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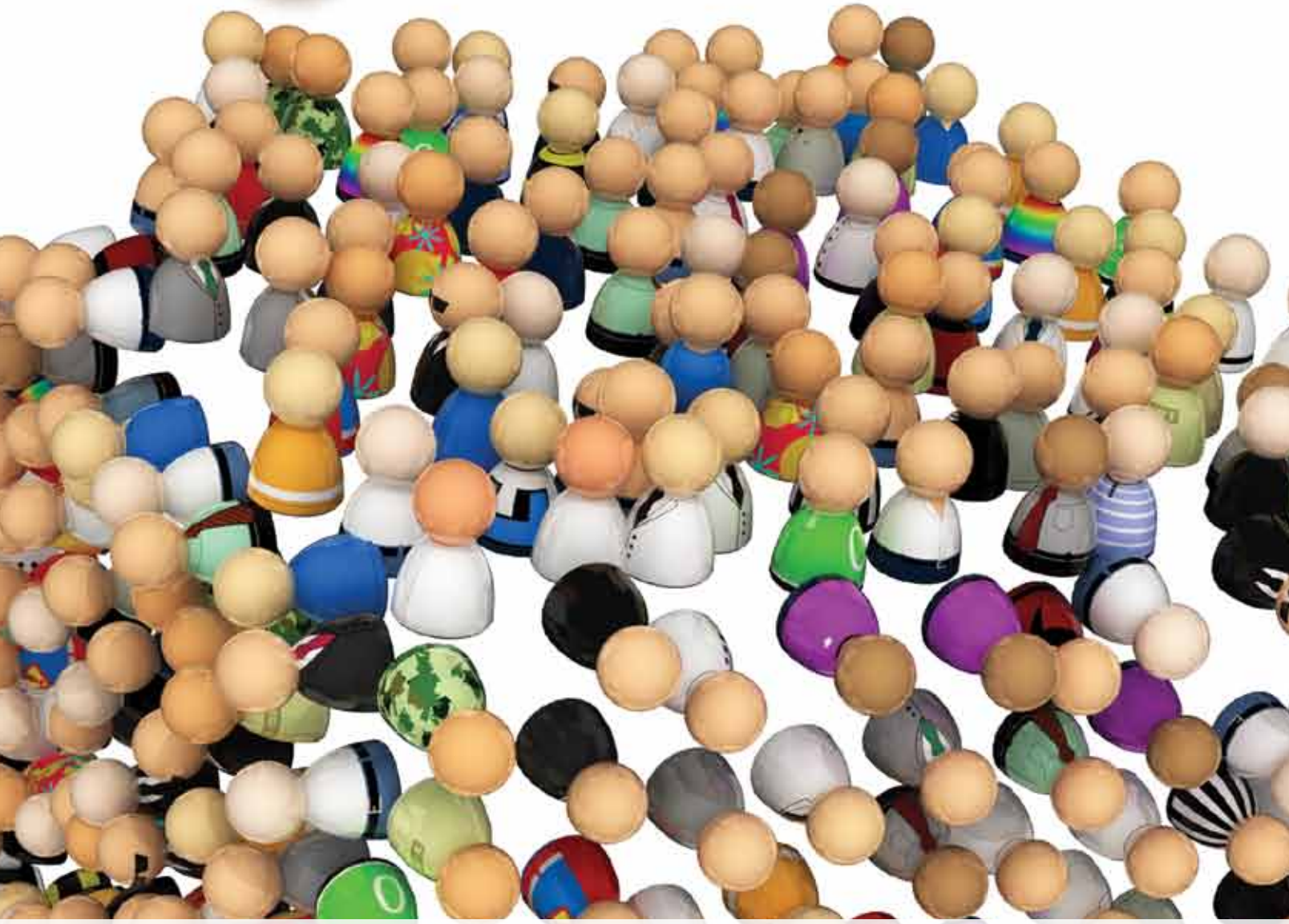

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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: 404-527-8791; sarahc@gabar.org.

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## GBJ Legal



## GBJ Features



## Departments

Photo by Zach Porter Photography

by Robin Frazer Clark

# Legal Trailblazers: Women in Leadership

As I said upon taking office as only the second woman to serve as president of the State Bar of Georgia, this is by far the greatest honor of my career as a lawyer. Coincidentally, the same week that I prepared to write this President's Page article, in appreciation of the women who blazed the trail for those of us now serving as leaders of the legal profession, some other history was made here in Georgia.

The Augusta National Golf Club announced that former U.S. Secretary of State Condoleezza Rice and South Carolina financier Darla Moore had been invited and had accepted the opportunity to become the first female members of the club, home of the Masters Tournament, in its 80-year history.

As an avid golfer, I can tell you *those* are some footsteps that I would really like to follow. (Hopefully, fellow State Bar member Billy Payne, chairman of Augusta National, is reading!)

> "If you are one of the fortunate ones who have stepped through that door to success that was opened for you by those women before you, reach your hand back through the door to help someone else step through it."

For now, though, on behalf of the women who serve in leadership of our State Bar and the entire legal profession, I would like to thank all those women who went before us so that we can practice law or work in our businesses with freedom and enjoy the independence of being a professional and the sheer joy of being a woman. Our trailblazers cleared the path for us to allow us to have it all, to experience equality in the profession and not to have to apologize for being ourselves, for wanting to have a career and also have a family.

Let me share with you some amazing trailblazer stories:

- Justice Ruth Bader Ginsburg graduated first in her class at Columbia Law School in 1959, but Justice Felix Frankfurter refused to hire her as a clerk because she was a woman. She was a pioneer for gender equality at a time when most people had never even heard of that term. Ginsburg recalls, "My mother told me two things constantly. One was to be a lady, and the other was to be independent." So she started working for the ACLU—the only place where she could get a job in the early 1960s—practicing law and taking cases in which she could advocate for gender equality.
- Justice Sandra Day O'Connor took only two years to complete law school. Along the way, she served on the *Stanford Law Review* and received member-

ship in the Order of the Coif, a legal honor society. O'Connor graduated third out of a class of 102 but faced a difficult job market after leaving Stanford. No law firm in California wanted to hire her, and only one offered her a position as a legal secretary.

- Cobb County Superior Court Judge Adele Grubbs is one of the Georgia legal community's own trailblazers we have to thank. When she was still a practicing attorney, on Wednesday before Thanksgiving many years ago, she was arguing a divorce case before a Cobb County Superior Court judge. It got to be fairly late, near 6 p.m., and Grubbs asked that court to be adjourned for the day. The judge wasn't going for it, until Grubbs said: "Judge, you get to go home and relax and wake up tomorrow and enjoy Thanksgiving dinner with your family. I get to go home tonight and clean house and polish silverware and get up early tomorrow and cook a turkey and an entire Thanksgiving dinner after having been in court all day today." After that, that particular superior court judge simply quit holding court on the day before a holiday to be respectful to women lawyers.
- Chief Justice Carol Hunstein was born into humble circumstances, contracted polio when she was two years old, survived her first bout of bone cancer at age 4 and lost her mother at age 11. Her father discouraged his six children from pursuing an education beyond high school. She married at 17, became a mother at 19, and was abandoned by her husband by age 22. That same year, Hunstein lost a leg to cancer and was told by doctors she had only a year to live. Struggling to find work to support herself and her son, she soon realized the value of an education. Hunstein went to college on a state vocational rehabilitation scholarship and to law school on the Social Security benefits she received after her former husband died. There were times when she could not afford to eat. Remarrying before graduating from law school, she soon had two daughters. Hunstein opened a private law practice in Decatur in 1977 and, spurred on by a county judge who repeatedly called her "little lady" in open court, decided to run for the bench. She defeated four men and in 1984 became the first woman elected to the DeKalb County Superior Court. She has served on the Supreme Court of Georgia since 1992.

There are many other trailblazers in our midst, of course, including Hon. Leah Ward Sears, the first woman, not to mention the first African-American woman, to have served as chief justice of the Supreme Court of Georgia; Hon. Yvette Miller, the first African-American to serve on the Court of Appeals of Georgia and as its chief judge; Hon. Anne Barnes, the first woman to win a contested statewide judicial election without having first been appointed to the bench; and Linda Klein, the first woman president of the State Bar and now a rising leader in the American Bar Association.

These women cleared the path for us, branch by branch, briar by briar, until your way in your profession became a smooth, flat, clear path for you.

There is no question things are different now for women in law, other professions and corporate America than they were for Justice O'Connor or Chief Justice Hunstein, or even for me for that matter, as I recall as a younger lawyer some 18 years ago, juggling a trial right after I had returned from maternity leave while still breastfeeding my son.

Given that during this Olympic year we marked the 40th anniversary of Title IX, I am convinced that Title IX has played a role in the advancement of women in sports but also in the workplace. This year, for the first time ever, the U.S. Olympic team consisted of more women than men. It is no wonder then, that 80 percent of women executives in companies with 100 employees or more played team sports. They say participation in team sports gave them the discipline, the poise and the confidence to succeed in the business world.

Title IX states, "*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.*"

Some have noted the true significance of those 37 words has been the accompanying increase in opportunities for women off the field—a level of female empowerment so strong that Bernice "Bunny" Sandler, who helped draft the legislation and now works as a senior scholar for the Women's Research and Education Institute in Washington, D.C., calls the law "the most important step for gender equality since the 19th Amendment gave (women) the right to vote."

Economists have long observed that participation in sports at a young age correlates to higher wages, greater educational attainment and overall professional success in adult life.

However, I recently saw a new survey from the *National Law Journal* about women partners in large law firms. It's not that encouraging. It showed that today about 18.8 percent of all partners, equity and non-equity, are women. That is up only 2.8 percent over the last 10 years. If we look at just women equity partners, that number has been fixed at 15 percent for the last 20 years. This survey also proved that if a law firm has two tiers of partnership, an equity tier and a non-equity tier, women are more likely to be placed on the non-equity tier than men. The survey showed that women make up 17.6 percent of equity partners with only the one-tier track but throw in a non-equity tier and the women who are equity partners in firms with both tiers comprise only 14.7 percent of equity partners. Some say acceptance of women as equals in the legal profession is a matter of culture. That may be . . . but to me it seems more intentional than that. I believe that women must still make every effort to support and include other women because most men will simply not naturally do it.

Earlier this year a professional organization of which I am a member held a seminar out of state, featuring three days of lectures. Not a single presenter was a woman. When I made note of this to several of my women friends in this organization, many of them thought I was getting my knickers in a twist (as they say in London). But my point is, unless someone calls this behavior out and simply doesn't stand idly by, it will never change. This is why I am proud that the ICLE Board of Trustees has this year adopted a diversity and inclusion policy for all of its seminars. Complacency will lead to the same old thing.

As I told one woman attorney, I am raising the issue now because in 20 years, when my daughter asks me why didn't I do anything about this back in 2012 when I had the chance, I don't want to have to answer her, "I don't know why I didn't do anything." That is not an acceptable response. Women need to support other women. I am reminded of something a friend of mine said who was running a political campaign for a woman who was running for office: "There must be a special place in hell for women who don't support women."

Therefore, I intend to promote diversity and inclusion while I am president of the State Bar. I will make diversity appointments to various committees and will always look to include points of view from all sectors and practices of the Bar. As James Surowiecki wrote in *The Wisdom of Crowds*, "Diversity and independence are important because the best collective decisions are the product of disagreement and contest, not consensus or compromise." And the late Stephen R. Covey, author of *The Seven Habits of Highly Effective People*, said, "Strength lies in differences, not in similarities." Good advice for us to keep in mind.

My professional mentors—Steve Cotter, Larry Jewett, Jimmy Franklin, Jay Cook, Ken Canfield, Nick Moraitakis and others—have all been men. While they had no idea what it is like to try a case while pregnant and having to use the bathroom every 30 minutes without being able to take a break, they were all progressive men and my champions. They realized the need to include women in our endeavors to strengthen our professions.

Your mentors can be women. Or you can be a mentor to another woman. It is extremely important to have mentors to show you the way, cheer for you on the sidelines, gut it out with you in the tough times, support you, encourage you and give you a hand up. You never know who you might influence. A young woman at the University of Georgia said she was definitely going to law school after hearing my speech to the State Court judges in Athens. As a mother of an 18-year-old son and a 15-year-old daughter, I am extremely cognizant of the example I set for them professionally and personally.

## Why is it a good idea to get involved in your profession?

*To enrich your life.* There is no question your life will be better if you really get involved in your world outside of your job and in your professional associations. Throw your energy into something unselfishly that has no logical relation to your practice. Roll up your sleeves and jump in. I have made friendships with many incredible people whose paths I might never have crossed but for working in the Bar. My life is the richer for it. These people have set an incredible example of service and selflessness for me and I am a better person just for having spent time with them. Doing so also makes you more well-rounded and have a balanced life, and that is a desirable thing. The lawyer who is one-dimensional and does nothing other than sleep at night and practice law all day for 12 hours or more a day is a miserable person. There is no balance to her life and trust me, no one wants to be around that woman. They are no fun and simply not pleasant. Ten years from now, they'll regret it.

*To enhance your professional life.* Staying in the same firm or company your entire career is rare these days. The person you meet at the next professional meeting may become your law partner a year from now, or the person who refers the next big case or client to you. The person you work alongside in a committee and become close friends with might in 10 years be on the bench, or State Bar president. My third-year law school mock trial partner is now a judge on the Court of Appeals bench.

*It gives you a greater purpose than just yourself.* A person should not be concerned only with making money. It's too shallow. It's not satisfactory enough. If all we do is work, we become a boring, one-dimensional person. Throw yourself into volunteer work for whatever is your passion. Find your passion. It will be your path to giving back. Luke 12:48 says, "Great gifts mean great responsibilities; greater gifts, greater responsibilities!" (The Message) Or from the King James Version: "For everyone to whom much is given, from him much will be required; and to whom much has been committed, of him they will ask the more."

We have a moral duty to help one another. Amy W. Schulman, executive vice president and general counsel of Pfizer and president and general manager of Pfizer Nutrition, who was recently awarded the Margaret Brent Women of Achievement Award from the ABA, said she was honored to be granted the award and remarked on the shift in how gender issues are discussed. Instead of addressing the essential problems that create inequity, she observed, women are being characterized as "wanting it all" or demanding more than they need.

"It's not that we want too much or blindly think we're entitled to it all," she said, "but as long as that is the lens through which we allow the conversation to be conducted . . . that will be the vehicle for which we will be divided and conquered."

As members of the State Bar, we are all in this together, and as women even more so. We must mentor other women and encourage other women and cheer each other on. By doing this for others, we will lift up ourselves unknowingly in the process. The more you help someone else, the more you help yourself. The less you think of yourself, the smaller your problems become. Remember: A rising tide lifts all boats. If you are one of the fortunate ones who have stepped through that door to success that was opened for you by those women before you, reach your hand back through the door to help someone else step through it. GBJ

**Robin Frazer Clark** is the president of the State Bar of Georgia and can be reached at robinclark@gatriallawyers.net.

by Jon Pannell

# Enrichment Through Serving Others

According to the Young Lawyers Division bylaws, one of our official purposes is "to foster among YLD members the principles of duty and service to the public." For the past 65 years, our members have taken this to heart with such success that the YLD has unofficially become known as the "service arm of the Bar."

Those of you who have been active with the YLD or any of our local affiliates have firsthand knowledge of the service projects that the YLD undertakes each year. On top of our "day jobs," YLD members excel at donating their time, money and sweat toward improving our communities all over the state.

Below is a sample of what the membership of the YLD has accomplished over the last 12 months. The list is far from complete, but shows the different areas where YLD members are making a difference and improving the perception of lawyers throughout Georgia. Many of these initiatives will be repeated over the coming year, so if you are willing to answer the call to "duty and service to the public," please contact any of the committee chairs listed on page 9, or visit the State Bar website for more information on getting involved.

> "Through active participation in the service projects of the YLD or the YLD affiliate in your area, you, too, can benefit from the rewards that go along with serving others."

## YLD Committee Projects

### Business Law

This committee co-hosted a happy hour event which benefited the Atlanta Children's Shelter. Committee members donated supplies to the shelter which provides free, quality day care, emotional support and an education curriculum for homeless children.

### Community Service Projects

This committee organized and carried out a wealth of projects meeting specific needs in the community, including:

- Working with ServiceJuris and Hands on Atlanta to host an annual community service day on which more than 300 members of Atlanta's legal community gathered to make a difference with CHRISkids, which serves abused and neglected youth in the metro area;
- Organizing volunteers for the Special Olympics State Summer Games at Emory University;

- Recruiting volunteers to help the Georgia Center for Child Advocacy staff the concession tents at the PGA Tour Championship at East Lake Golf Club;
- Going with children served by the Department of Family and Children Services on their annual visit to the Georgia Aquarium;
- Supporting the Atlanta Humane Society's Pet Parade fundraising project by hanging out with man's best friend;
- Meeting at Crossroads Ministries in downtown Atlanta to make more than 1,000 sandwiches, which were distributed to the homeless;
- Holding an Easter egg hunt at Nicholas House, which operates a transitional housing shelter and apartment sites for homeless families;
- Sponsoring the annual Business Suits & Cell Phones Drive, donating the clothing to the Atlanta Union Mission to help needy men and women transitioning into the workplace and the phones to the Women's Resource Center to End Domestic Violence, which receives a donation for every cell phone;
- Assisting the Global Soap Project, an organization that recovers and recycles soap from hotels and facilitates a process for sanitizing, melting and remolding the soap into new bars, which are distributed to refugee camps in Africa, by making soap at its Norcross warehouse;
- Collecting toiletries and supplies for the Atlanta Children's Shelter; and
- Partnering with the Georgia Association for Women Lawyers to prepare and package meals for Project Open Hand, which serves low-income families who are dealing with a critical, chronic or terminal disease and home-bound seniors.

## High School Mock Trial

One of the YLD's most successful annual programs, the Georgia Mock Trial Competition helps students gain an understanding of the legal system by providing opportunities for high school teams to participate in academic competitions where players assume attorney and witness roles in a court case. Lawyers are always needed to coach students in developing questioning, critical thinking and oral advocacy skills, as well as serve on judging panels for regionals and the state competition.

## Intellectual Property

This committee organized a project for volunteering at MedShare, a nonprofit whose dual mission is to deliver surplus medical supplies to underserved populations around the world while lessening the impact of medical supplies in U.S. landfills. Volunteers spent one day sorting and packaging surplus medical supplies for distribution.

## Juvenile Law

The committee initiated the first annual toy drive for juvenile court playrooms. They collected new and gently used toys for the purpose of replenishing the playrooms of Georgia's juvenile courts. All donations received by the committee went to the playrooms of juvenile courts in Fulton and DeKalb counties. The committee plans to expand next year by partnering with YLD members who practice in other counties to replenish their playrooms with the goal of having a toy drive for juvenile court playrooms across the state.

## Leadership Academy

The Leadership Academy incorporates a service project and pro bono project into at least one of the program's six sessions. This past year, the program donated various items to Open Door Community House in Columbus. Participants also participated in a pro bono legal clinic at the Macon Mall.

## Minorities in the Profession

Committee members volunteered at Atlanta Children's Shelter and helped with the organization's childhood education program.

# YLD Meeting Projects

The YLD holds many service projects in conjunction with their business meetings throughout the

**2012-13 Business Law**
Co-Chair Jessica Sabbath, *jsabbath@kslaw.com*
Co-Chair Sarah Statz, *sstatz@kslaw.com*

**2012-13 Community Service Projects**
Co-Chair Deepa Subramanian, *deepa.subramanian@ogletreedeakins.com*
Co-Chair Kristi Wilson, *kwilson@co.douglas.ga.us*

**2012-13 High School Mock Trial**
Co-Chair Deshala Bray, *ddixon@houstonda.org*
Co-Chair Kevin Epps, *kee@fbglaw.com*
Co-Chair Lee Ann Feeley, *lfeeley@whitfieldcountyga.com*

**2012-13 Intellectual Property**
Co-Chair Laura Ashby, *lashby@millermartin.com*
Co-Chair Rachel Young, *ryoung@huntermaclean.com*

**2012-13 Juvenile Law**
Co-Chair Crystal Conway, *Crystal.Conway@fultoncountyga.gov*
Co-Chair Stephanie Mason, *smason@law.ga.gov*

**2012-13 Minorities in the Profession**
Co-Chair Shalamar Parham, *sparham@parhamlaw.net*
Co-Chair Yenniffer Delgado, *delgado@hplawgroup.com*

*For a complete list of YLD Committees, contact information and to join, visit www.georgiayld.org.*

year. Last year, attendees of the Executive Committee Retreat and the Summer Meeting donated soccer supplies and books to Coastal Outreach Soccer (COS) Program. COS is a soccer and literacy program located in Brunswick created in 2005 as a way to teach underprivileged and underserved minorities soccer, literacy and social skills, all of which can be used to overcome obstacles.

At the Fall Meeting, attendees made monetary donations and brought supplies for Nuci's Space. Nuci's Space is a nonprofit health and music resource center in Athens whose aim is to prevent suicide by providing obstacle-free treatment for musicians suffering from depression and other such disorders, as well as to assist in the emotional, physical and professional well-being of musicians.

At the YLD's recent Executive Committee Retreat, attendees brought nonperishable food items and made monetary donations to the local Greene County Food Pantry. Started in 2007, this nonprofit is locally funded by the Lake Oconee community and serves approximately 350 families per month.

## YLD Affiliates

### Albany YLD

**2012-13 President Amy Purvis**

Albany YLD members collected supplies for the Dougherty Circuit Bar Association's "Boo from the Bar," through which local attorneys reverse trick-or-treat with residents of a local nursing home. YLD members donated books, crossword puzzles, toiletries, notebooks and plenty of candy for the residents. Albany YLD members also provided pro bono services at the local bar's "Ask a Lawyer Day," an annual event that allows attorneys to meet with pro bono clients, sponsored by the State Bar General Practice and Trial Law Section. Contact the Albany YLD at amy.purvis@gwsh-law.com.

