at High Falls State Park on Oct. 7, 2023. This centrally located park allowed participants to join from across the state. The group spent time outside enjoying the good weather, scenic views and conversation with young lawyers from Atlanta, Macon and beyond. The event concluded with lunch at the original Fresh Air Bar-B-Que located in Jackson.

On Dec. 8, the JLCC hosted its capstone event: a day of CLE at the Bar Center for judicial law clerks and staff attorneys. This CLE was the second such program, after the JLCC successfully hosted the first "Welcome to Chambers" CLE in February 2023. In December, the programming focused on preparing attendees to better serve their judge and fostering camaraderie among judicial law clerks. The day consisted of presentations and panels from staff attorneys, clerks, members of the judiciary and professors.

To begin the day, Michael Brazeal, Central staff attorney for the Supreme Court of Georgia, presented best practices when interpreting post-conviction criminal motions filed by pro se parties. The presentation included many helpful tips and concluded with a robust question and answer period with the attendees.

Following the pro se presentation, Caroline Scalf, associate attorney at Parker Poe Adams & Bernstein and former clerk to Hon. Verda Colvin, moderated a panel of

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THE GOOD LAWYER
WITH SARAH YOUNG

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The YLD Review seeks to provide a forum for the discussion of subjects pertaining to the regulation of the legal profession and improving the quality of legal services, as well as other matters of general interest to Georgia lawyers. The statements, views and opinions expressed herein are those of the authors and do not necessarily reflect those of State Bar of Georgia, its officers, Board of Governors, sections, committees or staff.

What's in a Parenting Plan?



**Ashley
O'Neil**

As a child of divorce, my siblings and I were the subjects of a court-ordered parenting plan. Thankfully, I had no awareness of such document until I became a family law attorney myself and asked my mom about it. I believe that is how a parenting plan should be—a well thought out, detailed, yet easy to follow plan, so that parents who are raising their children in separate homes have minimal confusion or conflict. The children should simply live their lives in bliss, reaping all the benefits of having two homes (two birthday parties each year!), instead of experiencing pressure and conflict from their parents. Unfortunately, the former is not always the result.

The court requires all divorce and custody modification actions to incorporate a parenting plan into the final order of the court.¹ When family law attorneys are presented with a potential modification of custody or a contempt action related to a custody issue, we must look at the parenting plan to determine what went wrong, and how to correct the issues. While the process is tedious and even sometimes ugly, the result is enormously rewarding—a happy and healthy child.

Uniform Superior Court Rule 24.10 provides that a parenting plan “should be tailored to fit the needs of each individual family[,]” and even provides a template that meets the requirements of O.C.G.A. § 19-9-1. In addition, if the underlying case went all the way to trial, each party would have been required to file and serve a proposed parenting plan (or the parties may jointly submit a parenting plan) pursuant to O.C.G.A. § 19-9-1(c).² Well in advance of trial, many family law practitioners seek proposed parenting plans in discovery. Theoretically, this should give everyone ample opportunity to review and hash out issues that they believe could arise in their family.



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So why do family law practitioners see so many terrible parenting plans? Occasionally, they are simply old parenting plans drafted when the requirements we have today did not exist. HB 369, enacted Jan. 1, 2008, included statutory provisions such as the “best interest” factors codified in O.C.G.A. § 19-9-3 and requirements for statutory language and provisions in all parenting plans codified in O.C.G.A. § 19-9-1. As an interesting sidebar, the statute still does not require a separate court order exclusively devoted to a parenting plan, unless ordered by the court.³

A more practical explanation as to why certain parenting plans are inadequate for the needs of the family is that many people involved in domestic litigation (parents and attorneys alike) cannot predict every potential conflict within the family. In addition, children’s needs change as they age. Sometimes parents relocate or begin new relationships. The Legislature covered quite a lot of ground by adding the following requirements for every parenting plan:

(2) Unless otherwise ordered by the court, or agreed upon by the parties, a parenting plan shall include, but not be limited to:

- (A) Where and when a child will be in each parent’s physical care, designating where the child will spend each day of the year;
- (B) How holidays, birthdays, vacations, school breaks, and other special occasions will be spent with each parent including the time of day that each event will begin and end;
- (C) Transportation arrangements including how the child will be exchanged between the parents, the location of the exchange, how the transportation costs will be paid, and any other matter relating to the child spending time with each parent;
- (D) Whether supervision will be needed for any parenting time and, if so, the particulars of the supervision;
- (E) An allocation of decision-

making authority to one or both of the parents with regard to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution;

(F) What, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity, and religious information regarding the child; and (G) If a military parent is a party in the case:

- (i) How to manage the child's transition into temporary physical custody to a nondeploying parent if a military parent is deployed;
- (ii) The manner in which the child will maintain continuing contact with a deployed parent;
- (iii) How a deployed parent's parenting time may be delegated to his or her extended family;
- (iv) How the parenting plan will be resumed once the deployed parent returns from deployment; and
- (v) How divisions (i) through (iv) of this subparagraph serve the best interest of the child.

By following these requirements, a parenting plan should be a helpful instruction manual for parents and guardians who will be relationally separated but still mutually responsible for the upbringing and well-being of their child or children. Further, the court must approve any parenting plans that are consented to by the parties and presented without a trial, taking into consideration the bests interest of the child.

I have met many parents in my practice who refer to their parenting plan years af-

ter being entered as an order, and still have many questions on the language and terminology. As such, practitioners have begun to include additional language and provisions to fit their needs and prevent future disputes. A few key examples are included below:

- Language that defines extracurricular activities. For the specific family's needs, should the definition include private swim or piano lessons and religious activities? This seemingly small issue can affect final decision-making, scheduling and finances for a family.
- A requirement to communicate certain things in writing. Changes to the holiday schedule, decisions regarding education (an IEP for the child, for example), an agreement to deviate from the parenting plan, travel itineraries, changes of address, etc., should be communicated in writing. We always suggest Our Family Wizard as a communication, calendar and expense reimbursement tool for high conflict parents.
- What to do when the regular schedule, the summer schedule and/or the holiday schedule conflict with one another. Lay out hierarchy of parenting schedules to avoid this pitfall.
- Whether either party can employ the help of a trusted adult to assist him or her with transportation of the children. This fight can be a doozy when someone remarries.
- Depending on the situation, sometimes we include the right of first refusal to care for the children when a parent is traveling overnight during his or her parenting time. (Make sure to exclude sleepovers with friends and relatives to avoid angering your children when they want to hang out with their friends instead of mom or dad.)

These suggestions for parenting plan language may not be explicitly required, but extremely helpful in many cases. I hope they will be useful in your practice, or your family, as well.

If you are a child of divorce and have memories of your parents' divorce and/or parenting plan order, will you share your story with me? It would be so helpful for my practice, and I will write a follow-up article for *The YLD Review* to share what I learn. Email me at ashley@leonardfirm.com. I look forward to hearing from you! ^{YLD}

Ashley O'Neil is an associate at The Leonard Firm.

Endnotes

1. See O.C.G.A. § 19-9-1.
2. O.C.G.A. § 19-9-1 (c): If the parties cannot reach agreement on a permanent parenting plan, each party shall file and serve a proposed parenting plan on or before the date set by the court. Failure to comply with filing a parenting plan may result in the court adopting the plan of the opposing party if the judge finds such plan to be in the best interests of the child.
3. O.C.G.A. § 19-9-1-(a): Except when a parent seeks emergency relief for family violence pursuant to Code Section 19-13-3 or 19-13-4, in all cases in which the custody of any child is at issue between the parents, each parent shall prepare a parenting plan or the parties may jointly submit a parenting plan. [...] The final order in any legal action involving the custody of a child, including modification actions, shall incorporate a permanent parenting plan as further set forth in this Code section; provided, however, that unless otherwise ordered by the court, a separate court order exclusively devoted to a parenting plan shall not be required.
4. O.C.G.A. § 19-9-5. See also *Pekor v. Clark*, 236 Ga. 457, 459 (224 SE2d 30) (1976) HN4 (“[w]here the parties in a divorce proceeding enter into a contract settling between themselves the questions of alimony, custody, and support of their minor child, the court may in its discretion approve the agreement in whole or in part, or refuse to approve it as a whole,” quoting *Amos v. Amos*, 212 Ga. 670, 671 (95 SE2d 5) (1956)); *Stanton v. Stanton*, 213 Ga. 545, 549 (100 SE2d 289) (1957) (parents' custody agreement subrogated to the paramount issue of the best interest of the child).