### Young Lawyers of Augusta (YLA)

**2012-13 President Adam Hatcher**

Members of the YLA participated in the Augusta Bar Association's annual Law Day "Ask-a-Lawyer" advice clinic. Thirteen attorneys volunteered their time on a Saturday morning to provide free legal advice to the community on a variety of issues. Augusta's young lawyers also provided service to Safe Homes, a domestic violence intervention program, by hosting an outing for children from the Safe Homes shelter, raising funds to benefit the program, doing yard work and creating emergency kits for victims of domestic violence. Contact the Young Lawyers of Augusta at yla.augusta@yahoo.com.

### Macon YLD

**2012-13 President David McCain**

The Macon YLD holds an annual Christmas gift drive for the local Department of Family and Children Services' foster children. Members of the Macon YLD, along with members of the Macon Bar Association, sponsored Christmas wish lists for 45 local foster children. Participants received and purchased items on a wish list for a local foster child. Contact the Macon YLD at yldpresident@maconbar.org.

### Savannah YLD

**2012-13 President Quentin Marlin**

The Savannah YLD holds several service projects throughout the year with their biggest being the Charity Golf Tournament to benefit Chatham County's Guardian Ad Litem Program. This program provides legal services to children and adults who need counsel in legal proceedings. On Aug. 21, members of the Savannah YLD Executive Board presented the Savannah Guardian Ad Litem Program with a check for $5,300 from the 2012 tournament. For more information about upcoming events and how to become involved with the Savannah YLD, please email Amanda Love at alove@thebowmanlawoffice.com.

## Georgia Legal Food Frenzy

Last May, the YLD partnered with Attorney General Sam Olens and the Georgia Food Bank Association to organize a statewide food drive. The goal of the Georgia Legal Food Frenzy was to sign up as many law firms and legal organizations as possible to commit to compete in a food drive in an effort to gather food and raise money for the seven regional Feeding America food banks in Georgia. The initiative was a tremendous success. More than 220 firms, legal departments, law schools and governmental agencies throughout the state participated and collected more than 612,497 pounds of food for families and organizations served by Georgia's seven regional food banks. To find out more, visit www.galegalfoodfrenzy.org.

## Final Thought

Ralph Waldo Emerson is attributed with the quote, "It is one of the most beautiful compensations of life that no man can sincerely try to help another without helping himself." Through active participation in the service projects of the YLD or the YLD affiliate in your area, you, too, can benefit from the rewards that go along with serving others. GBJ

**Jon Pannell** is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at jonpannell@gpwlawfirm.com.

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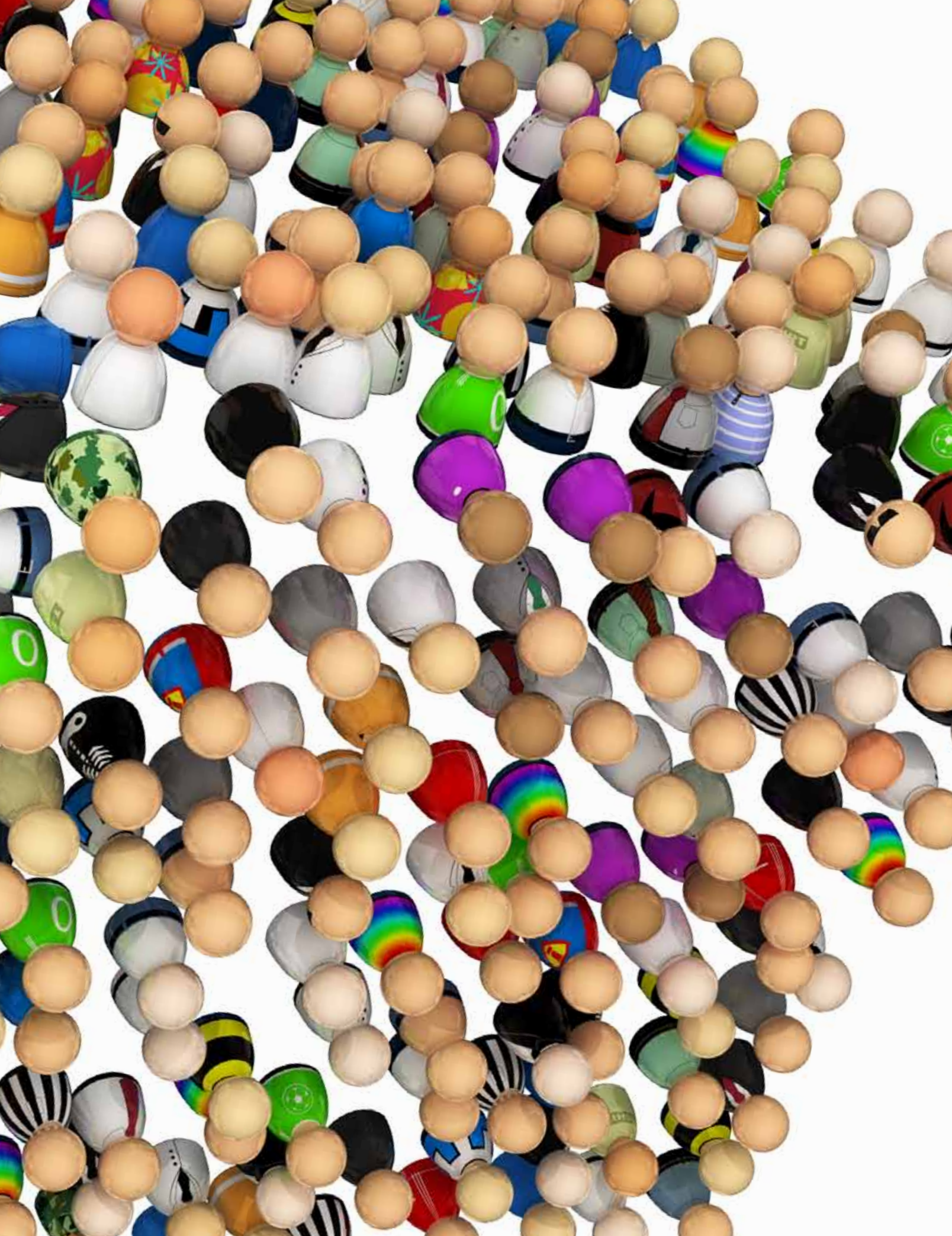

# Jury Composition Reform:

## Ensuring the Right to a Jury of One's Peers in Georgia

by Catherine Fitch Lotti

The look of Georgia's juries is becoming noticeably more diverse, especially in counties that experienced significant demographic changes during the past decade. The jury venires, from which potential jurors are chosen, are now more representative and inclusive of county populations than ever before, as a result of the Jury Composition Reform Act of 2011 (the Act).[1]

The Act established a new method of creating county jury pools, with the Council of Superior Court Clerks of Georgia charged with creating and maintaining a statewide master source list of potential jurors.[2] Each year, the state source list must be divided into 159 county master jury lists,[3] from which county clerks will randomly select individuals to comprise their jury venire.[4] This new process ends the "forced balancing" of juries in Georgia, and captures more of the jury eligible population than methods previously used by counties in producing their jury lists.

Effective July 1, 2012, the Act is the product of a seven-year effort by the Supreme Court of Georgia's Jury Composition Committee to assess how the state could develop an inclusive, statewide source for potential jurors and end the forced balancing of jury lists, according to committee member and Cherokee County Clerk of Court Patty Baker.[5] Forced balancing is the practice of adjusting a county jury pool's percentage of men and women, as well as black and white individuals, to be within 5 percent of the group's percentage in the county population as reported by the last decennial U.S. census.[6] Georgia courts have viewed the U.S. census as a comprehensive and objective source for determining the percentage of distinct groups in county populations.[7] However, balancing jury pools based on the latest census data, which can be up to a decade old, attracted increasing scrutiny during the past two decades. During that time, it became apparent some counties' racial and ethnic demographics were changing so rapidly that forced balancing based on the U.S. census was no longer producing jury pools representative of the local population.[8]

### Growing Concerns About Forced Balancing

"Forced balancing was started in the late 1960s to ensure the adequate representation of women

The Jury Composition Reform Act requires the Council of Superior Court Clerks of Georgia (the Council) to establish and maintain a statewide master jury list that identifies every individual who is prima facie qualified to serve as a juror.[26]

and African-Americans on juries, but it hasn't kept up with the demographic changes in many of Georgia's counties during the past 20 years,"[9] said Rep. Alex Atwood (R–Brunswick), who sponsored the Act at the request of House Judiciary Committee Chairman Wendell Willard (R-Sandy Springs).[10]

As the last state to force balance its jury venires, Georgia needed to modernize its system of jury administration to renew the public's confidence in the jury system, said Atwood. "Forced balancing often failed to produce jury venires that accurately reflected the percentages of distinct groups in county populations. This made the venires vulnerable to statutory and constitutional challenges."[11]

Georgia law mandates that jury commissioners "select a fairly representative cross section" of county residents for jury lists,[12] and the Sixth Amendment's guarantee of an impartial jury requires "a fair cross section of the community" be included in the jury pool.[13] A county's failure to provide juries that are representative of the local population can give rise to both equal protection and fair cross-section challenges to the grand jury or trial jury lists.[14]

To succeed, these challenges must establish an unreasonable underrepresentation from the jury venire of a cognizable group in the county population due to systematic exclusion in the jury selection process.[15] A cognizable group is any distinct group of individuals who share unique attitudes and beliefs, or "who have traditionally been the object of discrimination."[16] An absolute disparity between a group's percentage in the county population and its percentage in the jury pool of more than 10 percent is usually held unconstitutional, while a disparity between 5 and 10 percent is constitutional in most circumstances.[17]

In late 2010, the potential for challenges to Gwinnett County's jury venire troubled the county's three superior court judges who were presiding over death penalty cases at that time. According to former Gwinnett County Superior Court Judge Billy Ray (who now serves on the Court of Appeals of Georgia), pre-trial motions challenging the makeup of the county jury pool led the judges to stay those cases, until the clerk could redraw the jury lists using certified data from the 2010 census.[18] Although those new lists did not become available until November 2011, the new census numbers proved that proceeding under the old jury lists could have led to a retrial. The percentage of Gwinnett County's population that is African-American increased from 13 percent to 23.6 percent between 2000 and 2010, and the percentage of Hispanic residents increased from 11 percent to 20 percent in that same time period.[19]

"Death penalty cases are the most likely to get federal court scrutiny and no judge wants to try a death penalty case more than once," explained Ray, who testified on behalf of the Council of Superior Court Judges before the House Judiciary Committee. Ray added that people need to believe the jury selection process is fair, or they will never accept the result of a trial.

In April, 2011, Rockdale County District Attorney Richard R. Read wrote to Superior Court Chief Judge Sidney Nation to address the "significant disparities" existing in the grand and trial jury pools regarding race, and possibly regarding ethnicity, which were revealed by the release of preliminary 2010 U.S. Census data.[20] Read concluded "the current grand and traverse jury pools do not represent a fair cross section of the Rockdale community as required by O.C.G.A. Section 15-12-40 and the 14th and Sixth Amendments to the United States Constitution."[21] The letter requested that Nation confer with the County Clerk of Court and convene county jury commissioners to address the disparities "with all due deliberation and speed."[22]

In response, Nation issued an order acknowledging that preliminary 2010 U.S. census data showed the percentage of Rockdale County's adult African-American population had increased by 26.8 percent in the past decade.[23] This meant the county's grand and trial jury lists underrepresented blacks by about 26 percent, making the lists "ripe . . . for equal protection and fair cross section constitutional challenges."[24] In order to meet statutory and constitutional requirements, and maintain the public's confidence in jury selection, Nation ordered "the jury commission compile a completely new jury list for both traverse and grand jurors."[25]

## The New Law: Maximizing Inclusiveness and Efficiency

The Jury Composition Reform Act requires the Council of Superior Court Clerks of Georgia (the Council) to establish and maintain a statewide master jury list that identifies every individual who is prima facie qualified to serve as

a juror.[26] Every year, the Council will distribute a county master list to each county's board of jury commissioners.[27] The county's superior court clerk, or jury clerk,[28] will then compile the jury venire by choosing random individuals from the county's master list.[29] The venire is the group of individuals summoned to serve as jurors for a particular term of court, from which jury arrays are chosen.[30]

To assist the Council with its new duties, the Act gives it the authority to request from the Department of Driver Services (DDS) the lists of individuals holding a valid or expired driver's license, or a state-issued personal identification card.[31] These lists will provide the name, address, date of birth and gender of such individuals, as well as any racial and ethnic information collected by DDS.[32]

The new law also gives the Council authority to request voter registration records, for both active and inactive voters, from the Georgia Secretary of State.[33] These lists include the date of birth, gender, race, social security number, driver's license number and, when available, the ethnicity of each voter.[34] The Secretary of State must also provide the Council with the names of felons whose civil rights have not been restored and individuals who have been declared mentally incompetent.[35]

## The Jury Composition Rule

The merging of the source lists into the state and county master jury lists is governed by the Jury Composition Rule, promulgated by the Supreme Court of Georgia in 2011.[36] The rule in part tracks the framework of the American Bar Associations' Principles for Juries and Jury Trials for ensuring that county jury pools are representative and inclusive.[37] Representativeness considers whether the source lists and resulting jury venire represent the county population "to the extent the percentages of cognizable group members on the source list and in the assembled jury pool are reasonably proportionate to the corresponding percentages in the population."[38] Inclusiveness refers to the percentage of the eligible population "actually included in the primary juror source list."[39] Since the mid-1980s, the National Center for State Courts has promulgated an 85 percent inclusiveness standard for jury pools.[40]

The Jury Composition Rule requires the Council, or its list vendor,[41] to use voter registration and DDS lists as the primary records sources for creating the statewide master jury list.[42] Ineligible individuals must then be removed by using death certification data from the Department of Public Health, names of felons provided by the Secretary of State and lists of individuals who have been permanently excused from jury service.[43] Next, a name and address standardization procedure must be completed, after which the National-Change-of-Address database will be used to remove the names of people who have moved out of Georgia. The addresses of individuals who have moved intracounty and between counties will also be updated.[44] These scrubbed DDS and voter registration records will then be combined, and duplicates eliminated, to produce the final statewide master jury list.[45]

The Jury Composition Rule mandates that the Council or its vendor certify to the Supreme Court of Georgia that it complied with the business rules governing preparation of the statewide master jury list.[46] The rule further requires the Council, or its vendor, to certify that each county master jury list is at least 85 percent inclusive of the number of adults in the county, according to the most recent decennial census, or a county population estimate from the Census Bureau for the calendar year during which the list is generated.[47] This inclusiveness calculation is made by dividing the number of people on a county's jury list by the county's adult population.[48] If the inclusiveness threshold is not met, the Council must provide the census data and the information from the primary records sources to the chief judge, who will make a prima facie determination about the representativeness and constitutionality of the county's jury list.[49]

To pay for the creation of the lists, the Act allows the Council to annually assess each county a fee not to exceed three cents per name on its master jury list.[50] Payment of the fee must be made within 30 days of delivery, upon which the Council will certify the county's master jury list.[51] The lists must contain at least the first, middle and last names of potential jurors; their birth dates; and their residence and mailing addresses, including county and zip code.

Superior Court clerks still have a role to play in the maintenance of their county lists, though they are not authorized to add or delete names from a county's master list.[52] Judges will continue to excuse and defer potential jurors, and inactivate jurors who become ineligible or incompetent to serve.[53] The clerks must maintain electronic lists of these individuals, to be provided to the Council upon request.[54]

## Flaws in the Previous Methods of Jury Pool Creation

Before July 1, 2012, state law mandated that county boards of jury commissioners create and revise their trial and grand jury lists every two years.[55] In doing so, the boards were required to use two primary source lists: the county voter registration list, and the list of county residents having a driver's license or personal identification card.[56] If the random selection of names from these primary source lists failed to produce a master jury source list that included a fairly representative cross section of the community, other lists of county residents had to be used until a balanced jury box was achieved.[57]

Any list of county residents deemed appropriate by a board of jury commissioners could be used to supplement the primary source lists.[58] Commonly used lists included property tax rolls and utility records.[59] Even the local telephone book or a jury commissioner's personal knowledge of eligible individuals was acceptable in identifying members of cognizable groups that were underrepresented.[60] The data on these secondary source lists, and even on the driver's license lists, was often insufficient or out-of-date, which created a heavy administrative burden of unanswered summonses, according to Baker.[61]

"Some clerks had to summon twice as many people as they needed for jury service in order to ensure enough eligible jurors showed up," said Baker.[62] "I used the driver's license lists because it was mandated by law, but it was inefficient because people only renew their license every several years."[63]

Like many county clerks, Baker mailed out questionnaires designed to identify county residents who were eligible for jury service. "A mailing of 200 questionnaires to names taken from the driver's license list only results in about 35 to 60 returned questionnaires, some from people who are ineligible to serve," she said.[64] "It's really not enough to be useful, which is why the vast majority of names used by most clerks came from the voter registration rolls."[65]

Baker welcomes the new county jury lists, and believes the increased accuracy of names and addresses will decrease postage costs enough to offset the three cents per name fee.[66] Additionally, if the lists prove to be more accurate than current county lists, fewer people will be summoned for jury service in the future. Most significant to Baker, there should be a reduced need to have the sheriff's office search for individuals who do not return a mailed summons.[67]

"Ideally, the sheriff will only be sent out if someone is avoiding jury service, for which they can be fined $500," Baker said.[68]

## The End of Forced Balancing

The process of forced balancing, also called balancing the jury box, looks at absolute disparity to determine whether the grand jury and trial jury source lists adversely underrepresent whites, blacks, men or women.[69] Absolute disparity is calculated by subtracting the percentage of the cognizable group in the jury venire from the group's percentage in the county's population.[70] The difference shows the group's degree of underrepresentation in the county's jury venire. Georgia's courts use absolute disparity to decide whether the grand jury and trial jury lists represent a fair cross section of the community.[71]

In Georgia, the Unified Appeal provides the rules for criminal cases in which the state seeks the death penalty.[72] Under forced balancing, Rule II (C)(6) required the trial judge to certify that the percentage of whites, blacks, males and females, on the grand jury and trial jury lists, were within 5 percent of the group's percentage in the county population, according to the most recent U.S. census.[73] This rule was intended to ensure that the absolute disparity of cognizable groups was less than 10 percent, which is prima facie constitutional.[74] Rule II (E) provided grand and trial jury certificates that had to be included in the trial judge's report.[75] These certificates required calculations showing each cognizable group of "Males," "Females," "African-Americans" and "Whites" were adequately represented on the jury lists.[76] These were the only groups listed on the certificates, though there were blank spaces that allowed a trial judge to include additional cognizable groups.[77]

Jury commissioners were required to balance the jury box when there was more than a 5 percent disparity between a group's percentage on the jury list and its percentage of the county's adult population.[78] Balancing was achieved by removing individuals in an over-represented group from the jury venire. If the disparities were less than 5 percent, the trial judge certified that "identified cognizable groups are adequately represented" on the jury lists.[79]

With the enactment of the Jury Composition Reform Act, the Unified Appeal no longer requires the certificates in Rule II (E) to be completed. Rule II (C)(6) now states:

> Whether or not a challenge is presented, the court shall nonetheless review the certificate provided with the county master jury list to determine that the inclusiveness percentage meets the threshold requirement established by the Jury Composition


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Rule. If the inclusiveness threshold is met in the certificate, that shall establish a prima facie case that the county master jury list represents a fair cross-section of the community. This rule shall not be construed to deprive the defendant of any rights under the constitutions of the United States and the State of Georgia or O.C.G.A. § 15-12-40. The court's findings shall be included in the trial judge's report in the form specified by Rule II (C).[80]

The former Rule II (C)(6) certification requirement was the reason clerks balanced the jury box. To date, the Supreme Court of Georgia has held that forced balancing is constitutional.[81] However, the Sixth Circuit ruled in *United States v. Ovalle*, that balancing the jury box is unconstitutional, both because it was not the most narrowly tailored means to achieve a representative jury and because there was no forced balancing of cognizable groups other than whites and blacks.[82]

"The Jury Composition Reform Act avoids these problems by eliminating forced balancing and, instead, compiling a list of potential jurors that, as closely as possible, includes the entire jury eligible population," said Jack Martin, who testified in legislative hearings on behalf of the Georgia Association of Criminal Defense Lawyers.[83] "When you select juries randomly from such an inclusive list, you should mathematically obtain a representative sample of the community without resorting to race-based balancing."[84]

Martin testified in legislative hearings that in counties where the African-American population had increased significantly in recent years, forced balancing had resulted in removing too many blacks from the jury pool and was "simply unconstitutional."[85]

"For example, in Clayton County, the black population rose from 52 percent in 2000 to 66 percent in 2010," Martin said. "Forced balancing based upon the 2000 census required the percentage of blacks in the jury pool to be between 47 and 57 percent throughout the decade. This created the likelihood for the underrepresentation of blacks due to systematic exclusion in the jury selection process."[86]

Martin added the defense bar welcomes the increased use of driver's license records for identifying potential jurors because certain minority groups and young people do not register to vote at the same rate as white citizens, especially older white citizens.[87]

## Conclusion

The implementation of the Jury Composition Reform Act of 2011 will protect the integrity of the judicial system by extending jury service to many more eligible citizens and ending the forced balancing of jury pools. The Council of Superior Court Clerks will now compile and maintain an inclusive, statewide master list of prima facie eligible jurors, from which 159 county master lists will be created each year. The random selection of names from these lists by county clerks will produce venires that dynamically reflect local ethnic, gender and age demographics by capturing all cognizable groups in a county's population. GBJ

**Catherine Fitch Lotti** served as legal counsel to the Georgia General Assembly's House Judiciary Committee during the 2011 and 2012 legislative sessions.

## Endnotes

1. 2011 Ga. Laws 50.
2. O.C.G.A. § 15-12-120.1 (2011).
3. One list for each of the 159 counties in Georgia.
4. *Id.*
5. Interview with Patty Baker, Clerk of Court, Cherokee County, Georgia (Nov. 7, 2011).
6. Judicial Council of Georgia, Administrative Office of the Courts, *Georgia Jury Commissioner's Handbook*, 14 (Dec. 2005), *available at* http://www.georgiacourts.org/aoc/publications/JCH.pdf (last visited Sep. 14, 2012); Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(E); Al-Amin v. State, 278 Ga. 74, 597 S.E.2d 339 (2004).
7. Al-Amin, 278 Ga. at 78, 597 S.E.2d at 341.
8. *See* Georgia Administrative Office of the Courts, *Report to the Georgia Jury Composition Committee*, 11 (Dec. 2005), available at http://ars-corp.com/_view/PDF_Files/ReporttotheGeorgiaJuryCompositionCommittee2010.pdf (last visited Sept. 14, 2012) (discussing Smith v. State, 275 Ga. 715, 571 S.E.2d 740 (2002), in which the Supreme Court of Georgia ruled Hall County's jury pool did not underrepresent jury-eligible Hispanics, despite "statistical disparity between the percentage of Hispanics on the jury list and the percentage in the general population.").
9. Interview with Alex Atwood, Georgia State House Representative, Brunswick (Feb. 4, 2012).
10. State Sen. Bill Cowsert (R-Athens) sponsored companion legislation in the Senate, to increase the Act's chance of passing.
11. Interview with Alex Atwood (Feb. 4, 2012).
12. O.C.G.A. § 15-12-40(a) (2006).
13. Taylor v. Louisiana, 419 U.S. 522, 528-30 (1975) (reviewing Supreme Court precedent finding selection of trial jury "from a representative cross-section of the community is an essential component of the Sixth Amendment right to a jury trial").
14. Duren v. Missouri, 439 U.S. 357, 364 (1979); Taylor, 419 U.S. 522 (1975). The elements of a prima facie violation of the fair cross section requirement are: 1) the group being excluded is a distinctive group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to systematic exclusion of the group in the jury selection process. To show an equal protection violation, a defendant must establish: 1) the grand jury list excluded a recognized, distinct class; 2) the group was substantially

underrepresented in the grand jury venire over a significant period of time, and 3) the selection procedure was not racially neutral or was susceptible to abuse, thus supporting a presumption of discrimination raised by the statistics. Al-Amin v. State, 278 Ga. 74, 77-78, 597 S.E.2d 339, 341 (2004); Bryant v. Wainwright, 686 F.2d 1373, 1375-76 (11th Cir. 1982), *cert. denied*, 461 U.S. 932 (1983).

15. Al-Amin, 278 Ga. at 78.
16. Smith v. State, 275 Ga. 715, 716, 571 S.E.2d 740 (2002); Judicial Council of Georgia, Administrative Office of the Courts, *Georgia Jury Commissioner's Handbook*, 5 (Dec. 2005), *available at* http://www.georgiacourts.org/aoc/publications/JCH.pdf (last visited Sep. 14, 2012).
17. Smith, 275 Ga. at 720, 571 S.E.2d at 745; Morrow v. State, 272 Ga. 691, 692, 532 S.E.2d 78, 83 (2000); United States v. Rodriguez, 776 F.2d 1509, 1511 (11th Cir. 1985).
18. Interview with Judge Billy Ray, Court of Appeals of Georgia (Sept. 13, 2011).
19. United States Census Bureau, *State & County QuickFacts, Gwinnett County, Georgia* (2011), *available at* http://quickfacts.census.gov/qfd/states/13/13135.html (last visited Sep. 14, 2012); United States Census Bureau, *Profile of General Demographic Characteristics: 2000, Geographic Area: Gwinnett County, Georgia*, http://censtats.census.gov/data/GA/05013135.pdf (last visited Sep. 14, 2012).
20. Letter from Rockdale County District Attorney Richard R. Read to Superior Court Judge Sidney Nation Sr. (April 13, 2011).
21. *Id.*
22. *Id.*
23. Order, Superior Court of Rockdale County, In Re: Rockdale County Board of Jury Commissioners and the 2010 Decennial Census (April 19, 2011).
24. *Id.*
25. *Id.*
26. O.C.G.A. § 15-12-40.1(a) (2011).
27. O.C.G.A. § 15-12-40.1(d) (2011).
28. Counties with jury clerks are permitted to keep them, but no additional counties may hire jury clerks. For purposes of this article, "clerk" will include superior court clerks and jury clerks.
29. O.C.G.A. § 15-12-40.1(e) (2011).
30. O.C.G.A. § 15-12-1(11) (2011).
31. O.C.G.A. § 15-12-40.1(b) (2011).
32. O.C.G.A. § 15-12-40.1(b) (2011).
33. O.C.G.A. § 15-12-40.1(c) (2011).
34. O.C.G.A. § 15-12-40.1(c) (2011).
35. O.C.G.A. § 15-12-40.1(c)(1) (2011).
36. Ga. Jury Composition Rule (2012).
37. American Bar Association, *Principles for Juries and Jury Trials*, 11 (2005), *available at* www.abanet.org/juryprojectstandards/principles.pdf (last visited Sep. 14, 2012).
38. *Id.*
39. Georgia Administrative Office of the Courts, *Report to the Georgia Jury Composition Committee*, 4 (Dec. 2005), *available at* http://ars-corp.com/_view/PDF_Files/ReporttotheGeorgiaJuryCompositionCommittee2010.pdf (last visited Sep. 14, 2012).
40. National Center for State Courts, Trial Court Performance Standard Measure 3.2.3: Representativeness of Final Juror Pool (last modified January 2005).
41. The Council hired a private vendor, ACS, Inc., a subsidiary of Xerox Corporation, to create the first statewide master jury list.
42. Supreme Court of Georgia, *Jury Composition Rule, Appendix A: Inclusive Source List: Process and Business Rules* (2011), effective July 1, 2012.
43. *Id.*
44. *Id.* The Jury Composition Rule allows a National-Change-of-Address vendor to perform the name and address standardization procedure.
45. O.C.G.A. § 15-12-40.1 (2011).
46. Ga. Jury Composition Rule, ¶ 4 (2012).
47. *Id.* at ¶ 3.
48. *Id.*
49. *Id.*
50. O.C.G.A. § 15-12-40.1(d) (2011).
51. O.C.G.A. § 15-12-1(11) (2011).
52. Ga. Jury Composition Rule, ¶ 6.
53. *Id.*
54. *Id.*
55. O.C.G.A. § 15-12-40(a)(1) (2006), repealed effective July 1, 2012.
56. O.C.G.A. § 15-12-40(a)(1)(A), (B) (2006).
57. Judicial Council of Georgia, Administrative Office of the Courts, *Georgia Jury Commissioner's Handbook*, 5 (Dec. 2005), *available at* http://www.georgiacourts.org/aoc/publications/JCH.pdf (last visited Sep. 14, 2012).
58. *Id.* at 5, 7.
59. *Id.*
60. *Id.* at 7.
61. Interview with Patty Baker, Clerk of Court, Cherokee County, Georgia (Nov. 7, 2011).
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(E).
70. Al-Amin v. State, 278 Ga. 74, 79, 597 S.E.2d 339, 342 (2004); Ga. Jury Composition Rule, ¶ 3 (2012).
71. Al-Amin, 278 Ga. at 79, 597 S.E.2d at 342; Cook v. State, 255 Ga. 565, 571, 340 S.E.2d 843, 850 (1986).
72. Unif. Sup. Ct. R. 34, Unified Appeal.
73. Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(C)(6).
74. *See* Parks v. State, 254 Ga. 403, 409 n.4, 330 S.E.2d 686, 692 (1985); United States v. Rodriguez, 776 F.2d 1509, 1511 n.4, (11th Cir. 1985); Machetti v. Linahan, 679 F.2d 236, 239 (11th Cir. 1982).
75. Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(E).
76. *Id.*
77. *Id.*
78. Judicial Council of Georgia, Administrative Office of the Courts, *Georgia Jury Commissioner's Handbook*, 14 (Dec. 2005), *available at* http://www.georgiacourts.org/aoc/publications/JCH.pdf (last visited Sep. 14, 2012).
79. Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(E).
80. Unif. Sup. Ct. R. 34, Unified Appeal Proc. R. II(C)(6).
81. Al-Amin v. State, 278 Ga. 74, 77, 597 S.E.2d 339, 341 (2004) (finding Court has consistently held that the use of forced racial balancing is not violative of a defendant's statutory rights).
82. United States v. Ovalle, 136 F.3d 1092, 1107 (6th Cir.1998).
83. *Hearing on H.B. 415 Before the Georgia H. Comm. on the Judiciary*, 2011-2012 Reg. Session, 151st General Assembly (March 8, 2011).
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*

# Settlement Agreement Basics

by John K. Larkins Jr.

Measured by the number of appellate decisions, it seems that disputes concerning settlement agreements are the most common type of contract litigation. Many of those disputes deal with basic issues of contract formation.[1] Fundamentally, a settlement agreement "must meet the same requisites of formation and enforceability as any other contract,"[2] i.e., "parties able to contract," consideration, assent and certainty as to subject matter.[3] This article discusses the somewhat particularized body of Georgia case law that has developed relating to core issues of settlement agreement formation and enforcement.


## When Can a Lawyer Contract on Behalf of the Client?

Parties able to contract are a basic requirement for any contract. Many settlement agreements, of course,

result from communications entirely between counsel for the parties to the dispute. A common issue, therefore, is whether a party's attorney had authority to enter into an agreement on behalf of the client.

In *Brumbelow v. Northern Propane Gas Co.*,[4] the Supreme Court of Georgia considered whether a settlement agreement was enforceable where an attorney for a party accepted an offer, but the client did not. The Court in *Brumbelow* found that the agreement was enforceable, holding that an attorney of record *ipso facto* has apparent authority to enter into an agreement on behalf of the client.[5] Although the attorney's *actual* authority may be limited by the terms of the attorney-client contract, or by instructions from the client, the authority will be considered plenary unless the limitation is communicated to the opposing party.[6] In the absence of such communication, "the opposing party may deal with the attorney as if with the client," and the client is bound by the acts of the attorney within the scope of the apparent authority.[7] If the attorney oversteps his or her actual authority, the client's remedy is against the attorney.[8]

Under *Brumbelow,* a settlement agreement by an attorney with apparent authority is enforceable even if the client does not sign or otherwise expressly consent to it.[9] The client's denial that an agreement was reached is simply "immaterial where it is undisputed that the attorney for the party denying the agreement communicated acceptance of the settlement offer."[10] Where there is no attorney-client relationship, however, the attorney has no authority of any kind.[11] But if the lawyer is discharged, a party is entitled to rely on the attorney's apparent authority until notice of the discharge is given.[12]

The holding in *Brumbelow* is consistent with O.C.G.A. § 15-19-5, which provides that "[a]ttorneys have authority to bind their clients in any action or proceeding by any agreement in relation to the cause,"[13] and Rule 4.12 of the

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Uniform Superior and State Court Rules, which states "[a]ttorneys of record have apparent authority to enter into agreements on behalf of their clients in civil actions."[14]

A recent case, *Omni Builders Risk, Inc. v. Bennett,*[15] presented an interesting twist on the apparent authority issue. In that case, a purported settlement agreement was claimed to have been reached at a mediation. The settlement agreement was executed by counsel for both parties, but the agreement also contained a signature line for Omni's principal, Dillard. Dillard refused to sign. The Court held that, in light of Dillard's attendance at the mediation, his signature on the agreement to mediate, and the signature line for him on the settlement proposal, "there was nothing in these circumstances indicating that Dillard's attorney had apparent authority to act for Dillard."[16] Thus, it appears that the *Brumbelow* rule does not prevent a party from contesting a settlement agreement by proving "circumstances" showing that the other party should have understood that the attorney's authority was limited.

The *Brumbelow* rule concerns the authority of an attorney to settle a case on behalf of the client; the rule does not control the issue of whether an agreement was in fact formed—an issue that turns on other factors, such as offer and acceptance, certainty and consideration.[17] Thus, for example, if an attorney with plenary authority conditions acceptance on confirmation that the client has no comments, an agreement is not formed.[18]

## When is a Settlement Offer Accepted?

Because a settlement agreement is a contract, the typical principles of offer and acceptance apply, including the rule "that an agreement between two parties will occur only when the minds of the parties meet at the same time, upon the same subject matter, and in the same sense."[19] Where an offer is made, a valid acceptance must be unconditional, unequivocal and identical with the terms of the offer, without variance of any sort.[20] This is the traditional "mirror image" rule, under which a purported acceptance that seeks to impose conditions will be construed as a counteroffer.[21] Material alteration of a settlement document before signing will create a counteroffer.[22]

As in other types of agreements, an offer to settle may be accepted by conduct.[23] A party's "subsequent conduct" is not competent to show the *absence* of an agreement, however.[24] Similarly, where a settlement agreement has been reached, subsequent negotiations regarding other terms will not vitiate the agreement.[25]

If there is any *essential* part of the contract on which there was no meeting of the minds, then there is no valid contract.[26] The key term is "essential." Because the core intent of a settlement agreement is the compromise of a dispute, and compromises are viewed with favor, it is not uncommon for a court to find a proposed term to be immaterial and thus insufficient to defeat acceptance of the agreement's essential terms.[27] In short, an immaterial variation between the offer and the response to the offer will not prevent acceptance.[28]

It appears that if a proposed additional term is a *condition* to an agreement, then no acceptance will occur. If, however, the additional term is merely *precatory,* i.e., words of "entreaty, recommendation, or expectation," such as a suggestion as to the form to terminate the controversy, then it will not prevent acceptance.[29]

## When is a Settlement Sufficiently Certain?

For a valid agreement to exist, "the parties must have a distinct intention common to both and without doubt or difference"—a "meeting of the minds."[30] The terms of the agreement cannot be incomplete, vague, uncertain or indefinite, although any uncertainty and indefiniteness must be "extreme" to destroy the agreement.[31]

Nevertheless, it is not necessary that the contract "state specifically all facts in detail to which the parties may be agreeing" if the contract contains enough information to allow a court, using rules of construction, to determine the parties' intent as to terms and conditions.[32] Terms may be implied. For example, because "settlement" is construed to be a final disposition of any claim arising out of the subject incident, a dismissal of an action with prejudice is implied.[33] Similarly, an "offer to settle" implicitly promises "to execute some instrument terminating the controversy" between the parties.[34]

## What Consideration is Sufficient?

Valid and sufficient consideration is one of the requisites of a contract.[35] Consideration for a settlement agreement typically is described as "forbearance to prosecute a legal claim,"[36] or "compromise of a doubtful right," [37] either of which is sufficient. Moreover, "it is not essential that the matter should really be in doubt. . . . [i]t is sufficient if the parties consider it so far doubtful as to make it the subject of compromise."[38] Thus, it is immaterial whether the parties afterwards discover that one of the contentions is without foundation in the law.[39]

Under the "pre-existing duty rule," a settlement agreement that merely contains a promise to pay what a party indisputably already owes lacks consideration.[40] Where there is a danger posed by this rule, a careful practitioner will assure that there is some sort of "new consideration" for the agreement (such as money).[41]

Because settlement of family controversies is highly favored, the termination of the controversy "affords a consideration which is sufficient to support a contract made for such purpose,"[42] although

it is also required that the settlement be fair and honest.[43] When such an agreement is established, it will be enforced without an inquiry into the adequacy of the consideration.[44]

Settlement agreements frequently consist of multiple promises supported by separate consideration, so typically the failure of one promise for illegality is not fatal to the entire agreement.[45] Also, it is possible to settle one claim without relinquishing another, provided the agreement contains clear and specific language to this effect.[46] The prohibition against claim-splitting, i.e., dividing a single claim into two or more claims, does not apply to a partial settlement.[47]

## Does a Settlement Agreement Need to be in Writing?

A valid settlement agreement may be oral, provided its existence is established without dispute.[48] Further, "[a]n oral settlement agreement must be definite, certain, and unambiguous," and, to be binding, "it should be clear that it is full and complete, covers all issues, and is understood by all litigants concerned."[49] The fact that the parties to an oral settlement agreement intend or desire the execution of a formal written settlement agreement has no effect on the validity of the oral agreement.[50] It is possible, however, to have an agreement conditioned on it being reduced to writing.[51]

When the parties have reached an agreement, the drafting of documents necessary to effectuate the settlement may be "a condition of the performance of the agreement," but not an act necessary to acceptance.[52] In other words, *how* a settlement is accomplished may be distinct from whether the settlement agreement is made in the first place.[53]

Under *Brumbelow*, if there is a dispute as to the existence or terms of the settlement agreement, the agreement must be in writing, and "[t]his requirement of a writing goes to the certainty that an agreement exists and to the certainty of the terms of the agreement, not to the consent of the client to the agreement."[54] It will be noted that this rule applies where the parties agree that a settlement was reached but disagree as to its terms.[55] By the same token, where there is no dispute as to the existence or terms of the settlement agreement—even if there is a dispute as to an attorney's authority to make it—it is unnecessary that the agreement be in writing.[56]

The writing necessary to prove an agreement "ideally consists of a formal written agreement signed by the parties," but "letters or documents prepared by attorneys which memorialize the terms of the agreement reached will suffice."[57] Transcripts of recorded telephone conversations (and, presumably, voice mail) may demonstrate an agreement.[58] It has been suggested that an attorney's handwritten notes may provide evidence of an agreement.[59] Although the attorney's documents may "suffice," they are not necessarily dispositive so as to mandate the entry of summary judgment, however.[60] Notably, a lawyer may testify that the client authorized acceptance of an offer, because such communications, which are intended to be imparted to the opposite party, are not privileged.[61]

An agreement announced in open court by counsel for the parties is always sufficient to create a valid contract, without the necessity of a writing.[62] Further, an oral agreement may be enforceable under the doctrine of equitable estoppel, i.e., promissory estoppel.[63]

It is unclear whether a settlement agreement must satisfy the general statute of frauds.[64] In any event, generally there is part or full performance by one party so as to satisfy the statute of frauds.[65]

## How is a Settlement Enforced and Interpreted?

A court may be called upon to give effect to a settlement agreement or to determine whether an agreement exists in the first place. When the parties have entered into a valid settlement agreement, the trial court should make the agreement the judgment of the court (except in those cases where there is a special interest requiring court approval, such as custody of children), thereby terminating the litigation.[66] Once a settlement is announced and the trial court adopts the agreement as an oral order resolving the action, a voluntary dismissal may not be filed.[67] Although a court may adopt and incorporate a settlement agreement into a judgment or decree, it cannot add substantive terms to the agreement.[68] The court must accept the terms on which the parties have agreed to settle their dispute; the court's duty is to construe and enforce contracts as made, not to make them for the parties.[69]

Whether an agreement is *enforceable* in the first instance is a question of law for the court.[70] In considering this issue, the court should bear in mind that settlement agreements are highly favored under the law and will be upheld whenever possible as a means of resolving uncertainties and preventing lawsuits.[71] A settlement agreement is *interpreted* under the rules of contract construction applied to other contracts.[72] Thus, the trial court's construction of the agreement is a matter of law subject to *de novo* review.[73]

A motion to enforce a settlement supported by affidavits is analogous to a motion for summary judgment; thus, the burden is on the proponent of the settlement to present evidence demonstrating the absence of any material issue of fact.[74] Likewise, the standard of review on appeal is *de novo*, and the evidence is viewed in a light most favorable to the nonmoving party.[75] The motion to enforce also may be heard by the court as a finder of fact, in which case the "clearly erroneous" standard of review applies.[76] Therefore, a party seeking to establish and enforce a settlement should carefully consider whether there is any

disputed issue of fact and, if there is, request that the court conduct an evidentiary hearing.