Judicial Spotlight

Justice Carla Wong McMillian and Her Path to the Supreme Court of Georgia



**Brittanie
Browning**

In honor of Women's History Month, I sat down with Justice Carla Wong McMillian to discuss her journey from the first lawyer in her family to the Supreme Court of Georgia. On April 10, 2020, McMillian became the first Asian American serving on a state Supreme Court—not only in Georgia—but in the South. During law school, she was one of only two Asian American women at the University of Georgia School of Law. Justice McMillian shared she was told as a young lawyer to get involved in organizations that matched her passions, then be active and seek leadership roles in that organization. After graduating law school, she sought out an affinity bar and came across the Georgia Asian Pacific American Bar Association (GAPABA), eventually serving as president. Through the years, she has seen the organization grow from a small group of a dozen members to now hundreds. She sees GAPABA as a pipeline for younger lawyers through its mentorship. As an organization, it offers a great way to network and learn content through its programming. She noted that Bar organizations not only help build your network outside your law firm, but also enrich your personal development.

Prior to her judicial service, Justice McMillian was in private practice for 11 years at a large, international law firm (formerly Sutherland Asbill & Brennan LLP), where she eventually became a partner. She focused on complex business litigation and appellate matters, working cases throughout the United States. In describing the transition from private practice to public service, she felt the opportunities would be more limited for her, as she was not focusing her practice in Georgia. Therefore, she had not really considered going into public service.

However, when two seats on the Superior Court of Fayette County became vacant, she decided to seek appointment to the bench because she was eager to contribute to the well-being of the judiciary. Another motivating factor was her children. They were younger at that time, and it was a chance for them to see their mother serving the community and making a positive impact. In particular, the position allowed Justice McMillian to serve as an example to her daughter. The challenge of shifting from private practice to public service was a reasonable risk as she considered the career pivot. Ultimately, Justice McMillian was appointed to the State Court of Fayette County.

I asked Justice McMillian about the difference in workload from private practice to judicial service. In joining the State Court of Fayette County, her caseload was much higher than in private practice. In her practice, she had fewer cases that were larger and the life of the case could take years to resolve, whereas the court's docket had hundreds of files (both criminal and civil). In Fayette County, Justice McMillian served as the sole State Court judge with the support of one staff attorney. In that role, she was also responsible for the administrative side of running the court. Her predecessor, who had been appointed to the Superior Court, helped her transition and the interworking dynamics of the court. Justice McMillian observed his courtroom prior to her swearing-in and he offered support on the process and procedures to learn the ropes allowing her to hit the ground running.

In 2013, she was appointed to the Court of Appeals of Georgia by Gov. Nathan Deal, subsequently winning election to maintain her seat the following year. That election resulted in Justice McMillian becoming the first Asian American elected to statewide office in Georgia. She has now served three years on the Supreme Court of Georgia. The most rewarding part of her role on the Supreme Court is working with all the justices



Justice Carla Wong McMillian

on every case. The wide variety of experiences across the bench allow the justices to learn from each other. She pulls from her prior experience in private practice, the trial court and the Court of Appeals to help in the analysis and reaching decisions collectively.

More recently, Justice McMillian had the honor of swearing in Gov. Brian Kemp on Jan. 12, 2023, for his second term. She shared that the experience was incredible at the Georgia State University Convocation Center. The windows from the Convocation Center overlook the State Capitol and the Supreme Court, which was fitting as the audience consisted of state legislators, members of the judiciary and the public. Justice McMillian currently is involved with the Board of Visitors for her alma mater, the University of Georgia School of Law. She proudly shared her decision to come back to Georgia for her law degree after graduating from Duke University as a strong career move that propelled her career successes. Her parting words were, "Go Dawgs!" YLD

Brittanie Browning is an associate at Akerman LLP and president of the Young Lawyers Division of the State Bar of Georgia.

Officers' Block



JOIN A YLD COMMITTEE

The YLD has more than 25 committees working to support our motto of service to the community and profession. Each committee works diligently to provide substantive programming in their respective focus areas.

- Advocates for Students with Disabilities
- Business Law
- Community Service Projects
- Corporate Counsel
- Criminal Law
- Disaster Legal Assistance
- Estate and Elder Law
- Ethics and Professionalism
- Family Law
- Federal Law
- Health Law
- High School Mock Trial Competition
- Inclusion in the Profession
- Intellectual Property Law
- Intrastate Moot Court Competition
- Judicial Law Clerk
- Labor and Employment Law
- Law School Outreach Program
- Leadership Academy Alumni
- Legal Food Frenzy
- Legislative Affairs
- Litigation
- National Moot Court Competition
- Public Interest Internship Program
- Real Estate Law
- Solo Practice/Small Firm
- William W. Daniel National Invitational Mock Trial Competition
- Wellness
- Women in the Profession
- Workers' Compensation

What advice would you give your younger self?



BRITTANIE D. BROWNING | YLD President

I would advise my younger self that life is a journey, not a destination, so enjoy the ride.



KENNETH MITCHELL JR. | YLD President-Elect

I would tell my younger self to trust the process and not be afraid of failure.



VERONICA ROGUSKY COX | YLD Treasurer

I would tell my younger self to have faith, to trust her instincts and to be a lot kinder to herself.



VIRGINIA C. JOSEY | YLD Secretary

With law: Regardless of your practice area, if you are devoted to your work and respect your clients and colleagues, you can provide life changing results. With life: Try eating healthier and working out to manage stress. Bad habits die hard!



RON DANIELS | YLD Immediate Past President

Do not—I repeat—do not attempt to come back here to get me. I am perfectly happy living in the fresh air and wide-open spaces, and I fear that unnecessary time travel only risks further disruption of the space-time continuum.



JENA G. EMORY | YLD Newsletter Co-Editor

I would say, "Slow down and enjoy it." When I was younger, I was constantly striving to be somewhere else and disappointed that I was not there yet. So much of life involves waiting, but there can also be so much joy while you wait.



SIENA GADDY | YLD Newsletter Co-Editor

Be kind to yourself. Forgive everyone. And stay out of tanning beds!

Judicial Spotlight

A Conversation With Hon. Nancy G. Abudu



**Chelsea
Harris**

Hon. Nancy G. Abudu's appointment to serve on the U.S. Court of Appeals for the Eleventh Circuit is historic—she is the first Black woman to serve on the court since its creation in 1981. Not only does this fact make her appointment remarkable, but Judge Abudu's background in civil rights impact litigation makes her appointment even more special.

Judge Abudu, born in Virginia to two Ghanaian immigrants, graduated from Columbia University in 1996. She attended law school at Tulane University, where she represented marginalized communities in the school's Environmental Law Clinic during her third year. In the clinic, Judge Abudu advocated on behalf of low-income Louisianans, particularly those living in the New Orleans-Baton Rouge corridor that is often referred to as "Cancer Alley." She helped these communities in seeking increased legal protections for their health and safety against local industries that were polluting the area.

After graduation, Judge Abudu worked as an Associate at Skadden, Arps, Slate, Meagher & Flom LLP. She did not let her fast-paced, busy commercial litigation practice sidetrack her from maintaining a robust pro bono docket which included representing survivors of domestic violence. After a few years, Judge Abudu moved to Georgia and worked as a staff attorney in the Eleventh Circuit's Staff Attorney's Office so that she could delve deeper into constitutional questions that touched upon a broader range of issues.

In 2005, she joined the American Civil Liberties Union's (ACLU) Voting Rights Project as a staff attorney with a focus on developing the organization's work in felony disenfranchisement issues. She was then promoted to senior staff counsel where she expanded her voting rights work in an effort to uphold the fundamental tenets of the Voting Rights Act of 1965 and other federal

statutes. She has argued cases in state and federal courts, including the very court she now sits upon. In 2013, Judge Abudu became the ACLU of Florida's legal director, and in 2019, joined the Southern Poverty Law Center (SPLC), where she served as the organization's first deputy legal director for its then newly-created Voting Rights Practice Group. She also served as the SPLC's first director of strategic litigation until her judicial appointment in May 2023.

In these roles, Judge Abudu and the teams that she led made significant impacts in the lives of marginalized groups across the nation, especially here in the South. In fact, her advocacy and dedication to civil rights is what drew the attention of President Biden's administration when it nominated her to fill the seat Hon. Beverly Martin left vacant when she retired in 2021.

Your background is very unlike someone you generally see on a federal bench, especially in the South. How do you think your differing personal and legal background impact this court and your service as a judge?

The law often reflects the daily realities and needs of the people who come before us to vindicate their rights. Our country is so diverse, and the judiciary is much stronger when that diversity is reflected on the bench. Diversity on the bench does not mean that one will or should automatically share the views of another simply because they are from the same region, have the same upbringing or share the same personal views. However, the court's credibility is enhanced when litigants believe that they will have a fair opportunity to be heard, and having someone on the bench who understands varying perspectives is critical to that credibility.

You did not serve as a judge before your appointment. How has it been making the transition from being a zealous advocate into an objective decision-maker?

My new colleagues have been extremely supportive in helping me make that transi-



Hon. Nancy G. Abudu

tion. I had to remember that, at some point, each of us judges were all practicing lawyers and advocates. The transition has also been smooth because of my tremendous chambers team who work very hard to ensure I have all the information about a particular case or issue that I need to make a sound, objective decision. That infrastructure and support have sustained me as I embark on this new judicial journey.

Being a judge on this court comes with the security of a lifetime appointment. What legacy are you hoping to leave behind once you decide it's time to move into a different stage of your legal career?

My legacy on the bench is something I am still thinking about. Right now, I am just focused on learning the job and balancing the competing demands with respect to the various types of cases we get—some may be quick motions for extensions of time, while others are deeply complex constitutional issues with national implications. Once I am over this initial hurdle, I look forward to thinking more deeply about the role I will play in the interpretation of legal principles and its impact on the future generations.

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Smashing Success: What Pickleball Taught Me About Advocacy

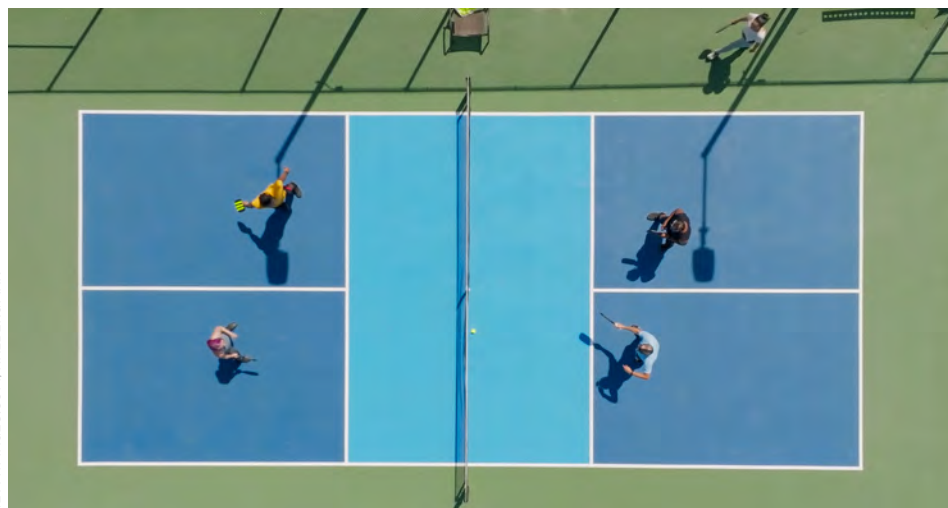


**Carlos
Fernández**

The practice of law. A platitude that will forever ring in a young attorney's ears when more experienced attorneys describe the constant evolution of the law. Precedent is overturned, legislators write new laws, and humans advance the world in new ways the law had not applied before. The same evolutionary principle applies to advocacy, but instead of judges, legislators and technology leading the change, outsiders like psychologists and thespians take the court. Who should tell the story to the jury, what types of demonstratives will capture the most attention, and how to word arguments so they are better received. While the rules may be decided by the judge and legislators, it is up to the advocate to learn how to play the game. And attorneys should look outside the legal arena to learn how to play the game from the greats.

In my old age, I retired from my pickup basketball career to try my hand at pickleball. For those of you who have not heard, pickleball is a racquet sport that combines elements from tennis, badminton and ping-pong. The ball is hit over a net from one side of the court to the other until the ball is hit out of bounds or bounces twice. The same way pickleball draws from multiple sports, we advocates should draw from outside influences. We should use phenomenal curiosity to learn how to tell our client's stories and recognize from outside experts what is important for our audience.

In pickleball, matches are an exchange of fast hit "drives" and cautiously lobbed "dinks." Each point has players choreographing reactions against planned decisions—like attorneys in court. An attorney, like a pickleball player, needs to prepare and think on their feet. They should be ready with outlines and able to read the room to change



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those bullet points. Good advocates cannot sway a jury by reading off a script prepared for imaginary individuals. They need to build their case around their pre-labeled exhibits and adapt arguments with soundbites from witnesses. Everyone has a plan until they get punched in the mouth, or worse, until the judge overrules their objection.

Pickleball is hallmarked by players lobbing the ball back and forth over the net until a mistake is made. A player may lob too high, which leads to a "slam" down the line. Or a player may lob too low and into the net. No matter what, patience is required in all "dinking battles." Advocates should also be patient as they develop their case. Let key moments sink in by pausing for a few seconds after a witness contradicts plaintiff's testimony. Do not let your opponent prepare an explanation by introducing impeachment evidence at trial instead of the deposition. Attorneys should use time and pace to their advantage through patience.

Pickleball is played either as singles or doubles. In a doubles match, partners move forward together and communicate with one another. If a ball is hit down the middle, then someone should yell "mine" so their partner knows to back off. No matter how good a player is, communication is key to victory in a doubles match. Similar to pickleball, an advocate must communi-

cate their message to their audience. Take "mine" for example: It is a short phrase, gets to the point and conveys the message. Advocates should do the same. Do not bog down your judge with dozens of case law citations, cite her the most pertinent cases. Tell your client's story with necessary facts and not echoes of prior testimony. Use analogies and metaphors to make sure the jury understands what you are saying. No matter how good the facts are, an advocate still must communicate those facts to their audience, so they understand the message.

Advocates should not entirely focus on the practice of law and its many changes, but should also think about how to practice the law. Leave the line calls to the referee and practice your game. It is important to watch other attorneys hone their craft, but advocates should also look for greatness outside the legal arena and bring those lessons to court. Pickleball revealed to me lessons of strategy in the field of trial advocacy. Advocates should learn to captivate their audiences through tried tested and true spectacles, like sports and movies. Whether on the court or in the courtroom, advocacy can be the key to success. YLD

Hailing from UF Law, former prosecutor, Freeman Mathis defense counsel, standing at a mighty 6 foot 1 inch, your partner's favorite associate—Carlos Fernández.

Mission to \$1 Million: The 13th Annual Georgia Legal Food Frenzy



**Caroline
Scalf**

The 13th Annual Georgia Legal Food Frenzy is quickly approaching. The annual fundraiser for Georgia's food banks will run from April 15-26. As in years past, Attorney General Chris Carr has issued a Billable Hour Challenge to all attorneys: donate the equivalent of one billable hour for your local food bank. If every Bar member donates the equivalent of one billable hour (\$250 on average), we can exceed our \$1 million goal and ensure that Georgia children go to bed with full bellies this summer.