A party to a settlement agreement may pursue a rescission for a breach, or for the usual equitable grounds, such a mistake or fraud.[77] It must be realized, however, that a fraud claim may be compromised by the agreement.[78] Damages may be available if a party to a settlement agreement breaches the agreement by, for example, reinstituting suit.[79]

## Conclusion

Settlement agreements in Georgia are in some respects governed by some unique rules, but in other respects are simply contracts governed by the usual rules of contract formation. Under any circumstance counsel should approach with caution to ensure the client's objectives are achieved. GBJ

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## Endnotes

1. A party claiming a settlement agreement must show "subject matter of the contract, consideration, and mutual assent by all parties to the contract terms." Oldham v. Self, 279 Ga. App. 703, 707, 632 S.E.2d 446, 449 (2006).
2. Interfinancial Midtown, Inc. v. Choate Constr. Co., 284 Ga. App. 747, 750, 644 S.E.2d 281, 283 (2007); *accord* Oldham, 279 Ga. App. at 707, 632 S.E.2d at 449; DeRossett Enters., Inc. v. General Elec. Capital Corp., 275 Ga. App. 728, 729, 621 S.E.2d 755, 757 (2005); Moore v. Farmers Bank, 184 Ga. App. 86, 87, 360 S.E.2d 640, 642 (1987).
3. *See* O.C.G.A. § 13-3-1.
4. 251 Ga. 674, 308 S.E.2d 544 (1983). In *Vandiver v. McFarland*, 179 Ga. App. 411, 412-14, 346 S.E.2d 854, 855-57 (1986), the court severely criticized *Brumbelow*, but it is now firmly established.
5. Brumbelow, 251 Ga. at 675; 308 S.E.2d at 546. As to an attorney at law's authority regarding contracts generally, see JOHN LARKINS, GEORGIA CONTRACTS: LAW & LITIGATION (2D ED.) § 2-8 (2011).
6. Brumbelow, 251 Ga. at 675; 308 S.E.2d at 546.
7. *Id.*; *accord*, Ligon v. Bartis, 243 Ga. App. 328, 330, 530 S.E.2d 773, 775 (2000). Note that attorneys for public entities ordinarily do not have plenary settlement authority. City of Atlanta v. Black, 265 Ga. 425, 426, 457 S.E.2d 551 (1983). *But see* DeKalb County v. DRS Inv's, Inc., 260 Ga. App. 225, 581 S.E.2d 573, 574-75 (2003). Also, a lawyer for a corporation "does not, by virtue of that fact, serve as attorney for the officers of the corporation in their personal capacity." Addley v. Beizer, 205 Ga. App. 714, 715, 423 S.E.2d 398, 400 (1992). The doctrine of apparent authority is inapplicable where the dispute is between the lawyer and the client. Lewis v. Uselton, 202 Ga. App. 875, 879, 416 S.E.2d 94, 97 (1992).
8. Brumbelow, 251 Ga. at 675; 308 S.E.2d at 546.
9. *Id.*; *accord* Ray v. Ray, 263 Ga. 719, 438 S.E.2d 78 (1994); Davis v. Davis, 245 Ga. 233, 235, 264 S.E.2d 177, 179 (1980) (client's contention that agreement is invalid "because she, herself, did not sign anything is without merit"); Stephens v. Alan V. Mock Construction Co., 302 Ga. App. 280, 285, 690 S.E.2d 225, 230 (2010); *see also* Stone v. King, 196 Ga. App. 251, 252, 396 S.E.2d 45, 46 (1990).
10. Ballard v. Williams, 223 Ga. App. 1, 2, 476 S.E.2d 783, 785 (1996) (quoting Penny Profit Foods v. McMullen, 214 Ga. App. 740, 742, 448 S.E.2d 787 (1994)); *accord* Superglass Windshield Repair, Inc., 233 Ga. App. 200, 202, 504 S.E.2d 38, 41 (1998); Stone, 196 Ga. App. at 252, 396 S.E.2d at 46.
11. Pembroke State Bank v. Warnell, 266 Ga. 819, 822, 471 S.E.2d 187, 190 (1996); Anaya v. Coello, 279 Ga. App. 578, 580-81, 632 S.E.2d 425, 428 (2006).
12. Clark v. Perino, 235 Ga. App. 444, 448, 509 S.E.2d 707, 712 (1998); *accord* Scott v. Carter, 239 Ga. App. 870, 872, 521 S.E.2d 835, 837 (1999).
13. *See* Abrams v. Abrams, 262 Ga. 170, 416 S.E.2d 88 (1992). Footnote 1 of the *Brumbelow* opinion also addressed O.C.G.A. § 15-19-6, holding that the statute "is in regulation of the relationship between attorney and client," and is therefore irrelevant to the issue of apparent authority. 251 Ga. 674, 308 S.E.2d 544, 546 n.1 (1983).
14. *Brumbelow* pre-dated the Uniform Rules, but discussed the somewhat similar Superior Court Rule 39 (Ga. Code Ann. § 24-3339). There is no conflict between *Brumbelow* and Uniform Rule 4.12. LeCroy v. Massey, 185 Ga. App. 828, 829, 366 S.E.2d 215, 216 (1988). Although *Brumbelow* and the Uniform Rules refer to an "attorney of record," the authority of an attorney to bind the client is not confined to "the context of formal litigation."
15. 313 Ga. App. 358, 721 S.E.2d 563 (2012) (physical precedent only). By contrast, in Morrow v. Vineville United Methodist Church, the plaintiffs participating in a mediation informed the opposing party that the attorney did not have authority to offer or accept any settlement without the express written consent of the plaintiffs to all terms, but the evidence showed that this limitation had been withdrawn. 227 Ga. App. 313, 319, 489 S.E.2d 310, 315 (1997).
16. Omni Builders Risk, Inc., 313 Ga. App. at 363, 721 S.E.2d at 566; *cf.* Ballard v. Williams, 233 Ga. App. 1, 476 S.E.2d 783 (1996) (where lawyer accepted agreement and had authority to do so, failure of client to "follow through" with signature immaterial).
17. *See* Bridges v. Bridges, 256 Ga. 348, 349, 349 S.E.2d 172, 174 (1986) (misunderstanding or mistake as to terms).
18. Brooks v. Ironstone Bank, 314 Ga. App. 879, 881-82, 726 S.E.2d 419, 421 (2012).
19. *E.g.*, Butler v. Household Mtg. Srvs., Inc., 266 Ga. App. 104, 106, 596 S.E.2d 664, 666 (2004) (if the parties are still negotiating, there is no agreement).
20. *E.g.*, Frickey v. Jones, 280 Ga. 573, 630 S.E.2d 374 (2006); Powerhouse Custom Homes, Inc. v. 84 Lumber Co., 307 Ga. App. 605, 607, 705

S.E.2d 704, 706 (2011) (acceptance not communicated).
21. Anderson v. Benton, 295 Ga. App. 851, 855, 673 S.E.2d 338, 341 (2009); *see* JOHN LARKINS, GEORGIA CONTRACTS: LAW & LITIGATION (2D ED.) NOTE 5, §§ 3-2, 3-3 (2011).
22. Newcomer v. Newcomer, 278 Ga. 776, 777, 606 S.E.2d 238, 239 (2004).
23. *See* Smith v. Hornbuckle, 140 Ga. App. 871, 875, 232 S.E.2d 149, 153 (1977).
24. Walter v. Mitchell, 294 Ga. App. 689, 691, 669 S.E.2d 706, 709 (2008).
25. Superglass Windshield Repair, Inc., 233 Ga. App. 200, 202, 504 S.E.2d 38, 41 (1998).
26. "No contract exists until all essential terms have been agreed to." Bridges v. Bridges, 256 Ga. 348, 349, 349 S.E.2d 172, 174 (1986); *accord* Reichard v. Reichard, 262 Ga. 561, 423 S.E.2d 241 (1992); Moss v. Moss, 265 Ga. 802, 463 S.E.2d 9 (1995) (failure to agree on appraisal); Oldham v. Self, 279 Ga. App. 703, 707-08, 632 S.E.2d 446, 449-50 (2006) (agreement as to terms of trust deemed essential). *See also* Griffin v. Wallace, 260 Ga. App. 857, 859, 581 S.E.2d 375, 377 (2003); Auto-Owners Ins. Co. v. Crawford, 240 Ga. App. 748, 750, 525 S.E.2d 118, 120 (1999); Tekin v. Whiddon, 233 Ga. App. 645, 648, 504 S.E.2d 722, 725 (1998).
27. *E.g.*, DeRossett Enters., Inc. v. General Elec. Capital Corp., 275 Ga. App. 728, 730, 621 S.E.2d 755, 757 (2005); Grange Mut. Cas. Co. v. Kay, 264 Ga. App. 139, 142, 589 S.E.2d 711, 715 (2003); Keffe v. Northside Hosp., Inc., 245 Ga. App. 420, 423, 538 S.E.2d 61, 63 (2000); Capitol Materials, Inc. v. Kellogg & Kimsey, Inc., 242 Ga. App. 584, 587, 530 S.E.2d 488, 491 (2000) (form of lien release not essential).
28. Crystal Cubes of Stone Mtn., Inc. v. Kutz, 201 Ga. App. 338, 339, 411 S.E.2d 53, 58 (1991) (proposal to return various items one day later than originally proposed held to be immaterial).
29. *Compare* Frickey v. Jones, 280 Ga. 573, 594, 630 S.E.2d 374 (2006) (condition; no agreement), *with* Herring v. Dunning, 213 Ga. App. 695, 697-98, 446 S.E.2d 199, 202-03 (1994) (precatory; agreement found). *See also* Torres v. Elkins, 2012 WL 284977 *5 (Ga. App.) (no agreement); Smith v. Hall, 311 Ga. App. 99, 101, 714 S.E.2d 742, 744 (2011) (agreement found); McReynolds v. Krebs, 307 Ga. App. 330, 335, 705 S.E.2d 214, 218 (2010), *aff'd* 290 Ga. 850, 725 S.E.2d 584 (2012) (no agreement); Baldwin v. Adams, 306 Ga. App. 104, 106, 701 S.E.2d 577, 579 (2010) (no agreement); Anderson v. Benson, 295 Ga. App. 851, 855, 673 S.E.2d 338, 340 (2009) (no agreement); Mealor v. Kennedy, 290 Ga. App. 432, 434-37, 659 S.E.2d 809 (2008) (agreement found); Wyatt v. House, 287 Ga. App. 739, 741, 652 S.E.2d 627 (2007) (no agreement).
30. Tekin v. Whiddon, 233 Ga. App. 645, 648, 504 S.E.2d 722, 725 (1998); *see* JOHN LARKINS, GEORGIA CONTRACTS: LAW & LITIGATION (2D ED.) NOTE 5, § 5-1 (2011).
31. Triple Eagle Assocs, Inc. v. PBK, Inc., 307 Ga. App. 17, 20, 704 S.E.2d 189, 193 (2010).
32. Fulford v. Fulford, 225 Ga. 9, 17, 165 S.E.2d 848, 854 (1969).
33. Peacock v. Spivey, 278 Ga. App. 338, 339-40, 629 S.E.2d 48, 51 (2006). For a definition of "compromise," *see* Fulford, 225 Ga. at 17, 165 S.E.2d at 851.
34. Herring v. Dunning, 213 Ga. App. 695, 697, 446 S.E.2d 199, 201 (1994).
35. For a general discussion, see LARKINS, GEORGIA CONTRACTS: LAW & LITIGATION (2D ED.) NOTE 5, CH. 4.
36. O.C.G.A. § 13-3-42(c)(2).
37. Capitol Materials, Inc. v. Kellogg & Kimsey, Inc., 242 Ga. App. 584, 585, 530 S.E.2d 488, 490 (2000); *accord* Kemp v. Adams, 297 Ga. App. 548, 549, 677 S.E.2d 743 (2009); *see* Smith v. Smith, 36 Ga. 184 (1897) (where there is a compromise of a doubtful question, "[t]he Court will not enquire into the adequacy or inadequacy of the consideration").
38. Fulford v. Fulford, 225 Ga. 9, 16, 165 S.E.2d 848, 853 (1969).
39. Littlegreen v. Gardner, 208 Ga. 523, 527, 67 S.E.2d 713, 715 (1951); Sellers Bros., Inc. v. Imperial Flowers, Inc., 232 Ga. App. 687, 689, 503 S.E.2d 573, 576 (1998).
40. Lamb v. Fulton-DeKalb Hosp. Auth., 297 Ga. App 529, 533-34, 677 S.E.2d 328, 333 (2009); *see* LARKINS, NOTE 5, §§ 4-3; 10-13.
41. *See* O.C.G.A. § 13-4-103(a).
42. Haley v. Regions Bank, 277 Ga. 85, 86-7, 586 S.E.2d 633, 635-36 (2003); Guthrie v. Guthrie, 259 Ga. App. 751, 752-53, 577 S.E.2d 832, 833-34 (2003), *aff'd* 277 Ga. 700, 594 S.E.2d 356 (2004); Mitchell v. Mitchell, 191 Ga. App. 139, 140, 381 S.E.2d 84, 86 (1989); Fulford, 225 Ga. at 16, 165 S.E.2d at 853.
43. Haley, 277 Ga. at 87, 586 S.E.2d at 636.
44. Mitchell, 191 Ga. App. at 140, 381 S.E.2d at 86.
45. *See* Unami v. Roshan, 290 Ga. App. 317, 320, 659 S.E.2d 724, 727 (2008); Charles v. Leavitt, 264 Ga. 160, 442 S.E.2d 241 (1994). "By their nature, global settlement agreements would tend to be entire rather than severable." Imerman v. London, 255 Ga. App. 140, 141, 564 S.E.2d 544, 546 (2002).
46. Carey v. Houston Oral Surgeons, LLC, 265 Ga. App. 812, 816, 595 S.E.2d 633, 637 (2004). For a case where a claim is reserved, *see* S. Guar. Ins. Co. v. Dowse, 278 Ga. 674, 605 S.E.2d 27 (2004).
47. Barnum v. Coastal Health Svcs, Inc., 288 Ga. App. 209, 212, 653 S.E.2d 816, 820 (2007).
48. Poulos v. Home Fed. Savings & Loan Assn., 192 Ga. App. 501, 502, 385 S.E.2d 135, 136 (1989).
49. West v. Southern States Coop., Inc., 275 Ga. App. 777, 622 S.E.2d 12 (2005); Griffin v. Wallace, 260 Ga. App. 857, 859, 581 S.E.2d 375, 377 (2003). For a case finding a want of certainty in an oral agreement, *see* Poulos v. Home Fed. Savings & Loan Ass'n, 192 Ga. App. 501, 385 S.E.2d 135 (1989).
50. Pourreza v. Teel Appraisals & Advisory, Inc., 273 Ga. App. 880, 883, 616 S.E.2d 108, 111 (2005). It is also possible to waive such a condition. Morrow v. Hineville United Methodist Church, 227 Ga. App. 313, 319, 489 S.E.2d 310, 315 (1997).
51. Thomas v. Phillips, 240 Ga. App. 600, 603, 524 S.E.2d 298, 301-02 (1999).
52. Baldwin v. Adams, 306 Ga. App. 104, 106, 701 S.E.2d 577, 579 (2010); Grange Mut. Casualty Co. v. Kay, 264 Ga. App. 139, 142, 589 S.E.2d 711, 715 (2003); Moreno v. Strickland, 255 Ga. App. 850, 853, 567 S.E.2d 90, 93 (2002).
53. *See* Smith v. Hall, 311 Ga. App. 99, 101, 714 S.E.2d 742, 744 (2011); DeRossett Enters., Inc. v. General Elec. Capital Corp., 275 Ga. App. 728, 729-30, 621 S.E.2d 755, 757 (2005); (agreement to pay attorney

fees); Vildibill v. Palmer Johnson of Savannah, Inc., 244 Ga. App. 747, 749, 536 S.E.2d 779, 781 (2000).
54. Brumbelow, 251 Ga. 674, 676, 308 S.E.2d 544, 547 (1983). The Supreme Court considered O.C.G.A. § 15-9-5, which refers to a "writing."
55. Imerys Clays, Inc. v. Board of Tax Assessors, 287 Ga. App. 674, 675-76, 652 S.E.2d 580, 582 (2007); *see* Tekin v. Whiddon, 233 Ga. App. 645, 504 S.E.2d 722 (1998).
56. Brumbelow, 251 Ga. at 676, 308 S.E.2d at 547; Stephens v. Alan V. Mock Const. Co., 302 Ga. App. 280, 285-86, 690 S.E.2d 225, 230-31 (2010).
57. Brumbelow, 251 Ga. at 676, 308 S.E.2d at 547; Stephens v. Alan V. Mock Const. Co., 302 Ga. App. at 285, 690 S.E.2d at 230 (confirmatory letters between counsel and insurer); *see* DeRossett Enters., Inc., 275 Ga. App. at 731, 621 S.E.2d at 758 (letters sufficient); Superglass Windshield Repair, Inc., 233 Ga. App. 200, 202, 504 S.E.2d 38, 41 (1998). For a case discussing evidentiary issues concerning "agreement," *see* Stubbs v. Dubois, 306 Ga. App. 171, 702 S.E.2d 32 (2010).
58. Tranakos v. Miller, 220 Ga. App. 829, 832, 470 S.E.2d 440, 444 (1996).
59. Moreno v. Strickland, 255 Ga. App. 850, 853, 567 S.E.2d 90, 92 (2002) (citing Tekin, 233 Ga. App. at 645, 504 S.E.2d at 722); *cf.*, Grossman v. Smith Barney Real Estate Fund, 211 Ga. App. 243, 245-46, 438 S.E.2d 700, 702 (1993) (correspondence insufficient).
60. City of Albany v. Freeney, 313 Ga. App. 24, 28, 720 S.E.2d 349, 352 (2011).
61. Crystal Cubes of Stone Mtn., Inc. v. Kutz, 201 Ga. App. 338, 339, 411 S.E.2d 53, 55 (1991).
62. Ray v. Ray, 263 Ga. 719, 438 S.E.2d 78 (1994); Triple Eagle Assocs, Inc. v. PBK, Inc., 307 Ga. App. 17, 18-20, 704 S.E.2d 189, 193 (2010); *see also* Davis v. Davis, 245 Ga. 233, 235, 264 S.E.2d 177, 179 (1980) (open court and letter).
63. Gen. Communications Service, Inc. v. PSC, 244 Ga. 855, 262 S.E.2d 96 (1979).
64. *Compare* Hale v. Lipham, 61 Ga. App. 191, 6 S.E.2d 115 (1939), *with* Fulford v. Fulford, 225 Ga. 9, 165 S.E.2d 848 (1969). *See* Johnson v. DeKalb County, 314 Ga. App. 790, 795, 726 S.E.2d 102, 107 (2012); Triple Eagle Assocs., Inc., 307 Ga. App. at 19-20, 704 S.E.2d at 193; Michael v. Acree, 202 Ga. App. 120, 413 S.E.2d 523, 525 (1991) (settlement agreement by insurer is original undertaking); Mason v. Rabun Waste, Inc., 174 Ga. App. 462, 463, 330 S.E.2d 400 (1985); Klag v. Home Ins. Co., 116 Ga. App. 678, 687, 158 S.E.2d 444, 451 (1967).
65. *See* Fowler v. Smith, 230 Ga. App. 817, 821, 498 S.E.2d 130, 133 (1998).
66. Dekalb County v. Everhart, 242 Ga. 104; 249 S.E.2d 571 (1978).
67. Leary v. Julian, 225 Ga. App. 472, 474, 484 S.E.2d 75, 77 (1997).
68. Reichard v. Reichard, 262 Ga. 561, 564, 423 S.E.2d 241, 243 (1992).
69. Herring v. Dunning, 213 Ga. App. 695, 697, 446 S.E.2d 199, 201 (1994); *accord* DeGarmo v. DeGarmo, 269 Ga. 480, 499 S.E.2d 317 (1998); Reichard v. Reichard, 262 Ga. 561, 564, 423 S.E.2d 241, 243 (1992).
70. Old Peachtree Partners, LLC v. Gwinnett County, 315 Ga. App. 342, 345, 726 S.E.2d 437, 441 (2012); USA Mfg, Corp. v. Perfection-Schwank, Inc., 271 Ga. App. 636, 638, 610 S.E.2d 600, 602 (2005).
71. Triple Eagle Assocs, Inc. v. PBK, Inc., 307 Ga. App. 17, 20, 704 S.E.2d 189, 194 (2010); Sanders v. Graves, 297 Ga. App. 779, 678 S.E.2d 220 (2009).
72. For a summary of these principles, *see* Lamb v. Fulton-DeKalb Hosp. Auth., 297 Ga. App. 529, 533, 677 S.E.2d 328, 333 (2009), and Safe Shield Workwear, LLC v. Shubee, Inc., 296 Ga. App. 498, 502-03, 675 S.E.2d 249, 252 (2009). *See also* Savannah Yacht Corp. v. Thunderbolt Marine, Inc., 297 Ga. App. 104, 109, 676 S.E.2d 728, 733 (2009). Further, when the parties reduce their agreement to writing, the doctrine of merger will apply. City of Demorest v. Roberts & Dunahoo Props., LLC, 288 Ga. App. 708, 712, 655 S.E.2d 617, 621 (2007).
73. Peacock v. Spivey, 278 Ga. App. 338, 339, 629 S.E.2d 48, 51 (2006).
74. Imerys Clays, Inc. v. Board of Tax Assessors, 287 Ga. App. 674, 675, 652 S.E.2d 580, 582 (2007).
75. McReynolds v. Krebs, 307 Ga. App. 330, 705 S.E.2d 214 (2010), *aff'd* 290 Ga. 850, 725 S.E.2d 584 (2012).
76. Griffin v. Wallace, 260 Ga. App. 857, 581 S.E.2d 375 (2003).
77. *See generally* Medical Staffing Network, Inc. v. Connors, 313 Ga. App. 645, 651, 722 S.E.2d 370, 375-76 (2012) (breach).
78. Fraser v. Citizens & So. Bank, 166 Ga. App. 804, 805, 305 S.E.2d 494, 496 (1983). In one case, it was held that a settlement agreement between a former fiduciary and his principal or beneficiary could not be avoided on the grounds that the fiduciary failed to disclose the extent of his misconduct, because the fiduciary had no disclosure obligation as of the date of the agreement and, in any event, there could be no justifiable reliance. Wender & Roberts, Inc. v. Wender, 238 Ga. App. 355, 360, 518 S.E.2d 154, 159 (1999).
79. Bishop v. Internationall Paper Co., 174 Ga. App. 863, 864, 332 S.E.2d 12, 13-14 (1985).

# Georgia Bar Foundation Awards $642,000 in Grants

by Len Horton

At its July 13 grant decisions meeting, the Georgia Bar Foundation (Foundation) awarded a total of $642,000 to two of the 27 applicants: Atlanta Legal Aid and Georgia Legal Services Program.

"With limited funds available, we concentrated on our primary purpose, which is supporting organizations providing civil legal services to disadvantaged Georgians," said Foundation President Aasia Mustakeem. "It was a challenging meeting not only because of limited funds but also because so many of our other applicants are worthy organizations that are well-managed."

Because of significant discussion during the meeting about domestic violence and the need to do more to assist women and their children affected by this problem, Atlanta Legal Aid and Georgia Legal Services Program were directed to devote about 30 percent of their grant award to assist victims of domestic violence. Taken together, both organizations cover the entire state in providing legal assistance to disadvantaged Georgians.

According to Mustakeem, "We saw the growing problem of family violence in the number of funding requests from battered women shelters and family assistance programs."

She added, "Domestic violence cases are on the upswing because of the economy, and we felt it has become a problem so significant that, at the urging of Judge Conley Ingram and others, we earmarked a significant part of the funds for that purpose."

The total amount awarded at this meeting was almost a quarter of a million dollars more (about 16 percent) than last year's total award. This increase was possible because of a cy pres award to the Foundation from residual funds from a lawsuit in the state of Washington. Without this special award, funds available for grants would have been about the same as they were last year.

The class action lawsuit was *Color One Photo Lab v. Lifequotes of America*. The insurance company had violated both federal and Washington state faxing laws. The defendant was fined $500 per fax.

Interest On Lawyer Trust Account (IOLTA) revenues for the Foundation continue to stay at levels comparable to IOLTA revenues in the late 1980s. Like many other sources of funds, IOLTA has been hurt by the ongoing "Great Recession," which has sent interest rates on these accounts to near zero at the same time it has reduced the balances in many of these accounts.

In the midst of this challenging economy, a major milestone is steadily being approached. Cumulative IOLTA revenues in Georgia are heading toward $100 million. At the beginning of IOLTA in the mid-1980s, no one thought these funds would ever approach such an enormous figure.