As Carr has explained, "if you are a lawyer, or you know a lawyer, or you have one in the family, or you hire one, you make sure that they contribute just one billable hour. We want to raise a million dollars." He also encouraged lawyers to "[t]hink about what we could actually do if every lawyer in Georgia gave just one billable hour."

In Georgia, 1 in 8 children do not always know where their next meal will come from because they live in a food insecure household. That means 13% of kids in our communities lack access to enough food for an active, healthy life. This can have detrimental effects to physical and mental health, academic achievement and future economic prosperity. In fact, childhood food insecurity has been linked to delayed development, risk of chronic illnesses, hyperactivity and anxiety.

Georgia Lawyers Will Compete to Fill Food Banks for Summer

Fifty-six percent of Georgia's public school children qualify for free or reduced lunch. When the school year ends, many of those students are left wondering where they will get their food. The answer? Georgia's food banks.



Demand for food bank services peaks in late-spring and summer. Unfortunately, food bank donations slow down around those times. To meet the increased need our food banks face in the summer months, Georgia's Attorney General, the Young Lawyers Division of the State Bar of Georgia and Feeding Georgia partner together to coordinate the Georgia Legal Food Frenzy. This two-week fundraising competition is strategically timed to stock food banks across the state for summer break.

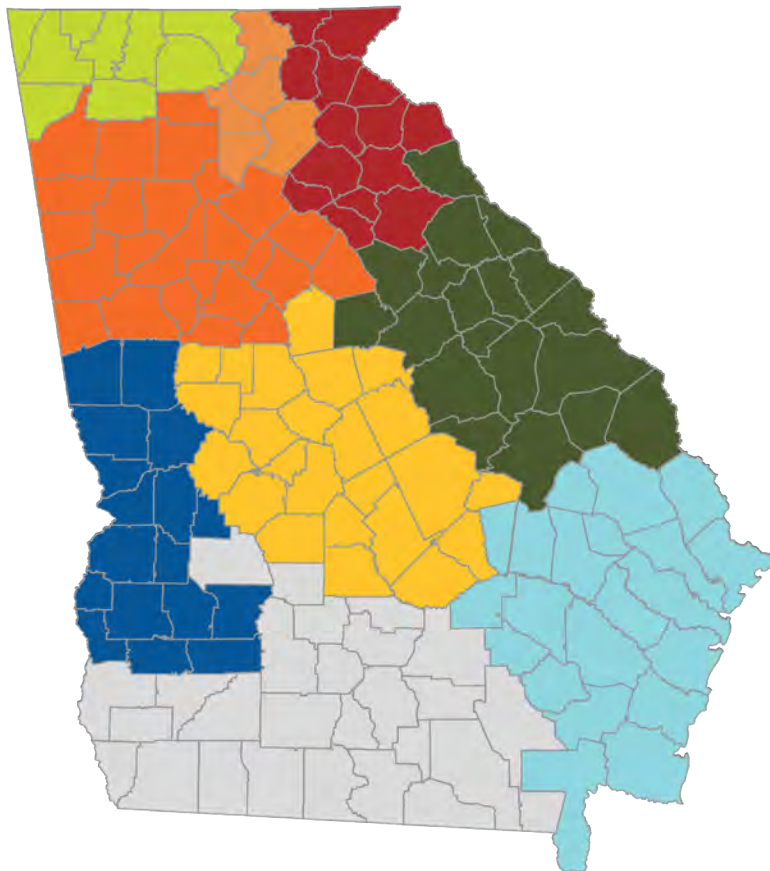
Since 2012, the Georgia Legal Food Frenzy has raised more than \$5.9 million for food banks across the state. And the fight against food insecurity in our communities continues. As food costs have increased over the past year, several Georgia food banks saw their demand increase. The Atlanta Community Food Bank, for example, is feeding 40% more people now than in 2022. Second Harvest of South Georgia Food Bank, which serves an area with the

state's highest rate of food insecurity in children, saw a 30% increase in demand. With this increased need, funds raised from the Georgia Legal Food Frenzy are as critical as ever.










Statewide Competition Local Impact

Because the Georgia Legal Food Frenzy is truly a statewide effort, funds stay in local communities. So, money raised in Savannah will stay in Savannah. Money raised in Augusta will stay in Augusta. In total, the Georgia Legal Food Frenzy supports nine regional food banks that cover every corner of the state. To determine which food bank your funds will benefit, check out the map of Georgia's regional food banks on page 11.

In addition to staying local, your food bank goes further at your food bank. With the benefit of food bank subsidies and partnerships, every dollar raised provides up to four meals for families in need. A donation of \$250, for example, can provide up to 1,000 meals.



Georgia's Regional Food Banks

-  **Chattanooga Area Food Bank**
Northwest Georgia Branch
-  **Food Bank of Northeast Georgia**
-  **Golden Harvest Food Bank**
-  **Atlanta Community Food Bank**
Partner distribution organization:
 Georgia Mountain Food Bank
-  **Feeding the Valley Food Bank**
-  **Middle Georgia Community Food Bank**
-  **Second Harvest of Coastal Georgia**
-  **Feeding America Partner Food Bank**

KEY DATES

APRIL 1

Early Registration Deadline for Bonus Point Opportunities.

APRIL 9

Georgia Legal Food Frenzy Kickoff.

APRIL 15-26

Georgia Legal Food Frenzy Competition.

MAY

Winners Announced.

JUNE 7

Awards Presentation at the State Bar of Georgia Annual Meeting in Amelia Island.

13th Annual Georgia Legal Food Frenzy

Registration for the 13th Annual Georgia Legal Food Frenzy is now open. Anyone in the legal community can participate, including law firms, legal organizations and corporate/in-house counsel.

Dollars raised are converted to points, and the team with the most points will win the coveted Attorney General's Cup. Awards will also be presented to top teams by category (e.g., Large Firm, Small Firm, Legal Organization). Winning teams in the 12 award categories will receive bragging rights, recognition at the State Bar of Georgia Annual Meeting and an invitation to the

Hunger Heroes VIP Reception at Feeding Georgia's Wild Hog Supper.

This year, YLD President Brittanie Browning has set our fundraising goal at a record-breaking \$1 million.

Register today at galegalfoodfrenzy.org and help the YLD reach our #missiontoamillion!

If you have questions about the Georgia Legal Food Frenzy or would like to get involved, please contact Caroline Scalf at carolinescalf@parkerpoe.com and Ashley Akins at ashley.a.akins@gmail.com.^{YLD}

Caroline Scalf is an associate at Parker Poe Adams & Bernstein LLP in Atlanta.

Trial Practice: Real Advice



**Lina
Leh**

We have all been there. We have all been in court watching a fellow attorney struggle and fumble their way through a hearing or a trial. Some of us want to shrink in our seats and disappear. Some of us want to reach out and help. Unfortunately, that help is coming a little too late. The judge is angry; the opposing counsel is irritated. And worst of all, this attorney has presented their case or their client very poorly.

It happens to almost all of us. We have all been there and no amount of law school training will prepare new lawyers for every circumstance. However, there are some specific tools to keep in your briefcase to help you be better prepared.

Be Realistic

New lawyers should enter the profession knowing that law school does not teach you the actual practice of law. If you are in civil practice, the art of obtaining and retaining clients begins with client control. Manage your client's expectations from your very first meeting. You cannot promise clients a prize horse and then give them a mule. In criminal practice, you must learn to evaluate the strengths and weaknesses of a case and be realistic about them. Many criminal lawyers practice with blinders on and they get caught up in the technical aspects of the case without considering how a jury will react or how a case will look in court. Sometimes, the best option is to know when to fold your cards and work out a good offer even if you have the law on your side.

Preparation

There is no such thing as being overprepared for court. It is simple. Know the facts of your case; know the facts you need to elicit from your witnesses; know what evidence



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you will seek to introduce and the order of your presentation. Premark your exhibits, have the procedure of impeachment handy and take your case seriously. These small things will keep you in control and confident in your hearing or trial. It may be difficult to prepare when you have hundreds of cases on your docket or if you are traveling for hearings all over the state, but it matters, and your level of preparation will be evident to everyone present, including the judge.

Time Management

This is an area that many attorneys struggle with—both new and old. Sharpen your time management skills. Balancing a huge caseload is standard practice for most attorneys but there are things you can do to make life easier. First, learn your court rules. Houston County will be different from Bibb County; Bibb County will be different from DeKalb County. File conflict notices and you will become an instant friend to judicial assistants and judges. Invest in a good calendar

that is easily accessible. Make sure you can easily add dates on-the-go and are able to send yourself reminders.

Schedule Office Time

You will meet many lawyers who are on the road every day traveling all over the state. Hey, we all have to pay the bills and keep the lights on—but when are these lawyers getting actual work done? The answer is, they are not. They are simply kicking their cases down the road. To be a successful attorney, you must spend time in your office. You must review case reports, review evidence, look at discovery and file motions. Investing in your cases early allows you to resolve and move more cases.

Invest in Quality Staff

We could all use a Donna Paulsen.¹ In 10 years of practice, I have never known a successful lawyer who did not have a well-trained and well-compensated legal assistant.

Take time to train your staff. Make sure they understand the legal terms, the way the trajectory of a case—from start to finish—clearly establishes your expectations. They will keep your files up to date, your hearings properly calendared and will always catch that deadline you inevitably forgot about.

Pick Up the Phone

Speak to your opposing counsel before court. Lawyers have stopped communicating; either because there are misconceptions over appearance. “How will it look if I make the first move?” or because of ego: “I’m not going to make the first move!” I am here to tell you: it is OK. You are allowed to call and work things out prior to court. You will build a reputation of professionalism and respect. The judge will appreciate it because they can free up valuable hearing time and dedicate it to something else and frankly, it will clear up time for you as well!

Watch and Learn

Observe hearings and trials as much as possible. Call the local clerk’s office to get a copy of the trial calendar (most jurisdictions are trying cases every couple of weeks) and spend an hour or so watching trials. Bring case briefs or depositions with you to review, but come watch. The time to learn as a young lawyer is now. You will get to see different styles, different themes and think about what works and does not work. You will pick up some great skills and meet attorneys along the way.

Do Not Interrupt

Court can be chaotic. The judge may be calling the calendar, attorneys are meeting with their clients, people are talking in the gallery and a lot of voices can be talking over each other. Hearings can get contentious and attendees can be short-tempered. The best

practice is to take a breath, stay calm and wait. Do not interrupt the judge, the opposing counsel or the witness. It will only hurt you and therefore your clients to engage in unprofessional behavior.

Respect

Treat everyone with respect—and I mean everyone. It may be surprising to hear such a basic idea but unfortunately it is necessary to mention this. Legal assistants speak to their attorneys, law clerks speak to their supervising attorneys and judicial assistants speak to their judge. It will never help you to be on bad terms with staff, especially if they do not work for you. If I know you have been disrespectful to my staff, you will receive a call from me, and you will never get a favor from me.

Get Involved

Get involved with your local bar association, your state bar association, your local inn of court or other professional organization. Even if you commit only to going to a meeting every other month: just go. Other lawyers are valuable resources and will help you build your reputation and your clientele. They will send business your way, and you will create connections across the state. If you are not sure how to get involved, ask. Call your local bar representatives, call your local executive officers or reach out to the YLD board. The attorneys who are involved will be happy to talk to you and help find a place for you to jump in. ^{YLD}

Lina Leh is an assistant district attorney in the Houston Judicial Circuit.

Endnote

1. Donna Paulsen is the fictional legal secretary to Harvey Specter in *Suits*.

► ABUDU, FROM PAGE 8

Finally, what is your advice to law students and young attorneys?

People tend to make better decisions when they have options. My advice for young advocates is to create as many options for yourself as possible and surround yourself with people who cannot only help you, but who you too can support. When you extend kindness, good will and honesty to others, it will come back around to you. ^{YLD}

Chelsea Harris is term staff attorney to Hon. Nancy G. Abudu, U.S. Court of Appeals for the Eleventh Circuit.



Serve the Bar. Earn CLE credit.

2 Volunteer and complete online training to be a peer in the Georgia Lawyers Helping Lawyers program and earn up to **two** CLE hours during your training. Visit www.georgiaLHL.org to learn more.

3 Coach a team or judge a trial for the High School Mock Trial program and receive up to **three** hours of CLE credit. Contact richardh@gabar.org for more information and to volunteer.

6 Earn up to **six** CLE credits for having your legal article published in the *Georgia Bar Journal*. Contact jenniferm@gabar.org to learn more.



The YLD in Action



1. (L-R) Former YLD President Bert Hummel and Christina Hummel; 2. (L-R) Judicial Law Clerk Committee Co-Chairs Mallory Flemming and Tate Crymes at the 2024 Signature Fundraiser, which benefitted the YLD's Public Interest Internship Program; 3. Members of the 2024 Leadership Academy at the Nathan Deal Judicial Center; 4. Supreme Court of Georgia Public Information Officer Kathleen Joyner speaks to the 2024 Leadership Academy class; 5. (L-R) Leadership Academy Co-Chair Sam Mullis, State Bar of Georgia President Elect Ivy Cadle, Leslie Cadle, Leadership Academy Co-Chair James Banter and Leadership Academy Co-Chair Kindall Browning; 6. 2024 Leadership Academy at Brookdale Resource Center (<https://www.brookdale.com/>) in Macon; 7. (L-R) Mallory Fleming, Siena Gaddy, Brittanie Browning, Lina Khan, Justice Shawn Ellen LaGrúa, Judge Sara Doyle, Judge Paige Whitaker, Olivia Mercer, Cayton Chrisman and Judge Shondeana Morris at "Power Hour Lunch with Women in the Judiciary."

Five Tips for Contracting With a State Entity



Samantha Mullis

Negotiating contracts with government entities requires awareness of statutory and constitutional restrictions that differ from those typically found in the private sector. Compliance with laws that govern state agencies can present practical complexities that may take private practitioners by surprise. Many standard clauses found in commercial contracts simply cannot be accepted by state agencies. The restrictions are based on constitutional and statutory prohibitions. Below are just a few of the most common provisions that Georgia state agencies must consider when negotiating contracts.

1 Arbitration and Alternative Dispute Resolution

Many contracts ask for the parties to waive their right to a jury trial and settle their disputes outside of the courtroom. However, state agencies do not have the authority to waive the state's right to a jury trial.¹ Based on Georgia's sovereign immunity and the Attorney General's authority over civil litigation, agencies are not authorized to agree to binding arbitration. The Attorney General has exclusive authority and control over all matters of litigation or potential litigation involving state agencies, and neither the Georgia Constitution nor any act of the General Assembly authorizes the agency to limit its access to the courts.

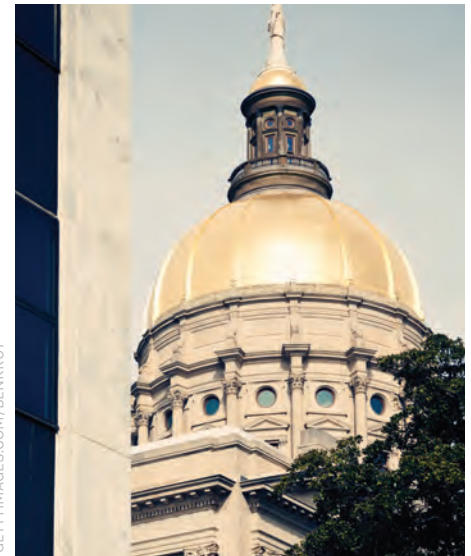
2 Jurisdiction Must Be in Georgia

All contracts with an agency must be governed by the laws of Georgia.² State agencies do not have the power to consent to jurisdiction outside of Georgia or the federal courts. State agencies cannot contractually agree to submit to federal court jurisdiction, regardless of where the federal court is

located, because doing so may constitute a waiver of Georgia's Eleventh Amendment rights under the U.S. Constitution.