"It reflects the magnitude of the work of the legal profession, guided by the Supreme Court of Georgia, in supporting the charitable work of the Georgia Bar Foundation through IOLTA," said Mustakeem. "And when this economy gets back on track, this revenue source will quickly push on toward its second hundred million dollars. The Supreme Court of Georgia, Georgia's lawyers and Georgia's bankers have become a partnership to make IOLTA a success in helping thousands of Georgians. It is a partnership of which we can all be proud." GBJ

**Len Horton** is the executive director of the Georgia Bar Foundation. He can be reached at hortonl@bellsouth.net.

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# The Grand Old Courthouses of Georgia

## The Decatur County Courthouse at Bainbridge

by Wilber W. Caldwell

In 1823, Decatur County had been cut from giant Early County. A year later, on the site of an older Indian trading post, Bainbridge was designated the county seat. A crude courthouse was erected in 1826, and the first steamboat arrived a year later. In his 1829 *Gazetteer of Georgia*, the reliable Adiel Sherwood described Bainbridge as a village containing a courthouse, a jail and about 20 stores and houses. The original court building was replaced with a 20 x 40 foot brick courthouse begun in 1831 but not completed until 1838. George White reckoned Bainbridge's population at only 200 in 1849, but the 1850s saw significant growth as cotton began to flow down the Flint. A fine two-story brick courthouse rose on the square in 1855.

Although the town was not technically at the head of navigation of the Flint River, and steamboats regularly plied the waters northward to Albany, navigation above Bainbridge was unpredictable. Before the arrival of the railroad, the town's economic focus had been her river connection to the shallow harbor at Apalachicola.

Photo by Wilber W. Caldwell

The Decatur County Courthouse at Bainbridge, built in 1902, Alexander Blair III, architect.

Surprisingly, the arrival of The Atlantic and Gulf Railroad in 1868 had the initial effect of increasing the importance of river transportation for Bainbridge. In southwest Georgia in the years immediately following the Civil War, The Atlantic and Gulf operated her own steamboats on the Chattahoochee and the Flint Rivers, promoting a water-rail route to Savannah with the rail link originating at Bainbridge. The A&G's rails were finally extended westward into Alabama in 1888, completing the long awaited Savannah to Montgomery connection. Meanwhile plans for a Columbus to Tallahassee route through Bainbridge met with frustration until 1901 when The Georgia Florida and Alabama Railroad finally completed the line. This sparked a notable conflagration of New South passion as Bainbridge's railroad dream of becoming a junction city finally began to come true. Here again was the inferno of seemingly boundless hope, which laid the foundation for so many of Georgia's fantasy courthouses of the era. Optimistic rhetoric spewed in all directions. *The Bainbridge Searchlight* proclaimed Bainbridge to be "destined to be one of the greatest commercial towns in the South" and speculating that there was no reason why Bainbridge "should remain long behind Columbus in point of population." This last dramatically relates the fantastic power of railroad euphoria to overpower logic and reason, for in 1902, when this was published, Bainbridge's population stood just above 2,500 and Columbus was a town of almost 20,000. Nonetheless, spirits briefly soared, the town grew and part of Bainbridge's perceived "onward march of progress" was the construction of Alexander Blair III's 1902 Decatur County Courthouse.

Many in Bainbridge found it unthinkable that a courthouse might be built in any location other than the center of the town square, but after a year of controversy over budget, funding and location, Alexander Blair III's Decatur County Courthouse rose on a corner lot adjacent to the square. The old courthouse was pulled down and the square remains today a public park.

Alexander Blair was the son of the English-born architect of the same name who had made a successful career in Macon in the last decades of the 19th century. Following in his father's footsteps, the son went on to design eight courthouses in Georgia. This was his first, and it is perhaps his best. The year 1901 found courthouse design in Georgia at a crossroads. Picturesque designs had covered the state in the years before the depression of 1893. Right up until the turn of the century Romanesque designs continued to find favor in Georgia, despite the growing national fascination with the Neoclassical theatrics spawned by the 1893 Columbian Exposition at Chicago and the ensuing City Beautiful Movement. In 1901, only two Neoclassical court buildings had appeared in Georgia, and it would be two more years before J. W. Golucke's courthouses at Greenville and Newnan and Frank Milburn's Wilcox County Courthouse at Abbeville would firmly establish the popularity of the Neoclassical courthouse form that was to capture the imagination of rural Georgians.

In this void, Alexander Blair labored to create in Bainbridge a design that would bridge the turbulent waters of changing times. He sought to capture the essence of New South economic passions imported on the rails of The Georgia, Florida and Alabama Railroad while retaining the distinctly Southern (which is to say reactionary) social character of the place. The result is a remarkable tapestry of architectural symbols. With its high corner tower, the building presents a Picturesque silhouette. The east elevation includes a monumentally tall and slender classical portico of the Composite Order. But the fundamental thrust of the design is what Henry Russell Hitchcock and William Seale properly term "Neocolonial" and "of a loosely Georgian order." The whole is overlaid with rather bold Renaissance ornament. Here is a symbol that, despite its complexity, clearly spoke the language of the divided mind of the South.

At first blush it might seem surprising that the Georgian Revival did not find an earlier audience in Georgia, but the power of the Greek Revival in the Southern mind cannot be understated. J. W. Golucke's much imitated four-sided symmetrical Neoclassical designs at Decatur, Greenville, Cartersville, Newnan, Eatonton, Hartwell and Sylvester would brush aside everything in their wake until 1910, and Alexander Blair's later court buildings at Colquitt (1903), Mount Vernon (1907) and Cairo (1908) would reflect this popular Neoclassical form. With their studied balance and airy porticos these buildings would combine the power of the Greek Revival and the brick and stone Classicism of Jefferson with the modern Classical forms emanating from the American Northeast. It was to become the ambiguous architecture of both the Old and the New South, and its self-contradictory symbolism spoke the troubled mythical language of hope, pride and nostalgic despair. GBJ

Excerpted by **Wilber W. Caldwell**, author of *The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia, 1833-1910*, (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps, 3 appendices, complete index. This book is available for $50 from book sellers or for $40 from the Mercer University Press at www.mupress.org or call the Mercer Press at 800-342-0841 inside Georgia or 800-637-2378 outside Georgia.

# Notice of Expiring BOG Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2013. These incumbents and those interested in running for a specific post should refer to the election schedule (posted below) for important dates.

Alapaha Circuit, Post 1 ..... Carson Dane Perkins, Nashville
Alcovy Circuit, Post 1 ..... Steven A. Hathorn, Covington
Appalachian Circuit ..... Will H. Pickett Jr., Jasper
Atlanta Circuit, Post 1 ..... Diane E. Bessen, Atlanta
Atlanta Circuit, Post 3 ..... Whitney Diane Mauk, Atlanta
Atlanta Circuit, Post 5 ..... Catherine Koura, Atlanta
Atlanta Circuit, Post 7 ..... William M. Ragland Jr., Atlanta
Atlanta Circuit, Post 9 ..... Damon Erik Elmore, Atlanta
Atlanta Circuit, Post 11 ..... Jill Pryor, Atlanta
Atlanta Circuit, Post 13 ..... Emily S. Bair, Atlanta
Atlanta Circuit, Post 15 ..... Letitia A. McDonald, Atlanta
Atlanta Circuit, Post 17 ..... Rita Arlene Sheffey, Atlanta
Atlanta Circuit, Post 19 ..... Elizabeth Louise Fite, Atlanta
Atlanta Circuit, Post 21 ..... Patricia Anne Gorham, Atlanta
Atlanta Circuit, Post 23 ..... Donna G. Barwick, Atlanta
Atlanta Circuit, Post 25 ..... Phyllis J. Holmen, Atlanta
Atlanta Circuit, Post 27 ..... Nancy Jean Whaley, Atlanta
Atlanta Circuit, Post 29 ..... Tina Shadix Roddenbery, Atlanta
Atlanta Circuit, Post 30 ..... Karlise Yvette Grier, Atlanta
Atlanta Circuit, Post 32 ..... Seth David Kirschenbaum, Atlanta
Atlanta Circuit, Post 34 ..... Allegra J. Lawrence, Atlanta
Atlanta Circuit, Post 36 ..... J. Marcus Edward Howard, Atlanta
Atlanta Circuit, Post 39 ..... Anita Wallace Thomas, Atlanta
Atlantic Circuit, Post 2 ..... Carl Robert Varnedoe, Hinesville
Augusta Circuit, Post 1 ..... Edward J. Coleman III, Augusta
Augusta Circuit, Post 3 ..... Thomas Reuben Burnside III, Augusta
Blue Ridge Circuit, Post 2 ..... Eric Alvin Ballinger, Canton
Brunswick Circuit, Post 1 ..... J. Alvin Leaphart, Jesup
Chattahoochee Circuit, Post 2 ..... William C. Rumer, Columbus
Chattahoochee Circuit, Post 4 ..... Donna Stanaland Hix, Columbus
Cherokee Circuit, Post 2 ..... Thomas Neal Brunt, Cartersville
Clayton Circuit, Post 1 ..... H. Emily George, Forest Park
Clayton Circuit, Post 3 ..... Martin L. Cowen III, Jonesboro
Cobb Circuit, Post 2 ..... Ronald Arthur Lowry, Marietta
Cobb Circuit, Post 4 ..... Patrick H. Head, Marietta
Cobb Circuit, Post 6 ..... J. Kevin Moore, Marietta
Conasauga Circuit, Post 2 ..... Robert Harris Smalley III, Dalton
Cordele Circuit ..... James W. Hurt, Cordele
Coweta Circuit, Post 2 ..... Sandra Nadeau Wisenbaker, Newnan
Dougherty Circuit, Post 2 ..... Gordon Robert Zeese, Albany
Dublin Circuit ..... Edward Burton Claxton III, Dublin
Eastern Circuit, Post 2 ..... Lester B. Johnson III, Savannah
Eastern Circuit, Post 4 ..... N. Harvey Weitz, Savannah
Flint Circuit, Post 1 ..... Gregory A. Futch, McDonough
Griffin Circuit, Post 2 ..... Roy B. Huff Jr., Peachtree City
Gwinnett Circuit, Post 1 ..... David S. Lipscomb, Lawrenceville
Gwinnett Circuit, Post 3 ..... Robert V. Rodatus, Lawrenceville
Lookout Mountain Circuit, Post 2 ..... Douglas Ray Woodruff, Ringgold
Macon Circuit, Post 1 ..... John Flanders Kennedy, Macon
Macon Circuit, Post 3 ..... John Christopher Clark, Macon
Member-at-Large, Post 1* ..... Kathleen M. Womack, Atlanta
Member-at-Large, Post 2* ..... Derek Jerome White, Pooler
Middle Circuit, Post 2 ..... John Alexander Fitzner III, Swainsboro
Mountain Circuit ..... James T. Irvin, Toccoa
Northeastern Circuit, Post 2 ..... Nicki Noel Vaughan, Gainesville
Northern Circuit, Post 1 ..... Walter James Gordon Sr., Hartwell
Ocmulgee Circuit, Post 2 ..... Wilson B. Mitcham Jr., Gray
Oconee Circuit, Post 2 ..... Stephanie Diane Burton, Eastman
Ogeechee Circuit, Post 2 ..... Susan Warren Cox, Statesboro
Out-of-State, Post 1 ..... Joaquin Eugene Martinez, Orlando
Pataula Circuit ..... William Harry Mills, Blakely
Piedmont Circuit ..... James Bradley Smith, Jefferson
Rome Circuit, Post 1 ..... Paul T. Carroll III, Rome
South Georgia Circuit, Post 2 ..... Joshua Clark Bell, Whigham
Southern Circuit, Post 2 ..... Brian Allen McDaniel, Moultrie
Southwestern Circuit ..... R. Rucker Smith, Americus
Stone Mountain Circuit, Post 2 ..... William Dixon James, Decatur
Stone Mountain Circuit, Post 4 ..... Robert D. James Jr., Decatur
Stone Mountain Circuit, Post 6 ..... Claudia Susan Saari, Decatur
Stone Mountain Circuit, Post 8 ..... R. Javoyne Hicks White, Stone Mountain
Stone Mountain Circuit, Post 10 ..... Andrea Dionne McGee, Decatur
Tallapoosa Circuit, Post 1 ..... Michael Douglas McRae, Cedartown
Toombs Circuit ..... Dennis C. Sanders, Thomson
Towaliga Circuit ..... Curtis Stephen Jenkins, Forsyth
Waycross Circuit, Post 2 ..... C. Deen Strickland, Waycross
Western Circuit, Post 1 ..... Lawton E. Stephens, Athens

**Post to be appointed by president-elect*

## State Bar of Georgia 2013 Election Schedule

**OCT** Official Election Notice, October Issue *Georgia Bar Journal*

**DEC 3** Nominating petition package mailed to incumbent Board of Governors members and other members who request a package

**JAN 10-12** Nomination of officers at Midyear Board Meeting, The St. Regis Hotel, Atlanta

**JAN 31** Deadline for receipt of nominating petitions for incumbent Board members including incumbent nonresident (out of state) members

**MAR 1** Deadline for receipt of nominating petitions for new Board members including new nonresident (out of state) members

**MAR 15** Deadline for write-in candidates for officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))

**MAR 29** Ballots mailed

**APR 30** 11:59 p.m. Deadline for ballots to be cast in order to be valid

**MAY 6** Election service submits results to the Elections Committee

**MAY 13** Election results reported and made available

# CALLING ALL TRIAL ATTORNEYS

**You are invited to judge the 11th Annual**

# Law Student Closing Argument Competition

Hosted by

## Keenan's Kids Foundation


# Saturday, October 27th, 2012

- 2nd and 3rd year law students from Georgia law schools will give a 15 minute closing argument in a civil case for the plaintiff, a catastrophically injured child.
- The argument will be on damages only and the fact pattern, exhibits and demonstrative evidence will be furnished.
- Each year, our panel of judges is comprised of local and national media, judges and trial lawyers . Each panel hears 4 cases with in a two hour time block.
- If you are a trial attorney interested in promoting the education of young lawyers in the areas of children's damages and negligence, then we want you to be a part of this years event!

**If you are interested in judging the 2012 Keenan's Kids Foundation Closing Argument Competition, please call Libby at 404.223.5437 or email us at office@keenanskidsfoundation.com**

## Kudos

**Parker, Hudson, Rainer & Dobbs LLP** announced that **Patty S. Veazey** was appointed by Gov. Nathan Deal as a member of the **Judicial Nominating Commission** for the state of Georgia. Veazey is an attorney with the firm's health care practice group and works in the firm's South Georgia office located in Tifton. The purpose of the Commission is to make recommendations to the governor of highly qualified judicial applicants for vacancies in state court judgeships, in order to assist the governor in his selection of judges to fill such vacancies.

**Burr & Forman LLP** announced that **Marcel L. Debruge**, partner in the firm's Birmingham office, will be inducted as a **fellow** of the **College of Labor and Employment Lawyers** during its fall 2012 meeting. Fellows are selected on the basis of their dedication to the study and enhancement of civility and professionalism in the practice of labor and employment law, as well as to the improvement of the delivery and quality of labor and employment legal services.

**Mariel Williams**, an associate in the Columbus office of **Hall Booth Smith & Slover, P.C.**, was sworn in as **president** of the **Columbus Chapter** of the **Georgia Association for Women Lawyers**. Williams previously served as the chapter's treasurer and secretary since 2009. Founded in 1928, the Georgia Association for Women Lawyers proudly serves the diverse interests of women lawyers around Georgia.

**Taylor English Duma LLP** announced that founding member **Marc Taylor** was selected as one of **Leadership Atlanta's Class of 2013**. Leadership Atlanta recently selected 84 leaders throughout Atlanta who have a desire to help grow and strengthen the community. Leadership Atlanta offers community service projects, community tours, discussion groups, retreats and seminars for members to explore their leadership skills and build relationships throughout the community.

**Pursley Lowery Meeks** announced that partner **Christian F. Torgrimson** wrote the chapter on Georgia law for ***Fifty-State Survey: The Law of Eminent Domain***, published by the American Bar Association. The complete guide is a single resource for eminent domain practitioners. The reference is used for questions about eminent domain and condemnation procedure in every state and the District of Columbia. Each states' chapter is prepared by state experts in jurisdiction of eminent domain law. Torgrimson is also the 2012-13 **chair** of the **Eminent Domain Section** of the **State Bar**.

**Creed & Gowdy, P.A.**, announced that **Jennifer Shoaf Richardson** was appointed as **chair** of the **Young Lawyers Section** for the **Florida Association of Women Lawyers** (FAWL). In that capacity, she will also sit as FAWL liaison on the Young Lawyers Division Board of Governors for The Florida Bar. Richardson also accepted an Outstanding Chapter Programming Award from FAWL on behalf of the Tallahassee Women Lawyers for a program called "Rookie Camp."

**Smith Moore Leatherwood LLP** announced that **Barry Herrin**, a partner in the firm's Atlanta office, was appointed to the **North Carolina Bar Association's Medico-Legal Liaison Committee** for the 2012-13 fiscal year. Herrin will collaborate with other committee members to promote understanding and cooperation between the bar and the medical profession.

**Hasty Pope LLP** partner **Jonathan Pope** was named to the **State Bar of Georgia Bench and Bar Committee**. The committee oversees the Judicial District Professionalism Program developing educational materials, law school curricula and continuing legal and judicial education programming that focuses on professional values. The group also administers the continuing legal education requirement.

**Stephen R. Klorfein** of **Chaiken Klorfein, LLC**, in Atlanta was elected **president-elect** of **The Atlanta Tax Forum, Inc**. The Forum was founded with the objective of furthering the education of their membership in all areas of federal and state taxation and to further the association of practicing attorneys and certified public accountants in the practice of taxation. It is the oldest organization in the metro-Atlanta area devoted exclusively to the education of tax practitioners.

**Tech Data Corporation** announced that **Andy Gaunce** was named one of the **top 10 in-house attor-**

**neys under 40** in the country by the **Association of Corporate Counsel** (ACC). The ACC is a global bar association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other private-sector organizations through information, education, networking opportunities and advocacy initiatives.

**Leah Ward Sears**, a partner at **Schiff Hardin LLP** and former chief justice of the Supreme Court of Georgia, was a winning recipient of the **"Fastcase 50" award**, which honors the law's smartest, most courageous innovators, techies, visionaries and leaders. Nominations for the annual "Fastcase 50" awards were submitted to legal publisher Fastcase by industry leaders, law firm managers, legal technology peers and individuals around the world who recommend candidates deserving of this recognition.

Humphries

Lott

**Hunton & Williams LLP** announced that associate **James D. Humphries IV** was appointed to the **Advisory Committee** of the **Atlanta Legal Aid Society, Inc**. Atlanta Legal Aid helps clients deal with some of life's most basic needs—a safe home, enough food to eat, a decent education, protection against fraud and personal safety. Clients come from Clayton, Cobb, DeKalb, Fulton and Gwinnett counties.

Associate **Rhani Lott** was appointed to the **Board of Directors** of the **Atlanta Council of Younger Lawyers Section** of the **Atlanta Bar Association**, which provides various programs and benefits for its members.

**Moore & Reese, LLC**, announced that partner **Mindy C. Waitsman** was chosen for the **Leadership DeKalb Class of 2013**. During the 10-month training program, the class will explore issues in the community including history, diversity, justice, government, education, economic development and transportation, and health.

Weizenecker

Rogers

**Lewis Brisbois Bisgaard & Smith LLP** announced that Atlanta partner **Stephen G. Weizenecker** was elected **chair** of the **Entertainment and Sports Law Section** of the **State Bar of Georgia**. Additionally, Weizenecker was appointed as the editor-in-chief of the American Bar Association publication, *Entertainment and Sports Lawyer*.

Atlanta partner **Leron E. Rogers** was elected as **vice chair, entertainment**, for the **Entertainment and Sports Law Section** of the **State Bar of Georgia**. The section's goals are to educate and promote networking among section members and guests.

**Frank Harper** was selected to receive **Scouting's National Distinguished Service Award**. The award was presented at the National Order of the Arrow Conference in July. The Distinguished Service Award recognizes individuals who have rendered distinguished and outstanding service to the national honor society of the Boy Scouts of America on a section, area, regional or national basis. Created in 1940, only 908 Distinguished Service Awards have been presented nationwide, and only 25 individuals from Georgia have ever received the award.

## On the Move

### In Atlanta

**Schulten Ward & Turner, LLP**, announced that **Abby von Fischer-Benzon** joined the firm as an **associate**. Her practice areas include employment law and litigation, commercial litigation and business disputes. The firm is located at 260 Peachtree St. NW, Suite 2700, Atlanta, GA 30303; 404-688-6800; Fax 404-688-6840; www.swtlaw.com.

**Davis, Matthews & Quigley, P.C.**, announced that **J. Chase Wilson** joined the firm as an **associate** practicing in the domestic relations and family law section. The firm is located at 3400 Peachtree Road NE, Suite 1400, Atlanta, GA 30326; 404-261-3900; Fax 404-261-0159; www.dmqlaw.com.

**Ballard Spahr LLP** announced that intellectual property attorney **Scott D. Marty** became a **partner** with the firm. Marty represents clients in the biotechnology, chemical and pharmaceutical industries in matters involving patent prosecution, portfolio evaluation and litigation. The firm is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309; 678-420-9300; Fax 678-420-9301; www.ballardspahr.com.

> **George Shingler** and **Joyce Gist Lewis** announced the formation of **Shingler Lewis LLC**. Primary areas of practice include business litigation, employment agreements and insurance coverage. The firm is located at 1170 Peachtree St., Suite 1200, Atlanta, GA 30309; 404-907-1999; www.shinglerlewis.com.

> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of **William M. Osterbrock** as **of counsel** to the firm's Atlanta office. Osterbrock is a member of the firm's corporate/mergers and acquisitions practice group and emerging companies team. He focuses his practice on representing business clients in relation to corporate governance, complex business transactions, mergers and acquisitions, securities, structured financing, and business planning and development. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

> **Duane Morris LLP** announced that **John H. Goselin II** joined the firm's trial practice group as a **partner** in its Atlanta office. He joined Duane Morris from Cetera Financial Group, where he was chief litigation counsel. Goselin focuses his practice in the area of financial services litigation. The firm is located at 1075 Peachtree St. NE, Suite 2000, Atlanta, GA 30309; 404-253-6900; Fax 404-253-6901; www.duanemorris.com.

> 
Christian

Baker

**MendenFreiman LLP** announced that **Bridget W. Christian** and **Paige P. Baker** joined the firm's Atlanta office as **senior attorneys** in the estates, trusts and business practice groups. Christian specializes in the areas of wills, trusts, charitable giving, probate, business representation and buy/sell agreements. A former tax accountant, Baker specializes in the areas of business succession planning, business transactions and governance with a particular emphasis on franchises, estate and trust planning, and estate administration. The firm is located at Two Ravinia Drive, Suite 1200, Atlanta, GA 30346; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

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**Balch & Bingham LLP** announced that **Dan M. Silverboard** joined the firm as an **associate** in the health care practice group. His practice focuses on complex health care regulatory matters relating to Medicare and Medicaid compliance, including practitioner and facility licensing and certification, reimbursement, HIPAA, Stark laws, fraud and abuse. The firm is located at 30 Ivan Allen Jr. Blvd. NW, Suite 700, Atlanta, GA 30308; 404-261-6020; Fax 404-261-3656; www.balch.com.

> **Schiff Hardin LLP** announced three new attorneys in the firm's Atlanta office. **Ronald B. Gaither** joined as **counsel** in the litigation group. Gaither, previously with Taylor English Duma LLP, is a trial attorney handling matters in all aspects of general litigation ranging from complex commercial disputes to sophisticated construction matters. He also handles products liability claims. **Kristina R. Jones** joined as an **associate** in the finance group. Jones, previously with Troutman Sanders LLP, focuses her practice on all aspects of public finance and public law. **Cherie A. Phears** joined as an **associate** in the litigation group. Phears, previously with Hunton & Williams LLP, focuses her practice on general commercial litigation. The firm is located at One Atlantic Center, Suite 2300, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-437-7000; Fax 404-437-7100; www.schiffhardin.com.

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**Jones Day** announced that **Bruce W. Moorhead Jr.** joined the firm as a **partner** with the banking and finance practice. Formerly a partner with Hunton & Williams, Moorhead's practice focuses on the representation of financial institutions in leveraged and asset-based lending transactions and in workouts and bankruptcies. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.

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**Stites & Harbison, PLLC,** attorney **Ron C. Bingham II** was named the new **office executive member** in Atlanta. Bingham will serve as the face of the firm in the Atlanta community and assist the chairman in executing firm policy. He will continue to serve clients in his creditors' rights and bankruptcy practice. The firm is located at 2800 SunTrust Plaza, 303 Peachtree St. NE, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

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**Moore & Reese, LLC**, announced that **Mindy C. Waitsman** was named **partner**. Waitsman advises condominium, cooperative and homeowner associations on covenant violations, updating documents, major service or repair con-

tracts, government compliance and transitioning associations from developer to owner control. The firm is located at 2987 Clairmont Road, Suite 440, Atlanta, GA 30329; 770-457-7000; Fax 770-455-3555; www.mooreandreese.com.

**Bovis, Kyle & Burch, LLC**, announced that **Winfield Pollidore** joined the firm as an **associate** in the family law practice. Prior to joining the firm, Pollidore was an associate at Schulten Ward & Turner, LLP. The firm is located at 200 Ashford Center North, Suite 500, Atlanta, GA 30338; 770-391-9100; Fax 770-668-0878; www.boviskyle.com.

**Topping & Associates, LLC**, announced that **Vanessa A. Leo** joined the firm as an **associate** in the general practice of law. The firm is located at 1930 N. Druid Hills Road, Suite B, Atlanta, GA 30319; 404-728-0220; Fax 404-0728-0660.

Driskell

Mohs

**Nall & Miller, LLP**, announced that **Shelley A. Driskell** and **Brian T. Mohs** joined the firm as **associates**. Driskell concentrates her practice in the areas of health care law and motor carrier litigation. Mohs concentrates his practice in the areas of catastrophic injury, insurance law, motor carrier litigation, premises liability, product liability and trial practice. The firm is located at 235 Peachtree St. NE, Suite 1500, Atlanta, GA 30303; 404-522-2200; Fax 404-522-2208; www.nallmiller.com.

**McGuireWoods LLP** announced that **Hil Jordan** was named as **managing partner** of the firm's Atlanta office. His practice focuses on representing financial institutions in leveraged finance transactions. The firm is located at Promenade II, Suite 2100, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

**Barnes & Thornburg LLP** announced that **John F. Meyers** joined the firm's Atlanta office as a **partner** in the labor and employment law department, and **Bryan S. Gershkowitz** joined as **of counsel** in the finance, insolvency and restructuring department. Meyers serves as labor and employment counsel to a wide range of client companies in Alabama, Florida, South Carolina, North Carolina, Maryland, Georgia and across the Southeast. Gershkowitz focuses his practice on representing secured lend-

ers in connection with distressed property workouts and restructurings, foreclosure proceedings, structured financings, general commercial and real estate transactions, and litigation. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.

> **Jon W. Hedgepeth, Hannibal F. Heredia, Rebecca L. Crumrine** and **Wayne A. Morrison** announced the formation of **Hedgepeth, Heredia, Crumrine & Morrison, LLC**. The principal focus of the firm is the successful and comprehensive representation of clients involved in divorce and all issues of family law. The firm is located at 3330 Cumberland Blvd., Suite 450, Atlanta, GA 30339; 404-846-7025; Fax 404-846-7027; www.hhcmfamilylaw.com.

## In Augusta

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Burnside


Williamson

**Thomas R. Burnside III** and **Mark B. Williamson**, formerly of Burnside Wall LLP, announced the formation of **Burnside Law Firm LLP** where they continue to focus on the representation of plaintiffs in personal injury cases. The firm is located at 3512 1/2 Wheeler Road, Augusta, GA 30909; 706-432-8320; www.burnsidefirm.com.

## In Macon

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**Peck, Shaffer & Williams LLP** announced that **Blake C. Sharpton** joined the firm as a **partner**. Sharpton's practice concentrates primarily on public finance and banking law. The firm is located at 435 Second St., Suite 204, Macon, GA 31201; 404-995-3850; Fax 404-995-3851; www.peckshaffer.com.

## In McDonough

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Pool


Pearson

**Smith, Welch, Webb & White, LLC**, announced that **Elizabeth Pool** and **Megan Pearson** joined the firm as **associates** in the litigation group. The firm is located at 2200 Keys Ferry Court, McDonough, GA 30253; 770-957-3937; www.smithwelchlaw.com.

## In Savannah

> Solo practitioners **Richard Darden** and **Laura Hastay** announced the formation of **Darden Hastay, LLC**. The firm's practice focuses on criminal defense in the state and federal courts, handling matters in both Georgia and Florida. The firm is located at 33 Bull St., Suite 510, Savannah, GA 31401; 912-231-1000; Fax 912-231-1400.

## In Stockbridge

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**Smith, Welch, Webb & White, LLC**, announced that **Lauren King** joined the firm as an **associate** in the litigation group. The firm is located at 280 Country Club Drive, Suite 200, Stockbridge, GA 30281; 770-389-4864; www.smithwelchlaw.com.

## In Charleston, S.C.

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**Smith Moore Leatherwood LLP** announced that **Matt Moore** joined the firm as a **member** of the commercial real estate practice group. Moore's practice focuses on real estate, commercial real estate development, distressed real estate, workouts and restructuring, and mortgage enforcement. The firm is located at 25 Calhoun St., Suite 250, Charleston, SC 29401; 843-300-6600; Fax 843-300-6700; www.smithmoorelaw.com.

> **Jonathan M. Jellema**, formerly deputy division counsel of the U.S. Army Corps of Engineers, South Atlantic Division, in Atlanta, was selected as

## How to Place an Announcement in the Bench & Bar column

If you are a member of the State Bar of Georgia and you have moved, been promoted, hired an associate, taken on a partner or received a promotion or award, we would like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the *Georgia Bar Journal* will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, Chambers USA, Who's Who, etc.). Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. For more information, please contact Stephanie Wilson, 404-527-8792 or stephaniew@gabar.org.

the new **district counsel** for the **U.S. Army Corps of Engineers, Charleston District**. Jellema practices in the areas of water resources, environmental, procurement, disaster response and construction law. The Charleston District's office is located at 69A Hagood Ave., Charleston, SC 29403; 843-329-8114; Fax 843-329-2323; www.sac.usace.army.mil.

## In Greensboro, N.C.

> **Hon. Frederick A. Johnson** was appointed as an **administrative law judge** in the **U.S. Social Security Administration Office of Disability Adjudication and Review**. The office is located at 101 S. Edgeworth St., Suite 300, Greensboro, NC 27401; 866-690-2091; Fax 336-333-5435; www.socialsecurity.gov.

## In Nashville, Tenn.

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**Harwell Howard Hyne Gabbert & Manner P.C.** announced the addition of **Ryan M. Richards** as an **associate**. He serves as a member of the firm's corporate and tax practice groups. The firm is located at 333 Commerce St., Suite 1500, Nashville, TN 37201; 615-256-0500; Fax 615-251-1059; www.h3gm.com.

## In Washington, D.C.

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**Wiley Rein LLP** announced that **Ralph J. Caccia** joined the firm as a **partner** in its white collar defense practice. Caccia's practice focuses on white collar issues, corporate internal investigations, Foreign Corrupt Practices Act matters, health care fraud, criminal antitrust cases, the defense of government enforcement actions and congressional investigations. The firm is located at 1776 K St. NW, Washington, DC 20006; 202-719-7000; Fax 202-719-7049; www.wileyrein.com.

## In Beijing, China

> **Troutman Sanders LLP** opened their third office in China. The firm is located at 6/F, Tower 2, Prosper Center, 5 Guanghua Road, Chaoyang District, Beijing 100020; +86 10 8573 1188; www.troutmansanders.com.

# 2012 Champions of Justice

The Georgia Legal Services Program named its 2012 Champions of Justice, a group of individuals selected and honored annually for their contributions as volunteer leaders in GLSP's mission of providing justice for all.

**J. Ben Shapiro**, Baker Donelson Bearman Caldwell & Berkowitz PC, was selected for his early commitment to and four decades of support for GLSP's work to provide access to justice for Georgians in the small towns and rural areas of the state who cannot afford to hire private counsel. Shapiro was involved in the early days of Georgia Indigents Legal Services, the precursor to GLSP. His continued and generous financial support has enabled GLSP to grow and become one of the most highly regarded legal services programs in the country.

**Walter E. Jospin**, Paul, Hastings, Janofsky & Walker LLP, was selected for his lifelong commitment to the shared value of justice for all and his service as a member of the GLSP board from 1994-98. During his board membership, he helped establish a new and independent supporting organization, the Georgia Legal Services Foundation, to receive and manage the cy pres award given to GLSP in 1996 by Hon. Marvin Shoob. He helped recruit and build a strong board and developed wise investment practices. Today, the Foundation boasts a history of providing more than $500,000 in gifts to the program.

**Thomas Dennard**, Nightingale, Liles, Dennard & Carmical, was selected for his work as president of the Younger Lawyers Section of the State Bar in 1971-72 advocating for the creation of the Georgia Indigents Legal Services against strong opposition. His work helped lay the groundwork for the success of GLSP. His subsequent service as one of the early presidents of the GLSP board and continued financial support and willingness to accept pro bono cases has been invaluable to the growth and success of GLSP.

*Selection as a Champion of Justice means that GLSP recognizes the achievements, contributions, tenure with GLSP or other service to GLSP, of the person selected, along with the person's continuing service to the legal profession and the cause of justice. The Champions of Justice themselves act as ambassadors for GLSP with the bar or state and federal policy makers and the public-at-large.*

# Liar, Liar, Pants on Fire

by Paula J. Frederick

"Aarrrrrgh!!!" you scream as you review the morning mail. "Jessie James has got to be the most unethical lawyer I have ever dealt with!"

"Please don't tell me her secretary forgot to serve us with another pleading!" your assistant begs. "Did she leave off the postage again?"

"My favorite was the settlement check she *accidentally* sent from her operating account," your secretary remembers. "Said she picked up the wrong checkbook; took her a week to straighten that one out!"

"Took her a week to get the funds together," you mutter.

"But that was last month's drama. This is a new low," you report grimly. "We finally got her responses to our discovery. I asked for the backup paperwork on the Johnson deal. She claims her client has *no* documents! None at all! Says the entire Johnson file was accidentally shredded when the company moved last year."

"Well, that's convenient," your assistant responds. "Can she spell S-P-O-L-I-A-T-I-O-N?"

What does a good lawyer do when faced with an ethically challenged adversary?

Since most disputes involve a lack of communication, it's good to start by making sure that things are as they seem. Maybe there's a good reason why

opposing counsel neglected to notify you of that emergency hearing, or why her client doesn't seem to know about your multiple settlement offers. It's worth a call to be sure that your understanding of the situation is correct and that no one at *your* end has dropped the ball.

Communication isn't just good practice; it might be required by court rules. When you're involved in a discovery battle, don't forget that Uniform Superior Court Rule 6.4 requires a lawyer to confer with opposing counsel "in a good faith effort to resolve the matters involved" before filing a motion to compel.

The Bar's Judicial District Professionalism Program may also be helpful when dealing with opposing counsel who engage in abusive discovery practices or other inappropriate conduct. The program uses "informal peer influence to alter unprofessional conduct." Take a look at the Bar's website, www.gabar.org, for more information on the program and the types of problems it can help with.

When informal efforts fail and you are before a tribunal, ask the judge for help. The court can conduct an inquiry and get to the bottom of any factual disputes. It can order a recalcitrant lawyer to produce "missing" documents, and can sanction a lawyer who fails to comply.

If opposing counsel's conduct goes beyond unprofessionalism to a violation of the Rules of Professional Conduct, it may be necessary to file a grievance. There is a four-year statute of limitations for filing; quite often the Bar and the disciplinary board decide to wait until the case is completely over and the dust settles before conducting an investigation. In those cases, findings from a judge who has heard from witnesses and reviewed the situation at the time of the questionable conduct are particularly helpful.

No lawyer enjoys filing a grievance against a fellow member of the Bar, but doing so may be necessary to protect the public and the profession's privilege of self-regulation. GBJ

**Paula Frederick** is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.



# Discipline Summaries

## (June 16, 2012 - August 10, 2012)

by Connie P. Henry

### Voluntary Surrender/Disbarments

**John Lee Scott**
Gainesville, Fla.
Admitted to Bar in 1975

On June 18, 2012, the Supreme Court of Georgia disbarred John L. Scott (State Bar No. 632150) as reciprocal discipline in regard to his disbarment in Florida for sexual misconduct and contempt of court.

**Adrienne Regina McFall**
Athens, Ga.
Admitted to Bar in 1992

On June 25, 2012, the Supreme Court of Georgia disbarred Adrienne R. McFall (State Bar No. 491035). The following facts are admitted by default: McFall was living in Ohio in 2006 and was retained for $700 to represent a client in a divorce action. McFall was not licensed to practice law in Ohio, although she had been temporarily certified to practice there from October 2004 through November 2005. McFall failed to perform legal services for her client, did not communicate with the client and did not refund the fee. At the time of this order she was under suspension for abandonment of another client.

**William M. Peterson**
Warner Robins, Ga.
Admitted to Bar in 1988

On July 2, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of William M. Peterson (State Bar No. 574660). Peterson represented two clients in different matters. He failed to adequately communicate with them, did not act with reasonable diligence and promptness in representing them, and willfully abandoned their cases. Peterson had a previous three-year suspension and two formal letters of admonition.

**Joseph N. Harden**
Carrollton, Ga.
Admitted to Bar in 2004

On July 2, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Joseph N. Harden (State Bar No. 324515). Harden received $180,000 on behalf of two clients and has never accounted for those funds.

**Marcus L. Vickers**
Ellenwood, Ga.
Admitted to Bar in 2001

On July 2, 2012, the Supreme Court of Georgia disbarred Marcus L. Vickers (State Bar No. 727392). On Aug. 21, 2009, Vickers was convicted on one count of conspiracy to defraud the United States (mortgage fraud), and two counts of mail/wire fraud.

### Suspensions

**Steven Hyman Hurwitz**
Lumber City, Ga.
Admitted to Bar in 2001

On June 18, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Steven H. Hurwitz (State Bar No. 380116). Hurwitz

represented two clients in different matters. He did not complete work on their cases, ceased communication with them and did not refund the clients' fees.

**Lisa M. Cummings**
Atlanta, Ga.
Admitted to Bar in 1996

On June 25, 2012, the Supreme Court of Georgia suspended Lisa M. Cummings (State Bar No. 201865) for 18 months with conditions for reinstatement. The following facts are admitted by default: Cummings agreed to create a limited liability corporation and a nonprofit corporation for two clients. She accepted a check for $2,500 but never provided a receipt or contract for her services, nor did she ever perform the services. In the resulting notice of investigation, Cummings provided false information, claiming that she was never hired by the clients and that the $2,500 was to pay for marketing services by a third party who was present at the first meeting.

In mitigation of discipline, the special master found that Cummings had no prior discipline. In aggravation, the special master noted that this case involved multiple violations; that Cummings failed to comply with disciplinary rules; that she refused to acknowledge the wrongful conduct; and that she has substantial experience in the practice of law. The special master also noted concerns about Cummings' mental condition. Prior to reinstatement, Cummings must refund the $2,500 and be evaluated by a psychiatrist.

## Review Panel Reprimand

**Ted H. Reed**
Marietta, Ga.
Admitted to Bar in 1976

On June 18, 2012, the Supreme Court of Georgia accepted the petition for voluntary discipline of Ted H. Reed (State Bar No. 597837) and imposed a Review Panel reprimand contingent on Reed's payment of $300 to his client. Reed represented a client in a civil matter. He received notice to take a post-judgment deposition and notice to produce, but he was not able to contact his client. Neither the client nor Reed appeared at the deposition. The trial court granted the opposing party's motion to compel and directed the client to attend the deposition and pay $300 to the opposing party.

In aggravation of discipline, in 1979 the Court accepted Reed's voluntary surrender of license in connection with his acceptance of a bribe while serving as a probation officer. In 2007, Reed received a formal letter of admonition. In mitigation, Reed lacked a dishonest or selfish motive and had a cooperative attitude toward the disciplinary process.

## Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since June 16, 2012, six lawyers have been suspended for violating this Rule and one has been reinstated.



**Connie P. Henry** is the clerk of the State Disciplinary Board and can be reached at connieh@gabar.org.

**For the most up-to-date information on lawyer discipline, visit the Bar's website at www.gabar.org/forthepublic/recent-discipline.**

# Smartphone Security on the Go:

## Keeping Your Phone Locked Down

by Natalie R. Kelly

Have you ever wondered what kind of day you'd have if you lost your smartphone? Would it mean you'd lose instant access to all of your firm's and your personal contacts? What about important calendar entries that you just put in but didn't have time to synchronize with the master calendar back to the office? How about your personal photos and banking information? As scary as it sounds, you won't have to worry as much if you use some common sense and take preventive steps towards securing your mobile phone. It may seem basic, but I have seen several lawyers who have not done anything to protect their shiny new smartphones.

Smartphone security can be accomplished through use of the security settings and specific features on your phone, or via a security app. You can also keep tabs on the location of your phone by setting up routines and usage habits.

## Security options for Android users:

- Set up screen lock—Home/Menu/Settings/ Security/set "Swipe Pattern" or standard "PIN or password"
- Set up SIM card lock—Home/Menu/Settings/Security/ Set up SIM card lock
- Use security app—Mobile Defense; free

## Security options for iPhone users:

- Set up password—Settings/General/Passcode Lock (move to On); also set time frame for invoking Auto-Lock via Settings/General/Auto-Lock
- Set up restrictions—Settings/General/Restrictions and select options for allowing general phone apps and services; changes to Location and Accounts; Content and Games.
- Set up Find My iPhone—Settings/Privacy/Location Services/Find My iPhone (move to On)
- Use security app—Lookout; free

## Security options for Windows Phone users:

- Set lock screen password—Start/flick to App list/Settings/Lock + Wallpaper/turn on Password/set New Password or Change Password
- Use Find My Phone service—free at My Phone on www.windowsphone.com
- Turn on SIM security—Start/Phone/More/Call settings/turn on SIM security/Enter SIM PIN
- Use security app—Burglar Alarm; $0.99

Now on to the even scarier stuff—mobile app corruption and remote data protection.

Apps themselves are susceptible to being hacked. Remember that apps are just mini computer programs or applications and they can be hacked, too. In a recent mobile app security study done by Arxan Technologies (www.arxan.com), they found that more than 90 percent of the top 100 mobile apps have been hacked. Hacked according to their definition means a hacker was able to enter the app, make changes to the code within the app and/or set up files that allow malicious websites to be launched or other potentially dangerous code to be run by the user accessing the app. To help protect yourself, make sure you download apps from your phone's verified download location, typically Google Play, App Store and Marketplace. You should also make sure you are getting the latest updates to your apps. This is similar to running updates on the software you use on your computers and can help with keeping viruses and malware at bay on your smartphone.

What should you do if you have lost your phone and can't find it? You may want to consider "remote wiping" your phone. This security setting allows you to access your phone remotely and then erase all of its data. You must consider this option very carefully, as remote wiping is typically an "all or nothing" proposition unless you have synchronized your phone's data to another source, e.g. cloud practice manager, online calendar, office server, etc.

Smartphones have become so important in the lives of lawyers and their clients that you can no longer just get a device and go. You must take these basic steps to keep you and your client's information secure. Plus, no one wants to have a really bad day due to the loss of a smartphone.

**Natalie R. Kelly** is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at nataliek@gabar.org.

# SOLACE:

## Support of Lawyers/Legal Personnel, All Concern Encouraged

by Bonne D. Cella

In 2002, a New Orleans attorney and a U.S. district court judge developed a network of compassion in action called SOLACE, (support of Lawyers/Legal Personnel, All Concern Encouraged), a statewide volunteer organization. It reaches out to assist those in the legal community who have experienced some significant, potentially life-changing event in their lives. Attorney Mark C. Surprenant and Hon. Jay Zainey, U.S. District Court, Eastern District of Louisiana, recognized that there were needs within their legal community as well as vast resources that could assist in meeting those needs, and they brought the two together.

The sole purpose of the SOLACE program is to allow the legal community to reach out in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and

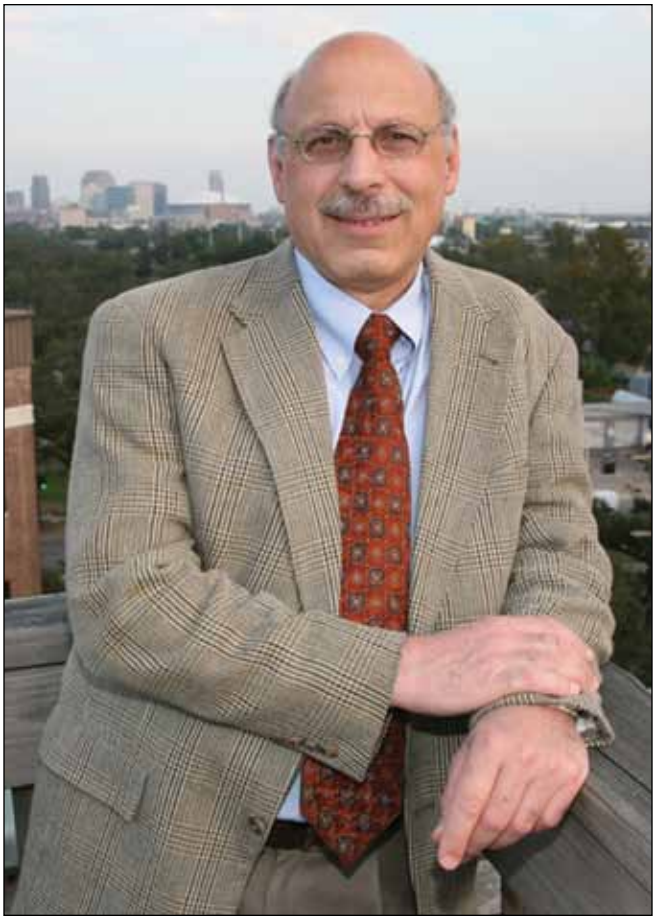


Photo provided by the Louisiana State Bar Association

Hon. Jay Zainey spearheads SOLACE in Louisiana.

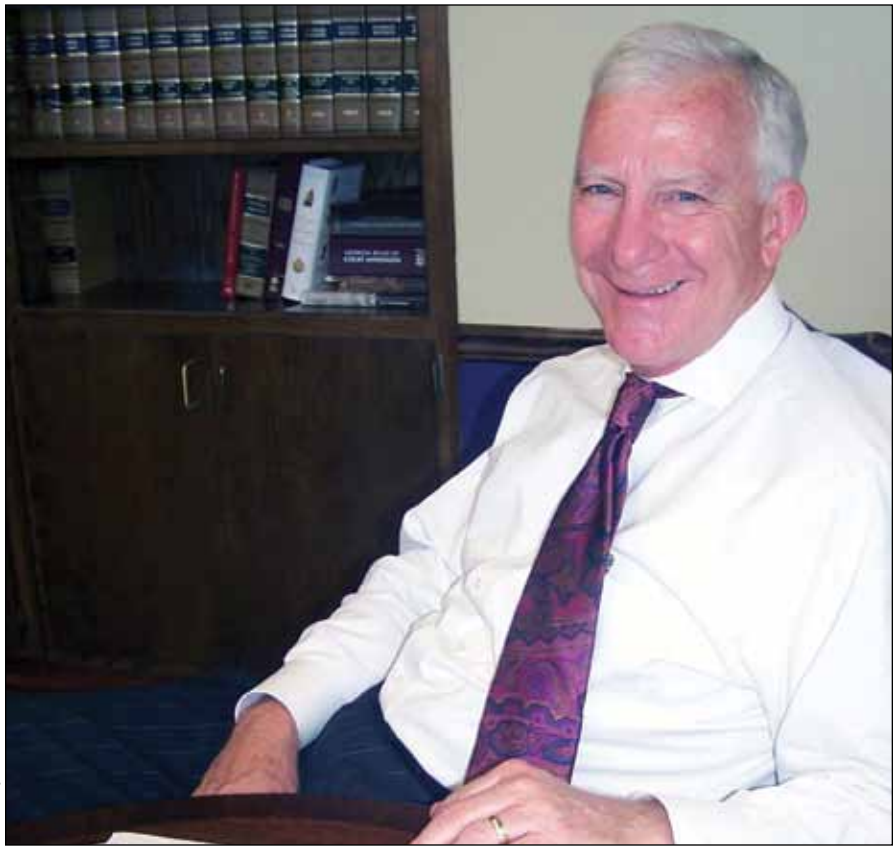


Photo by Bonne D. Cella

Hon. William Rumer is chairman of the SOLACE Committee for the State Bar of Georgia.

their families who experience deaths or other catastrophic illnesses, sickness or injury. The way the program works is simple, but the effects can be significant. Examples of assistance include a solo practitioner who lost everything in a fire and within two days, he was back in business with furniture and a computer obtained through the SOLACE network. Another attorney undergoing chemotherapy had a dog that was part of the family and it upset him to board the dog while undergoing treatments. Within minutes of sending an email to SOLACE, 70 people responded offering to keep the dog at their home at no charge. There are many more examples of kindness and compassion, especially in 2005, when SOLACE volunteers sprang into action after Hurricane Katrina ravaged the state. Today, more than 5,000 members of the Louisiana legal community are a part of SOLACE, and it is expanding to become a nationwide network.

Ken Shigley, immediate past president of the State Bar of Georgia, heard Zainey speak about SOLACE at the National Conference of Bar Presidents in San Francisco in 2010. Impressed by what he heard, Shigley talked to Zainey after his presentation and decided to bring the initiative to Georgia. When it came time to appoint a chairperson for the SOLACE Committee, Shigley contacted Superior Court Judge William Rumer of Columbus. After giving it some thought, Rumer accepted the challenge.

"This is something that I am supposed to do," said Rumer. As chair, Rumer brings with him years of experience in volunteerism and service. He is a past recipient of the H. Sol Clark Award for his pro bono efforts and the Justice Robert Benham Award for Community Service. He and his wife Becky have four children and they were foster parents for 14 years.

SOLACE is voluntary, simple and straightforward. SOLACE does not solicit monetary contributions but assistance or donations in kind. The program is limited to requests on behalf of the legal community and their immediate family members and confidentiality is encouraged. When a need arises, SOLACE participants decide if they or someone in their circle of friends and family can help and in what way. The guiding motto is "there is nothing too big, there is nothing too small." Whether it is a card of condolence or something on a much larger scale, there is potential to serve countless members of the legal community.

If you are interested in becoming a member of the SOLACE network, or know of someone in need of assistance, please contact Rumer at williamrumer@columbusga.org.

**Bonne D. Cella** is the office administrator at the State Bar of Georgia's South Georgia Office in Tifton and can be reached at bonnec@gabar.org.

# 45 Sections to Fine Tune Your Practice

by Derrick W. Stanley

The State Bar of Georgia now has 45 sections to provide you with a range of benefits including lunch-and-learn programs, CLE institutes and social functions.

If you did not sign up for a section(s) when you paid your dues, go to www.gabar.org, sign into your account, click on the "Section Membership" link and then the "Join Sections" link. This process immediately adds you to the section(s) you choose. Section dues vary and some sections are more active than others. Section members are always looking for aspiring leadership to keep the section active and fresh.

A list of the current sections and their descriptions can be found below.

## Administrative Law

Provides a forum for attorneys to become better acquainted with the Georgia Administrative Procedures Act and the numerous administrative agencies of the state government.

## Agriculture Law

Seeks to increase the awareness and further the knowledge of members of the State Bar and general public in agricultural law issues.

## Animal Law

Provides networking and educational opportunities to its members in addition to providing a forum for members to exchange ideas, study and understand laws, regulations and case law pertaining to all areas of animal law.

## Antitrust Law

Facilitates awareness and compliance with the federal antitrust laws. It does so primarily through meetings and programs that alert section members to recent antitrust developments and allows them to get together with other antitrust practitioners in the private bar and the Atlanta offices of the Antitrust Division and the FTC.

## Appellate Practice

The purpose of the section is "to foster professionalism and excellence in appellate advocacy and to encourage improvements in the appellate process." The work of the section involves sponsoring programs and seminars, encouraging appellate pro bono representation, providing a forum for dialogue between the appellate bench and bar of this state and, when appropriate, advocating improvements in appellate practice and procedure through legislation.

## Aviation Law

Offers opportunities to members of the Bar to acquire and share knowledge of aviation-related topics in order to foster a better understanding of the issues that are unique to aviation law.

## Bankruptcy

Serves all members of the Bar whose practice involves debt or creditor issues in the consumer or commercial law areas by its sponsorship of seminars, publications and networking opportunities throughout the state.

## Business Law

Hosts standing committees on the Corporate Code, the UCC, Securities, Partnerships, Legal Opinions and Publications and continues to consider legislative pro-

posals and monitor legislative developments in their respective areas.

## Child Protection & Advocacy

Provides a forum for dissemination of information on aspects of juvenile law practice related to children; focuses on representation at school tribunals, advocacy in IEP and other meetings, and quasi-judicial procurement of social security disability, Medicaid and other entitlements; keeps members informed of changing federal and state laws and of agency rules, policies and regulations; and enhances the practice of law relevant to children, except for matters related to matrimonial law as covered by the Family Law Section.

## Consumer Law

Fosters professionalism and excellence in consumer law advocacy, both through individual and class actions and to promote improvements in laws governing consumer transactions and fair or deceptive business practices.

## Corporate Counsel Law

Comprised of Bar members engaged in corporate law practice with corporations, associations and law firms, the section annually sponsors a two-day Corporate Counsel Institute covering topics of interest to corporate counsel.

## Creditors' Rights

Seeks to provide learning opportunities for its members and to serve the needs of attorneys practicing in the area of collections and commercial litigation.

## Criminal Law

Conducts activities to help keep members updated in the finer points of criminal law and disseminates information on matters affecting criminal practice.

## Dispute Resolution

Facilitates the methods for resolving legal disputes other than through litigation and plans continuing education seminars.

## Elder Law

Promotes the development of substantive skills of attorneys working with older clients by offering continuing education programs.

## Eminent Domain

Organized to promote education relating to the law of eminent domain in the state of Georgia.

## Employee Benefits Law

Seeks to promote knowledge and understanding of laws regulating employer sponsored benefit plans through continuing legal education opportunities in the field of executive compensation, pensions, health and welfare and ERISA litigation and develops collegial-

ity among practitioners within the employee benefits area of practice.

## Entertainment & Sports Law

The section goals are to educate and promote networking among section members and guests. Varied programs include a monthly luncheon lecture series with CLE credits as well as local and international seminars.

## Environmental Law

Provides its members with a unique opportunity to get to know other lawyers from industry, federal and state government, public interest organizations and private law firms who practice environmental law on a day-to-day basis. Membership in the section also enables members to stay informed on current environmental subjects, including legislative and regulatory developments.

## Equine Law

Provides opportunities for members to develop their knowledge and professional abilities in equine matters of law in order to render better service to their clients and the general public.

## Family Law

Keeps domestic relations practitioners informed of changes in applicable statutory and case law that impact us every day. The section promotes this continuing education process through seminars, meetings and a newsletter, which is invaluable to all family law practitioners. The section also monitors legislation in an attempt to improve the administration of family law justice in Georgia.

## Fiduciary Law

Has as its primary goal the improvement of skills of lawyers who practice in the fiduciary area by sponsoring seminars such as the Fiduciary Law Seminar, the Estate Planning Institute in Athens, the Basic Estate Planning Seminar and other programs.

## Franchise & Distribution Law

Promotes the education and best practices of franchise and distribution law among section members.

## General Practice & Trial Law

Benefits of membership include *Calendar Call*, luncheons, liaison to other sections and the American Bar Association and a web presence. Section seminars focus on trial practice, law staff training, office technology, mediation and basic corporate practice.

## Government Attorneys

The purpose of this section is to provide a forum for government attorneys and to promote their interest before and participation in the Bar.

## Health Law

Deals with a wide variety of health care law issues relevant to attorneys for hospitals, physicians, insurers, employers, patients and government agencies. The section publishes a newsletter for its members and conducts educational seminars during the year. The section also sponsors health law projects among the various Georgia law schools.

## Immigration Law

Provides education, advice and disseminates information regarding current conditions relating to the practice before various government agencies including Department of Homeland Security, U.S. and state Department of Labor, etc., to its members in the area of U.S. immigration law.

## Individual Rights Law

Serves the Bar through educational activities intended to protect and promote the rights of individuals. During the legislative session the section monitors legislation likely to have a significant impact on members. The section sponsors community service projects, hosts informal gatherings for its members and special guests.

## Intellectual Property Law

Provides networking and educational opportunities to its members. The section also fosters networking and education for intellectual property attorneys and professionals nationwide, including co-sponsoring the annual IP Institute.

## International Law

Endeavors to provide a forum for its members to exchange ideas and experiences related to representation of domestic or foreign clients in connection with matters involving more than one national jurisdiction. In addition, the section keeps its members informed of the latest developments in the areas of international law and practice through an annual continuing legal education seminar, luncheon study groups and periodic presentations by experts in their field.

## Judicial

Fosters professionalism and excellence in the judiciary, encourages improvements in judicial process and court operations, solicits input from non-judicial Bar members upon judicial procedures and court operations, and encourages interaction between bench and bar.

## Labor & Employment Law

Focuses attention on all areas of labor/management-employee/employer relationships through continuing legal education.

## Legal Economics Law

Provides information and assistance on the administrative, business and practical aspects of the practice of law. The section produces a newsletter with the Law Practice Management Program of the Bar and co-sponsors seminars.

## Local Government Law

Provides a forum for attorneys representing local governments to

exchange ideas and experiences. The Local Government Institute for city and county attorneys is held annually in Athens.

## Military/Veterans Law

Sponsors two continuing legal education programs each year promoting awareness and training among Bar members of legal issues particular to military service. The section annually conducts training for attorneys seeking approval to practice before the VA.

## Nonprofit Law

Establishes and maintains, as an integrated group, members of the Bar who are legal advisors in the field of nonprofit law to provide an opportunity for the exchange of information and ideas; to improve the professional responsibility with respect to the practice of nonprofit law; to provide, serve and act as a central association and forum for the study, discussion, resolution, collection and dissemination of ideas, information, data, conclusions and solutions with respect to, and common problems created by, the field of nonprofit law.

## Product Liability Law

Co-sponsors two seminars annually. Members receive a quarterly newsletter featuring case summaries, articles, section member profiles and a calendar of section events, which will include meetings in Rome, Savannah and Macon.

## Professional Liability

Promotes the objectives of the Bar within the fields of professional liability and malpractice. The section's emphasis shall be upon liability in fields other than medical or veterinary professions, including but not limited to: (1) Architects; (2) Attorneys at law; (3) Certified public accountants; (4) Land surveyors; (5) Professional engineers. The purposes shall be to provide a medium through which practitioners in the fields of professional liability can organize, concentrate and coordinate their activities to enhance the practice and understanding of professional liability law.

## Real Property Law

Promotes continuing legal education by co-sponsoring with ICLE each year, a commercial real property law seminar in the fall, a basic real estate practice seminar in the winter and a Real Property Law Institute in May. The section monitors legislation at the state and federal level that impacts its members, publishes a newsletter and maintains a section website. It also maintains a Listserv for members to post questions and receive real time responses, with helpful guidance from other practitioners.

## School & College Law

Provides section members with opportunities to interact with those actively engaged in practicing school and college law. The section co-sponsors annually, with ICLE, a seminar on school and college law issues.

## Senior Lawyers

Informs lawyers of retirement opportunities, options and benefits, support and assistance to senior lawyers in continuing their careers, improved representation for the disadvantaged, increased pro bono work, encouraging the development of alternate provisions of dispute resolution, advancement of substantive elder law and professional collegiality.

## Taxation Law

Pursues the continuing education of the members of the Bar in the field of federal and state taxation; maintains liaison with the Internal Revenue Service, the State Department of Revenue and the Georgia State University Tax Clinic; monitors state legislation affecting taxation; and makes recommendations concerning legislative and administrative rules.

## Technology Law

Provides a forum for lawyers to discuss legal issues related to technology.

## Tort & Insurance Law

Has five main functions: (1) to further the education of its members by providing seminars on insurance-related legal topics; (2) to keep its members abreast of current developments in insurance law, such as case law, legislation or regulations; (3) to provide a forum for the exchange of views on the insurance-related aspects of the practice of law; and (4) to influence for the better, when appropriate, those activities which relate to insurance and affect lawyers; and (5) to develop a relationship with the State Insurance Commissioner's Office that will enhance the interests of the members of the section.

## Workers' Compensation Law

Seeks through its work to keep its members fully informed in the area of workers' compensation. The section works closely with the State Board of Workers' Compensation to convey information regarding new rules changes and statutes to its members. It actively participates in and supports workers' compensation seminars and continuing legal education.

* * *

Sections offer the unique opportunity to network with peers in the same field of practice. They also provide leadership and growth opportunities within the section itself as well as one's career. For more information please visit www.gabar.org/sections or contact Derrick Stanley at derricks@gabar.org or 404-527-8749. GBJ

**Derrick W. Stanley** is the section liaison for the State Bar of Georgia and can be reached at derricks@gabar.org.

# Online Research Using Fastcase and Google

by Sheila Baldwin

The State Bar of Georgia provides Fastcase, one of the most comprehensive law libraries, to all members at no cost as part of their Bar dues. We offer classes each month at the Bar Center as well as our Coastal and South Georgia offices, and at other locations by request. This one-hour class guides users through an overview of available content, search syntax including traditional Boolean-style keyword searching and design features. Learn how to use the interactive timeline and the integrated citation tool, Authority Check, to find and analyze relevant and highly cited cases (see fig. 1). Not only are these classes free, your staff members are welcome, also. If you want CLE credit, there is a $5 fee for the one hour of general credit.

Google specialty search tools can be used effectively in conjunction with Fastcase to find relevant information that may not readily come up in traditional case law searches. As part of the Fastcase training, we touch on Google Scholar, Alerts, Reader and Trends to name a few. Google Scholar searches legal opinions and organizes them nicely but is not comprehensive; it does have a spell check feature that comes in handy. Specialized searches are found under the "more" tab in the center of Google's homepage and then going to the bottom of the menu to find "even more" (see fig. 2).

## Fastcase

- Create a list of cases that cite to a particular statute or case.
- See cases displayed in a visual 4D timeline that map by time, relevance, court level and how often cited, which you can see in a glance.
- Explore how a judge has historically treated an area of law.
- Find the latest cases coming out of the courts even as recently as the previous day.
- Compare statutes from various jurisdictions to see historical and ongoing trends.
- Use a combination of words, phrases and citations to create good searches.
- Save often-used legal documents to a favorites library.

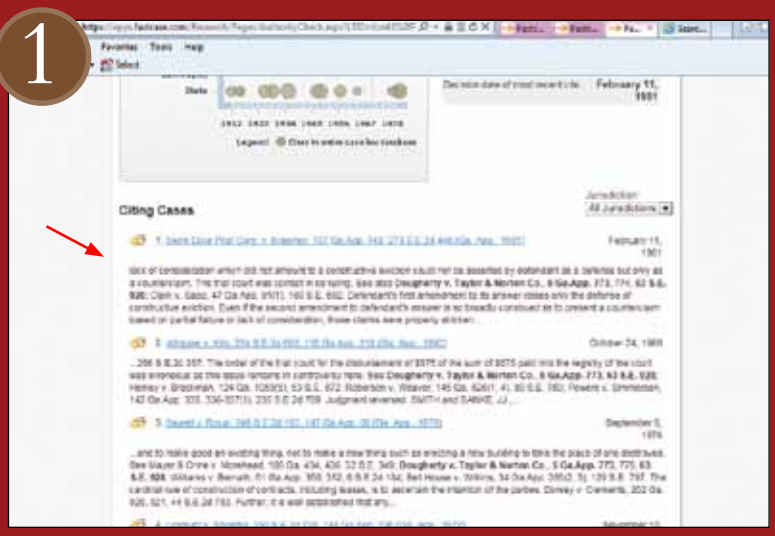
- Create a static URL for each results list produced to save for future reference.

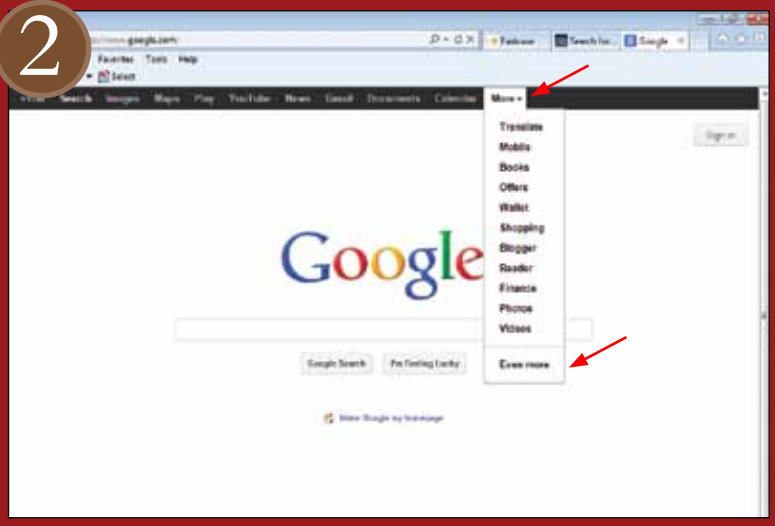
## Google

- Follow a case going forward and send updates to your email when discussed later.
- Search all case law that is not password protected; anything that is digitized and publically on the Internet which would include most recent cases.
- View cases in three ways, cited by, how cited and related articles.
- Find unpublished cases that may be on point and contain information that will help you find authoritative cases.
- Search scholarly articles related to cases.
- Keep up with favorite law blogs by simply checking your email.
- Follow trends in law, business and government (see fig. 3).
- Use the glossary, thesaurus and translation tools to write briefs or other documents.
- Track citations to your publications and add them to your profile.
- Discover company or personal information for due diligence research.