3 Confidentiality It is important to remember that Georgia has liberal open records laws, and therefore there are very few contracts that can be kept confidential.³ State agencies may agree that they will use the care which it uses to protect its own confidential information not to disclose to any third-party information provided to it by the other contracting party. However, the contract must clearly identify certain specific instances where such an obligation of confidentiality does not apply, such as the Georgia Open Records Act.

4 Insurance Many contracts have requirements that mandate the parties carry a certain type and specific amount of insurance coverage. Georgia state agencies are covered by Georgia's Department of Administrative Services' State Tort Claims Policy and General Liability Agreement. As such, state agencies cannot agree to contractual provisions that require them to purchase private insurance policies, to obtain insurance from a particular carrier or in an amount acceptable to the other party to the contract, or to name the other party to the contract as an insured beneficiary.⁴ If the other party wants to reference the agency's insurance coverage in the contract, we suggest inserting the following language: "[insert state agency] employees are covered by a self-insurance fund administered by the Georgia Department of Administrative Services. This coverage has limits of not less than \$1 million per occurrence and \$3 million aggregate." You may also provide the other party with a copy of the Department of Administrative Services' Certificate of Insurance.



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5 Renewal of Contracts State agencies are generally given funds and their budgets by the Georgia General Assembly. Therefore, the amount of money appropriated to each state agency is not guaranteed every year. Therefore, contracts should not automatically renew and contracts should not last longer than one year in duration.⁵ Exceptions to this may exist in certain circumstances, such as if the contract does not obligate the institution to pay money and gives the institution an unrestricted right to cancel the contract at any time. If the agency desires to renew a contract beyond its initial term, the following language should be inserted: "This Agreement may be renewed for additional periods of one year each if agreed upon in writing by both parties." YLD

Samantha Mullis serves as assistant general counsel at Augusta University.

Endnotes

1. O.C.G.A. § 50-5-64.1(2)(D).
2. O.C.G.A. § 50-5-64.1(a)(2)(C).
3. O.C.G.A. § 50-18-70 et seq.
4. O.C.G.A. § 50-1-120 et seq.
5. O.C.G.A. § 50-5-64.1(a)(2)(E).

Antitrust 101: How to Avoid Antitrust Pitfalls Amid Increased Government Scrutiny



**David
Cromer**

Federal antitrust law has recently had an outsized impact on the nation's legal landscape, due in large part to highly publicized allegations of antitrust violations against household-name companies like Apple,¹ Google² and Amazon.³ While these investigations likely cause antitrust considerations to weigh heavily on the minds of attorneys representing these corporate monoliths, many practicing attorneys have little exposure to the subject and may see it as a largely irrelevant, niche practice area. Nevertheless, this easily overlooked body of law can pose a significant risk to unwary small and medium-sized businesses. This article seeks to provide a basic overview of antitrust law and to make you aware of some little-known antitrust risk areas to help you advise your clients regarding antitrust compliance.

The primary statutory authority for federal antitrust law is the Sherman Act of 1890.⁴ The Sherman Act prohibits "[e]very contract... in restraint of trade or commerce among the several States."⁵ Courts have interpreted the Sherman Act to "prohibit only agreements that unreasonably restrain trade."⁶ Agreements in restraint of trade can be "horizontal" or "vertical." Horizontal restraints are agreements between competitors regarding how they will compete with one another (two major airlines or cell phone service providers, for example).⁷ Vertical restraints are "imposed by agreement between firms at different levels of distribution" on matters over which they do not compete (think a construction company and a lumber supplier).⁸ Unsurprisingly, the government adopts a very expansive view of the term "competitor." From the Federal Trade Commission's

(FTC) perspective, companies that aim to hire similarly-skilled employees are "competitors," even if they do not compete otherwise.⁹

Courts use two different rules or tests to determine whether a particular agreement violates the Sherman Act—the "Rule of Reason" test and the "Per Se" Rule. Under the Rule of Reason, courts seek to determine whether under the specific facts at hand an agreement between competitors actually limits competition. In other words, courts use the Rule of Reason to "distinguish between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest."¹⁰ However, some agreements between competitors have "such [a] predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful per se."¹¹ Typically, only horizontal restraints are per se unlawful.¹²

With these principles in mind, it is easy to see why federal regulators are concerned with things like price-fixing between competitors or massive corporate mergers that give consumers little choice between service providers. However, there are other less obvious ways that companies can violate the Sherman Act. Two risk areas that many smaller companies might unwittingly step into are so-called "no-poach" agreements and "information sharing" agreements.

If you ask business owners what their top stressors are, finding and retaining talented employees is likely to be high on the list. It can be especially frustrating when a good employee is "poached" by a competitor. Sometimes these frustrations prompt competitors to agree not to steal each other's employees through a "no-poach" or "no hire" agreement. These agreements have come under intense antitrust scrutiny in recent years. In 2016, the Department of Justice (DOJ) and FTC announced that they would criminally prosecute blatant no-

poach agreements, a departure from their historic use of civil actions in similar situations.¹³

Federal regulators typically view no-poach agreements through the unforgiving lens of the per se analysis.¹⁴ However, there is a way for no-poach agreements to pass DOJ and FTC scrutiny. No-poach provisions are often included in merger agreements, and a no-poach provision can potentially be valid if it is subservient to the larger agreement and helps the larger agreement fulfill some pro-competitive purpose (in other words, the no-poach agreement is merely "ancillary" to a pro-competitive agreement).¹⁵ This safe-harbor for no-poach agreements is not absolute—the FTC recently announced a renewed interest in prosecuting anti-competitive components of buy-sell agreements and mergers.¹⁶

Another little-known antitrust risk is information sharing between competitors. Sometimes competing companies share information between each other about pricing strategies, employee compensation and benefits, or other details. Some courts have concluded that the sharing of information by itself is subject to the lenient Rule of Reason test.¹⁷ However, if the shared information is later used for an anti-competitive purpose, a "per se" analysis can be triggered.¹⁸ Like with no-poach agreements, the government has recently announced a renewed interest in these information sharing agreements.¹⁹

The importance of antitrust compliance will only grow as federal regulators continue to use the Sherman Act to promote competition in the marketplace. Practitioners can guide their clients toward compliance by keeping up to date on the areas that regulators are most interested in and by being aware of risk areas that might otherwise be overlooked. YLD

David Cromer is an attorney at Constangy, Brooks, Smith & Prophete, LLP, in Macon, Georgia.

Endnotes

1. David McCabe, Tripp Mickle, U.S. *Moves Closer to Filing Sweeping Antitrust Case Against Apple*, N.Y. Times (Jan. 5, 2024, 2:15PM) <https://www.nytimes.com/2024/01/05/technology/antitrust-apple-lawsuit-us.html>.
2. *Justice Department Sues Google for Monopolizing Digital Advertising Technologies*, Department of Justice Office of Public Affairs (Jan. 24, 2023) <https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>.
3. *FTC Sues Amazon for Illegally Maintaining Monopoly Power*, Federal Trade Commission (Sept. 26, 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.
4. 15 U.S.C. § 1–7 (2024).
5. 15 U.S.C. § 1.
6. *United States v. Joyce*, 895 F.3d 673, 676 (9th Cir. 2018) (emphasis added).
7. *NCAA v. Bd. of Regents*, 468 U.S. 85, 99 (1984).
8. *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018).
9. Department of Justice Antitrust Division, *Antitrust Guidance for Human Resources Professionals* (2016).
10. *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007).
11. *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997).
12. *Am. Express*, 138 S. Ct. at 2283–84.
13. *Supra*, note 9.
14. *Id.*
15. *Aya Healthcare Services, Inc. v. AMN Healthcare, Inc.*, 9 F.4th 1102 (9th Cir. 2021).
16. *Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers* (Jan. 18, 2022) <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>.
17. *Todd v. Exxon Corp.*, 275 F.3d 191 (2nd Cir. 2001).
18. *Id.*
19. Principal Deputy Assistant Attorney General Doha Mekki of the Antitrust Division Delivers Remarks at GCR Live: Law Leaders Global 2023 (Feb. 2, 2023).

► LAW CLERKS, FROM PAGE 3

current and former law clerks. The panel included Alec Chappell, career law clerk to Hon. Edward J. Coleman, III, chief judge, U.S. Bankruptcy Court for the Southern District of Georgia; Allison Ellison, staff attorney to Hon. Julie Adams Jacobs, judge, Superior Court of Cobb County; Mallory Fleming, central staff attorney for the Supreme Court of Georgia; and Tayah Woodward, associate attorney, Seed Intellectual Property Law Group, LLP, and former law clerk to Hon. Tilman E. Self, III, judge, U.S. District Court for the Middle District of Georgia. Discussions ranged from judicial writing as a law clerk to collaboration with judges to ensure the correct result is reached in each matter.

After lunch, Tate Crymes, law clerk to Hon. Austin E. Carter, chief judge, U.S. Bankruptcy Court for the Middle District of Georgia, moderated a panel of judicial guest speakers for a conversation on how law clerks can assist judges and on judicial writing from a judge's perspective. The panel included Hon. Verda M. Colvin, justice,

Supreme Court of Georgia, Hon. Sara L. Doyle, judge, Court of Appeals of Georgia, Hon. Paige Whitaker, judge, Superior Court of Fulton County, and Hon. Eric Richardson, judge, State Court of Fulton County. Our judicial guest speakers shared many wise words and stories from their time on the bench.

Finally, Prof. Ishaq Kundawala and Prof. Kaleb Byars of Mercer University School of Law applied their respective backgrounds in clerking and presented "Professionalism for Law Clerks." The professors discussed the Code of Conduct for Judicial Employees and walked through hypothetical scenarios with professionalism implications affecting clerks.

The JLCC was encouraged by the attendance and participation at both the hike and the CLE and plans to build off these successes going forward. If you are interested in joining the JLCC for future events or if you chair a committee and would like to collaborate with the JLCC, please do not hesitate to reach out. YLD



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Mercer Bankruptcy Externship Benefits Law Students and the Community



T. Alec Chappell

Launched in 2023, Mercer School of Law Consumer Bankruptcy Externship Program provides both hands-on experience for law students and no-cost legal assistance to Middle Georgians in need of a financial fresh start. “Our goal in this program is to help people who don’t have any access or ability to pay their bankruptcy lawyer,” says program founder Ishaq Kundawala, associate dean for academic affairs, professor of law and Southeastern Bankruptcy Law Institute and W. Homer Drake, Jr. endowed chair in bankruptcy law at Mercer Law.¹ The one-semester 3L course arose from a loophole in the Bankruptcy Code: many people in financial distress cannot file for bankruptcy under Chapter 7 because they cannot afford to pay attorney’s fees. “They’re too broke to file, in other words,” Kundawala says.²

In a Chapter 7 case, a trustee sells the debtor’s nonexempt assets and distributes the proceeds to creditors.³ Although “relatively simple and straightforward,” Chapter 7 bankruptcy generally requires debtors to pay their attorneys in full upfront.⁴ That’s because the Bankruptcy Code authorizes bankruptcy courts to award reasonable attorney’s fees to a professional employed by the trustee, not by the debtor.⁵ For that reason, the Supreme Court has held that “[a] debtor’s attorney not engaged” by the trustee “is simply not ... eligible for compensation” from the bankruptcy estate.⁶ As a result, if a Chapter 7 debtor “does not pay the agreed upon fee in full in advance of the filing,” then the attorney’s “claim against the debtor for the unpaid fee will be discharged in the bankruptcy[.]”⁷ In most jurisdictions, therefore, Chapter 7 debtors must pay their attorneys in full upfront.⁸

Unable to pay an attorney to file a Chapter 7 case, many debtors instead file under Chapter 13 of the Bankruptcy Code. In a Chapter 13 case, a debtor makes payments to a trustee over three to five years.⁹ Chapter 13 debtors, unlike Chapter 7 debtors, can pay their attorneys’ fees over time.¹⁰ But Chapter 13 cases cost more than Chapter 7 cases, take longer to complete and have a success rate no better than a coin toss.¹¹ Despite these drawbacks, many debtors have little choice but to proceed under Chapter 13 to prevent the imminent foreclosure of their homes or repossession of their cars.¹² Georgia’s Northern, Middle and Southern districts all rank among the top 25 federal judicial districts in the nation with the highest percentage of consumer cases filed under Chapter 13.¹³

Students in Mercer’s 2023 externship program served the Middle Georgia community by filing eight Chapter 7 cases and shepherding them all to completion pro bono. Initial client intake took place with the help of the Georgia Legal Services Program. Kundawala credits Tomieka Daniel, Rachael Schell and Elizabeth Waller for their assistance.¹⁴ Kundawala then assigned the files to local bankruptcy attorneys Robert M. Matson and Alex Sanders, who supervised the students. “Alex and Rob really did a tremendous job of mentoring the students,” says Kundawala.¹⁵ Devon Holloway, a student in the program’s inaugural class, echoed that sentiment, saying students “got to spend a ton of time” with Matson and Sanders, which was “extremely beneficial” in showing “what it looks like when the process is done correctly.”¹⁶ Matson’s law partner Joy R. Webster has since joined the program. Kundawala also attributes the program’s success to the support of Middle District Bankruptcy Judges Austin E. Carter, James P. Smith and John T. Laney III, along with Clerk of Court Kyle George. “It takes a village,” he says.¹⁷

Kundawala emphasizes that a student need not “be committed to a career in bankruptcy to benefit from [the] program.”¹⁸ In his view, bankruptcy attorneys are “the last of the generalists.”¹⁹ Holloway concurs, calling the program “beneficial to those who are interested in any type of work where they’ll be dealing with people directly.”²⁰ Now a judicial law clerk with the U.S. Bankruptcy Courts, he gained invaluable experience from the program, saying “it definitely helps put things in perspective in terms of what it’s truly like to be counsel in a case like that.”²¹ He recalls that his first client cried during their initial meeting. By the end of the meeting, though, “her demeanor was entirely different: upbeat, happy and content with how things were going.”²² She hugged the students on her way out. “You can’t really replicate those types of moments and those types of feelings in the classroom,” Holloway says.²³ “You can only do it through experience.”²⁴ YLD

T. Alec Chappell is a career law clerk for Chief Judge Edward J. Coleman III, U.S. Bankruptcy Court for the Southern District of Georgia and adjunct professor at Mercer School of Law.

Endnotes

1. Interview with Ishaq Kundawala (Jan. 15, 2024).
2. *Id.*
3. Terrence L. Michael, *There’s a Storm a Brewin’: The Ethics and Realities of Paying Debtors’ Counsel in Consumer Chapter 7 Bankruptcy Cases and the Need for Reform*, 94 Am. Bankr. L.J. 387, 389 (2020).
4. *Id.*; Ishaq Kundawala, *Biting the Bullet: A Bipartisan Solution to Increase Debtors’ Access to Chapter 7 Relief While Exempting Firearms in a Bankruptcy Case*, 56 Ind. L. Rev. 33, 40 (2022). Some districts allow bifurcation of fees by separating pre-petition and post-petition services. See *In re Brown*, 631 B.R. 77, 91-92 (Bankr. S.D. Fla. 2021).
5. 11 U.S.C. §§ 330(a)(1), 327(a).
6. *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004).