Online legal research has never been easier. Take some time to explore Fastcase and Google to make the most of two of the best products for Internet research and sign up for a Fastcase training to quickly discover how to use the features described in this article. As always, feel free to contact me at 404-526-8618 or sheilab@gabar.org with any comments or questions. GBJ

**Sheila Baldwin** is the member benefits coordinator of the State Bar of Georgia and can be reached at sheilab@gabar.org.





Fastcase training classes are offered four times a month at the State Bar of Georgia in Atlanta for Bar members and their staff. Training is available at other locations and in various formats and will be listed on the calendar at www.gabar.org. Please call 404-526-8618 to request onsite classes for local and specialty bar associations.

# Improving Routine Documents Part 1: Engagement Letters

by Karen Sneddon and David Hricik

The next few installments of *Writing Matters* will tackle improving documents a lawyer may write every day that may have become so routine that the documents do not receive the critical eye they may need. We start the series with the engagement letter.

For the most part, attorneys are not ethically required to send engagement letters to clients. But engagement letters provide great opportunities to establish rapport with a client, to highlight the client's obligations and to manage expectations. We focus here not on all aspects of engagement letters that are ethically required or good to use to manage risk, but instead on those that relate to effective communication. So, pull out your engagement letter and consider how your engagement letter addresses the following topics.

## Does the Letter Clearly Identify the Client?

A lawyer owes a fiduciary duty to every client. A lawyer who does not clearly identify who the client is, and who is not, may be leaving the identity of his or her fiduciary to a judge or jury to decide.

The letter should identify the client. It should be clear whether the client is an individual, a married couple, a corporation, a trust or some other juridical person. In addition to identifying the client, if there is potential for uncertainty the letter should also make clear who the lawyer does not represent. For example, if a lawyer represents a corporation, he may need to specify that he does not represent affiliated corporations. If he represents a partnership, he may need to specify that he does not represent its partners. Particularly in representing close corporations or small partnerships, informal communications coupled with a lack of clarity can confuse

A well-written engagement letter that is tailored to the particular needs of a client begins the attorney-client relationship on solid footing and prepares both parties for the work ahead.

an individual into believing that he, in addition to the entity, is a client. A clear engagement letter can reduce the likelihood of confusion as to whom the lawyer will correspond with, take instructions from and otherwise obey.

## Does Your Engagement Letter Define the Scope of the Engagement and Summarize Client Objectives?

Ethical rules provide that the client decides the objectives of the representation. The lawyer generally determines the means to achieve those objectives, but in consultation with the client. Stating that abstraction is easy; communicating it in concrete terms to a client may not be.

A letter that clearly sets out the objectives of a representation will ensure that the lawyer understands what the client wants, and also that the client understands what the lawyer is obligated to do. Particularly in flat fee or contingent fee practices, this can be vitally important. For example, a lawyer who agrees to handle a client's "personal injury matter" may be binding herself to handle, not just trial of a personal injury case, but any appeal and any related proceedings such as workers' compensation hearings. An engagement letter should set out the scope of the representation so everyone is on the same page.

## Does Your Engagement Letter State the Billing Terms?

A client may not understand the process of fees and expenses for legal services rendered, let alone that time may be billed in increments of a tenth of an hour. Communicating to the client about basic transactional details will reduce the likelihood of a client being surprised by a bill.

The engagement letter can anticipate some of the client's concerns and questions about fees, expenses and billing. The explanation may include the fee structure being used, how fees will be calculated, when expenses will be due and the frequency of billing—and expectations regarding the timing of payment. A client who agrees to pay fees and expenses "within 30 days" will better understand the arrangement than one who agrees to pay those costs in a "timely" fashion, for example.

## Does Your Engagement Letter Settle Expectations About Communication?

Many bar complaints arise from mismanagement of client expectations regarding the nature and frequency of communication. In this digital age of instantaneous and continuous communication, the engagement letter can outline the policy and procedure for communication to reduce unrealistic expectations.

For example, the letter can make clear how often and in what manner the client may expect updates from the attorney. It can limit how or how frequently the client should communicate with the attorney and what amount of time the client should reasonably expect to pass before the attorney returns calls or emails. Informing a client that emails will be addressed within five business days, for example, may reduce or eliminate the unrealistic expectation of instantaneous replies.

## Is the Engagement Letter Reader-Friendly?

There are admittedly a lot of other topics to address in a particular engagement letter. Conflicts of interest, how contingent fees will be determined, termination provisions and other issues must be addressed in some circumstances.

Clarity is critical. Consequently, not only should the lawyer avoid legalese and instead opt for clear language, the lawyer should also pay attention to the appearance of the letter. Formatting (including margins, white space, type space, line spacing and headings) should be used to promote client comprehension of the contents.

* * *

A well-written engagement letter that is tailored to the particular needs of a client begins the attorney-client relationship on solid footing and prepares both parties for the work ahead. GBJ


**Karen J. Sneddon** is an associate professor of law at Mercer University School of Law.

**David Hricik** is currently on leave from Mercer University School of Law, serving as law clerk to Chief Judge Randall R. Rader of the U.S. Court of Appeals for the Federal Circuit during 2012-13. He will return to Mercer in 2013. The legal writing program at Mercer University continues to be recognized as one of the nation's top legal writing programs.

# The Now and Future of Legal Education:

## Professionalism Matters

by Avarita L. Hanson

Every summer for the last 20 years, the Chief Justice's Commission on Professionalism (CJCP) has partenered with the State Bar's Committee on Professionalism (Professionalism Committee) and all Georgia law schools to present the Law School Orientation on Professionalism Program. This year, the new Savannah Law School, the offshoot of Atlanta's John Marshall Law School, was added to the mix. More than 200 legal professionals engaged more than 1,000 students in dialogues about professionalism aspirations and issues.

### Georgia State University

The orientation program at Georgia State took place on Aug. 7, with long-standing Professionalism Committee member Dean Roy M. Sobelson opening the day with an overview of the program. The keynote address was given by Hon. Stephanie D. Woodard (J.D. '96), solicitor-general of Hall County, who also

Photos by Terie Latala

Hon. Louisa Abbot, judge, Chatham County Superior Court, Eastern Judicial Circuit, administers the professionalism honor pledge to students at the new Savannah Law School.

administered the professionalism and honor code pledge. Volunteer judges, attorneys and law professors serving as group leaders were joined by students in small breakout groups to discuss hypothetical law school and practice situations giving rise to professionalism and ethics challenges. Students brought a wealth of life experiences to the table as they considered the situations that challenged their professional identity and moral compass.

## Mercer University

Dean Oren Griffin, associate dean of academic affairs, welcomed attorneys and students to the orientation on Aug. 10. Prof. Patrick Longan provided the overview and introduction; Hon. Tilman E. Self III, Superior Court, Macon Judicial Circuit, delivered the keynote address and administered the Law Student's Creed.

Self's comments, excerpted herein, were most helpful to the ensuing dialogue with the students:

> I can only give you some ideas of what I think are some common characteristics of a professional lawyer. However, I can tell you that it takes work. You have to work at it and you have to guard it hawkishly once you get it. Today's culture makes it harder to obtain, in my opinion. We live in a day where people are often heralded who humiliate others, and watching others lose is great entertainment. We live in a culture where the truth is optional, where there are no absolutes and everything is relative and where there is very little shame. We need only look to our presidential campaign where those that should be the ultimate role models for others behave in the most shameful fashion. Reality shows glamorize backbiting, lying, winning at all costs, and often mock those that subscribe to a higher moral standard. We can't stoop to their level. Neither you nor I can change our culture, but we can

## The Future: The 2012 Convocation on Professionalism

This fall, under the leadership of Chief Justice Carol W. Hunstein, the Chief Justice's Commission on Professionalism will present its 2012 Convocation on Professionalism on Thursday, Nov. 15, at the Bar Center. The Convocation addresses the topic: "The Future of Legal Education: Will It Produce Practice-Ready Lawyers?" National and Georgia legal experts will address the hot topics and challenges of legal education today and the near future. Georgia stakeholders—the public, practitioners, recent graduates and new lawyers, judges and legal educators—will discuss the options and opportunities to produce practice-ready attorneys.

The luncheon will feature a special tribute to Rev. Dr. James T. Laney, credited as being one of the founders of the Chief Justice's Commission on Professionalism. In 1986, Laney, then-president of Emory University, delivered a lecture on "Moral Authority in the Professions." In that lecture, Laney not only expressed concern about the moral authority of all the professions, he focused on the legal profession because of the respect and confidence in which it has traditionally been held and because it is viewed by the public as serving the public in unique and important ways. As a result, the Supreme Court of Georgia and the State Bar embarked on a long-range project to raise the professional aspirations of Georgia lawyers that culminated in the formation of the Chief Justice's Commission on Professionalism in 1989.

Convocation participants include: Prof. Frank S. Alexander, Emory School of Law; Prof. Kimberly W. D'Haene, Atlanta's John Marshall Law School; Prof. Daisy Hurst Floyd, Mercer University Walter F. George School of Law; Prof. Steven Hobbs, University of Alabama School of Law; Dean Steven Kaminshine, Georgia State University College of Law; Prof. James E. Moliterno, Washington & Lee University School of Law; Prof. Thomas D. Morgan, George Washington School of Law; Fred Rooney, director, CUNY School of Law Community Legal Resource Network; and Dean Rebecca H. White, University of Georgia School of Law. The Georgia Board to Determine Fitness of Bar Applicants will be represented by Hon. J. Antonio DelCampo, chair, and the Georgia Board of Bar Examiners will be represented by Ralph F. "Rusty" Simpson, chair. Representing the State Bar of Georgia are Robin Frazer Clark, president, and Jon Pannell, YLD president. Other noteworthy participants include: Hulett "Bucky" Askew, past consultant, ABA Section on Legal Education; Shatorree Bates, founder, YLD Solo & Small Firm Practice Committee; Steve Gottlieb, executive director, Atlanta Legal Aid Society; C. Lash Harrison, Ford & Harrison LLP; Vivian Ingersoll, community volunteer; Linda A. Klein, past chair, ABA House of Delegates, past president, State Bar of Georgia; Tangela S. King, director, Transition Into Law Practice Program; John T. Marshall, Bryan Cave LLP; and Charles C. Olson, director, Prosecuting Attorneys' Council of Georgia.

A CLE program for attorneys, the Convocation offers six hours of credit, including one hour of Professionalism and one hour of Ethics credit. Separate lunch tickets will be available. Sponsors to date include the Georgia Board of Bar Examiners; the Georgia Board to Determine Fitness of Bar Applicants; Justice Leah Ward Sears (Ret.); Schiff Hardin LLC; Gate City Bar Association; the State Bar of Georgia Young Lawyers Division; the State Bar of Georgia Committee on Professionalism; and the State Bar of Georgia Law Practice Management Program.

For more information, contact Nneka Harris-Daniel at professionalism@cjcpga.org.

*(Left to right)* Dean Paul M. Kurtz, Hon. Edward J. Tarver and Prof. Lonnie Brown following the University of Georgia's Orientation on Professionalism.

decide to live unaffected by it. We can purpose ourselves to be better than others and to conduct ourselves in an honorable fashion, no matter how unpopular. Law is an honorable and noble profession. I am proud to be a lawyer, and I think that I am in the best profession. I hope you are, too. Let me begin by saying that there is no shame in being a lawyer. Don't apologize for it, and defend it with your utmost ability. Our profession is under attack and the way we fight back is by being professional, by acting in a way that brings honor and credit to this calling. It starts with you today.

## University of Georgia

Dean Paul M. Kurtz opened the orientation on Aug. 10, by administering the honor code. Prof. Lonnie Brown introduced the program and keynote speaker, Hon. Edward J. Tarver, U.S. Attorney for the Southern District of Georgia, provided the address. He emphasized to the students that their careers started with orientation and that the characteristics they develop as students will aid in their professional life. He advised the students that they cannot embrace the "win at any cost" approach which usually ends in "no win and at great cost."

## Atlanta's John Marshall Law School

On Aug. 11, Hon. Dick Donovan, Paulding County District Attorney and immediate past chair of the Professionalism Committee, provided an overview of the orientation program and introduced keynote speaker, Hon. James R. Osborne, Superior Court, Paulding Judicial Circuit. Osborne stressed that students should "take the same professionalism in whatever area you go into," whether to law practice or something else. Osborne administered the professional honor pledge to the incoming class and the law school hosted a barbecue lunch for students, group leaders, faculty, friends and family.

## Emory University

Emory's orientation was held on Aug. 17. Dean A. James Elliott welcomed students and provided an introduction to the program. Fulton County Superior Court Judge T. Jackson Bedford served as the keynote speaker. Hon. David E. Nahmias, justice, Supreme Court of Georgia, administered the professionalism oath to the students. Other program participants were Sally Evans Lockwood, Georgia Office of Bar Admissions, and Student Defense Counsel Member Courtney Ginn. Group leaders included judges, attorneys and law professors in discussions with incoming, transfer and visiting students. Emory's orientation is a two-part event with the summer orientation addressing student situations and the winter segment focusing on practitioner hypotheticals.

## Savannah Law School

Georgia's newest law school, a branch of Atlanta's John Marshall Law School, was launched in August and held its first Orientation on Professionalism on Aug. 18. Avarita L. Hanson, executive director of CJCP and former associate dean for academic affairs and professor at John Marshall, provided the overview. Dean Richardson Lynn introduced the keynote speaker, Hon. Louisa Abbot, Chatham County Superior Court, Eastern Judicial Circuit. Abbot began with her comments that these students will "add to the social fabric of our community in so many ways I can't imagine" as she advised them to "make us proud." She emphasized that lawyers are problem solvers who can leave clients with more choices to make, some of which may involve conflicts and high emotions. Abbot ended by sharing words from her father, an attorney, in which she firmly believes: "There can never be enough good lawyers." Abbot then administered the professionalism honor code pledge to the nearly 50 incoming full-time and evening students.

## Wrap-Up and Acknowledgments

The 2012 orientations were well-received by all participants. Group leaders commented that the general orientation format provided: "good interaction of the students" and "small groups are a great for-

# 2012 Law School Orientations on Professionalism Volunteers

### Atlanta's John Marshall Law School

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Prof. Kathleen Burch
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Thomas G. Traylor III
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### Savannah Law School

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Fred V. Bauerlein
Denise M. Cooper
Brittney Diggs
William S. Lewis
Avarita L. Hanson
Michael L. Monahan
William H. Pinson Jr.
James B. Smith
Katie A. Smith
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Ryan J. Swingle
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*Delivering on the Promise of Justice for All*

# Now's Your Chance to Make a Difference

As a reservist in the Air National Guard, Ms. Bennett had been given leave from her job to attend training for her National Guard duties several times. One day, she received orders to appear for training, but when she submitted a request for leave, her employer denied it. She quit her job to keep from being AWOL from the Guard and facing jail time. When she returned from her military service, she applied for unemployment benefits but was denied because her employer had reported that she quit for "personal reasons." Ms. Bennett came to the Georgia Legal Services Program (GLSP) for help and was advised that federal regulations require employers to grant leave for military service and prohibit any discrimination against service members because of their obligation to do their military duty. A GLSP lawyer represented Ms. Bennett at her appeal hearing arguing that her employer had wrongfully forced her to choose between her job and her duty to the National Guard. Ms. Bennett was awarded more than $3,000 in back benefits and $277 a week until she could find another job.

## Make your gift now and support GLSP in delivering on our nation's promise of justice for all.

**Give or make your pledge to the Georgia Legal Services Program (GLSP) at www.glsp.org (click on Donate Now), or scan the QR code box with your smart phone. You will help Georgians with low-incomes who live in the 154 counties outside Metro Atlanta overcome barriers to opportunities out of poverty.**

State Bar of Georgia

Georgia Legal Services Program®

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The Georgia Legal Services Program (GLSP) is a 501(c)(3) nonprofit law firm. Gifts to GLSP are tax-deductible to the fullest extent allowed by law.

mat for these discussions." Many attorney volunteers commented that they "enjoyed giving back, meeting other lawyers and students," and that it is "a great idea to expose 1L students to ethics and professionalism."

Students found the program effectively introduced them to the concept of professionalism in the practice of law. One commented that "the program has placed a strong emphasis on professionalism and has given me a firm understanding of how to conduct myself as a professional." Students found the group leaders "very respectful and considerate," "phenomenal at explaining professionalism and what it entails," and "good at moderating discussion and channeling questions." The keynote speakers were most impactful since they were motivating and shared their wisdom through their personal stories that humanized professionalism.

Many thanks to Joy Lampley Fortson, chair of the Professionalism Committee, Hon. Dick Donovan, immediate past chair, committee members and the volunteer judges, attorneys and law school professionals for making the 20th year of the Law School Orientation on Professionalism Program successful, engaging, educational and meaningful. We also extend our gratitude to CJCP staff for their dedication to this program: Terie Latala, assistant director and Nneka Harris-Daniel, administrative assistant.

A fitting conclusion is that we are now seeing a growing number of law school graduates who, as incoming students, participated in these orientations returning as group leaders. Developing our professional identity as an attorney is truly a life endeavor. Hon. Tilman E. Self III began his keynote at Mercer by pointing out, "By giving me the opportunity to give this speech, I was also given the opportunity to do some self-evaluation and introspection—a good exercise for all of us. Thinking about professionalism has reinvigorated me and driven me to recommit myself to these ideals of which I speak."

Attorneys who wish to participate in this unique way of orienting law students to professionalism should watch for the call to volunteer in the *Georgia Bar Journal* and online, or by contacting Nneka Harris-Daniel at the Chief Justice's Commission on Professionalism at professionalism@cjcpg.org.

**Avarita L. Hanson** is the executive director of the Chief Justice's Commission on Professionalism and can be reached at ahanson@cjcpga.org.

In Memoriam honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the legal profession. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

**Leonard G. Anderson**
Richmond, Va.
Emory University School of Law (1949)
Admitted 1949
Died March 2012

**Alvan S. Arnall**
Atlanta, Ga.
University of Georgia School of Law (1963)
Admitted 1963
Died February 2012

**Lauren Lyn Becker**
Atlanta, Ga.
Samford University Cumberland School of Law (1980)
Admitted 1980
Died July 2012

**G. Larry Bonner**
Scottsboro, Ala.
University of Georgia School of Law (1976)
Admitted 1976
Died May 2012

**Edward E. Boshears**
Brunswick, Ga.
Mercer University Walter F. George School of Law (1972)
Admitted 1972
Died July 2012

**Carl J. Chrisope**
Marietta, Ga.
Emory University School of Law (1958)
Admitted 1958
Died June 2012

**Reed E. Cox**
Marietta, Ga.
John Marshall Law School (1979)
Admitted 1973
Died July 2012

**Joseph Wilmer Davenport**
Theodore, Ala.
Georgia State University College of Law (1993)
Admitted 1993
Died January 2012

**T. Hoyt Davis Jr.**
Vienna, Ga.
Mercer University Walter F. George School of Law (1940)
Admitted 1940
Died April 2012

**Marion Guess Jr.**
Decatur, Ga.
Emory University School of Law (1967)
Admitted 1969
Died July 2012

**C. Edward Hansell**
Roswell, Ga.
Harvard University Law School (1953)
Admitted 1953
Died July 2012

**C. Thomas Huggins**
Evans, Ga.
University of Georgia School of Law (1967)
Admitted 1966
Died July 2012

**Harry L. Hutchinson**
Dunwoody, Ga.
Dickinson School of Law (1971)
Admitted 1974
Died August 2012

**Jack Thomas Hutchinson**
Canton, Ga.
University of Cincinnati College of Law (1954)
Admitted 1971
Died July 2012

**Deborah Sue Hyden**
Lawrenceville, Ga.
University of Tennessee College of Law (2001)
Admitted 2002
Died July 2012

**Frank C. Jones**
Macon, Ga.
Mercer University Walter F. George School of Law (1950)
Admitted 1950
Died August 2012

**Michael J. Keane**
Roswell, Ga.
Fordham University School of Law (1959)
Admitted 1973
Died July 2012

**Charles C. King Jr.**
Covington, Ga.
Emory University School of Law (1940)
Admitted 1947
Died June 2012

# Frank C. Jones, 1925-2012, A Distinguished Leader in the Legal Community

Frank Cater Jones, 1968-69 president of the State Bar of Georgia, died Aug. 29, 2012, at his home in Macon at the age of 87, following a lengthy illness.

Born in Macon, he was educated in the public schools of Bibb County and graduated from Lanier High School. As a teenager, he was very active in scouting, and became an Eagle Scout.

During World War II, he served for three years in the United States Naval Reserve, including a period of about a year near the war's end as a member of the original crew of the USS Midway, CVB-41. He remained in the Naval Reserves for several years after the war ended and was honorably discharged with the rank of Lieutenant.

He received an undergraduate degree from Emory University, where he was a member of the Kappa Alpha Order and the chapter head during his senior year. Thereafter, he graduated from the Walter F. George School of Law, Mercer University, and while there served as editor-in-chief of the *Law Review*.

During his six decades as a Georgia lawyer, Jones consistently demonstrated his commitment to leadership, service and the work of the organized Bar. He was faithful to the ideals of serving others, promoting the cause of justice, upholding the rule of law and protecting the rights of all citizens.

His service as a Bar leader included terms as president not only of the State Bar but also the Younger Lawyers Section, the Macon Bar Association, the American College of Trial Lawyers and the U.S. Supreme Court Historical Society. As chair of the State Bar of Georgia Bar Center Committee from 1995 until the time of his death, he provided crucial leadership in creation of what is arguably the finest such facility in the nation.

While serving as State Bar President, Jones began to recognize a need for the State Bar to consider moving its headquarters from Macon to Atlanta, the state capital, home of the Supreme Court and rapidly growing economic center of the state. In 1970, Jones agreed to chair a Special Committee on State Bar Headquarters. For the good of the entire Bar, he unselfishly set aside any desire to keep the headquarters from leaving his hometown, and the committee's work resulted in the move to Atlanta, which was completed in 1973.

In 1997, the State Bar honored Jones with its highest honor, the Distinguished Service Award, for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in our state. Over the years, he also earned the Tradition of Excellence Award, presented by the General Practice and Trial Section of the State Bar; the Outstanding Alumnus Award, presented by the Walter F. George School of Law at Mercer University; and the Lifetime Achievement