7. U.S. Trustee v. Cialella (In re Cialella), 643 B.R. 789, 792 (Bankr. W.D. Pa. 2022).
8. Ishaq Kundawala, *Biting the Bullet: A Bipartisan Solution to Increase Debtors' Access to Chapter 7 Relief While Exempting Firearms in a Bankruptcy Case*, 56 Ind. L. Rev. 33, 40 (2022). Some districts allow bifurcation of fees by separating pre-petition and post-petition services. See *In re Brown*, 631 B.R. 77, 91-92 (Bankr. S.D. Fla. 2021).
9. 11 U.S.C. § 1322(d)(1)(C)-(d)(2)(C).
10. 11 U.S.C. §§ 1326(b)(1), 507(a)(2), 503(b)(2), 330(a)(4)(B).
11. Kundawala, *supra* note 8.
12. Interview with Ishaq Kundawala (Jan. 15, 2024).
13. *Just the Facts: Consumer Bankruptcy Filings, 2006-2017, United States Courts* (March 7, 2018), <https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017>.
14. Interview with Ishaq Kundawala (Jan. 15, 2024).
15. *Id.*
16. Interview with Devon Holloway (Jan. 3, 2024).
17. Interview with Ishaq Kundawala (Jan. 15, 2024).
18. *Id.*
19. *Id.*
20. Interview with Devon Holloway (January 3, 2024).
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*

YLD NIGHT WITH THE HAWKS



1. (L-R) Kerry Nicholson, Colin Adebayo, Kenneth Mitchell Jr. and LaToya Williams. 2. (L-R) YLD Directors Carlos Fernandez and Morgan Lyndall. 3. (L-R) YLD President Elect Kenneth Mitchell Jr. and YLD President Brittanie Browning. 4. (L-R) Caleb Ratliff, Scott Wilkinson, Hawks executive vice president and chief legal officer, and YLD President Brittanie Browning.

Litigation 101: Audience Perception of Presentation



Franklin T. Gaddy

“But I think we’re also just talking about the literacy of the audience. The visual literacy of the audience. They’ve seen so many images now, especially here in the states. There’s so much to look at, to watch. So the visual storytelling literacy is harder to impress.”—Keanu Reeves

Your binders are packed, your trial notebooks are carefully organized, your scripts are meticulously reviewed and edited, and trial is right around the corner. Have you asked yourself, “to whom am I presenting,” and “what am I presenting?”

While these questions may seem obvious, overlooking either can be fatal to your case. The most brilliant attorneys and arguments can be disregarded should they fail to consider presentation. Genius and social intelligence do not always go hand in hand.

I have yet to find an audience clamoring for an attorney to demonstrate how intellectually superior they are to the common man or woman. Despite this, many attorneys believe that confusing a jury into a position of inferiority will somehow win the day. These attorneys, brilliant as they may be, do not understand that trial presentation revolves around crisp communication, storytelling and audience connection.

Whether the presentation is made before a judge or jury, our role as litigators is to connect with our audiences and tell our clients’ stories. Presentation is paramount in the world of storytelling. We are presenting not only our clients but ourselves.

As stated by Neo himself, quoted above, audiences are constantly flooded with information, stories and news highlights. We cannot trust that our audience will hang onto our every word and anticipate the next



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riveting disclosure or discussion pertaining to parol evidence, fiduciary obligations or, better yet, fraudulent inducement. In hopes that our audience will grasp these important points, our presentation should include visual indicators tied to our trial themes that will help them understand “the why.” These memory aids support our stories and further our arguments.

To hold the attention of our audience long enough to make our points we must refine our presentation. First, focus on the basics. Be respectful. Be considerate. Be professional. Be attentive. Trials are often lost by attorneys who have no concept of the aforementioned qualities. Especially in the eyes of a juror, you do not want to be perceived as wasting everyone’s time. Be cognizant of the fact that those civil servants, so vital to our society, have lives outside of the courthouse. Saying during voir dire or opening statements how much you “appreciate their time” and “how important they are as juries” is warranted and is owed; however, if the respect ends there, then you have harmed your case.

This view of respect goes further than respecting your jurors as individuals and humans. We must also respect our peers and adversaries. With our objections we should consider “is this really protecting the record,” or “am I going to look like a jerk” and “will the jurors roll their eyes at this?”

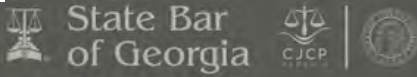
Our judges and jurors analyze not only our arguments, but also our character.

In preparation for trial, we should think about to whom we are presenting. Who are the likely jurors? Who is my judge? Regardless of the outcome, how do I want those individuals to remember me when the case is over and the verdict is read? As an underlying current to everything that we do in court and in trial is human connection. Storytelling, after all, is about connecting with our audience, believing our stories, and winning hearts and minds. In the words of Tahir Shah, “Stories are a communal currency of humanity.”

In your presentation, analyze your connection with the audience. Ask yourself, “would I want to listen to this story?” Better yet, “would my non-lawyer friends or family be willing to sit down and listen to me tell this story?” While friends and family have the option of getting up and leaving the room, the jurors cannot. Although they cannot leave, they can deliver a critical review of your performance, which you will then have to explain to your client.

Think about who you are, how you want to be perceived, and how you want to be remembered when crafting your presentation and carrying out your performance. YLD

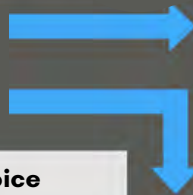
Franklin T. Gaddy is a partner at Martin Snow LLP and is an adjunct professor at Mercer University School of Law.



CONNECT WITH A COLLEAGUE

In the spirit of professionalism and promoting BRAND NEW collegial relationships, the State Bar of Georgia’s Committee on Professionalism presents the 2024 Connect with a Colleague Contest! Because of the pandemic, we paused this contest in 2020. We hope for robust statewide participation this year. Here’s how to enter and Win!

RULES & ENTRIES PRIZES INCLUDE



Grand Prize: \$500 Gift Card + Winner’s Choice between Atlanta Hawks or Atlanta United Game Tickets (4 seats provided by the donor).

2nd Prize: \$350 Gift Card + Commission selection of Atlanta Hawks or Atlanta United Game Tickets (4 seats provided by the donor).

District Prizes: \$50 Gift Card to 1 winner in Each Judicial District Who Participated in the Contest.

Sponsored by: Cathy Hampton & The Hampton Firm; Kevin Patrick Law; and GA Bar CLE Participants. To learn more about sponsoring Connect With A Colleague, email Cathy@theHamptonFirm.com, or call 404.344.6696.

Contest Rules:

- Georgia attorneys may submit up to five entries: one for each separate lunch, dinner, or coffee connection with a colleague outside your office or firm that occurs between April 1, 2024 & April 30, 2024.
- Only one entry per NEW connection is eligible.
- A “colleague” is a member in good standing with the State Bar of Georgia with whom you have not yet shared a meal, coffee, or other social interaction.

How to Enter:

VIA LinkedIn, Instagram, or X (Formerly Twitter)

1. Post a “selfie” photograph identifying you with your NEW colleague.
2. Share your post with the handle [#ConnectWithAColleague](#) and tag us at [@CJCPGA](#).
3. Include in the caption your new connection’s venue, city, state, or zip.

VIA EMAIL

1. Email a “selfie” photograph identifying you with your NEW colleague to CJCPGA at cwac@cjcpa.org.
2. Add “Connect with a Colleague” in the subject line.
3. Include in the message your new connection’s venue, city, state, or zip.

Rules Regarding Entries

- No duplicate or incomplete entries will be eligible for this competition.
- There will be one prize per entrant.
- There will be one Grand Prize winner, one Second Prize winner, and one District Prize winner per judicial district.
- Winners will be selected by May 10, 2024.



Jena Emory, Editor
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Atlanta, GA 30303



2024 GEORGIA LEGAL FOOD FRENZY

APRIL 15-26

Fight hunger by going head-to-head with Georgia's lawyers outside the courtroom.

Register your law firm, legal organization or department at www.galegalfoodfrenzy.org/sign-up

WHO

Open to EVERYONE in the legal community. All law firms (solos, small, medium and large), legal organizations (bar associations, vendors, etc.), corporate/in-house counsel, and clerks and judges can compete with special awards for each.

RULES & AWARDS

Between April 15-26, every \$1 raised earns your team four points in the competition. Awards are given in different categories based on the most points earned per employee and most points overall. The Attorney General's Cup and the Bar President's Award are given to the grand prize winners.

THE NEED

One in eight children in Georgia are at risk for hunger, and food banks are working around the clock to meet an overall 30% increase in need. The Legal Food Frenzy helps keep the food banks stocked so they can feed more families. With every \$1 you donate, food banks can distribute more than four meals to our neighbors in need.



State Bar
of Georgia

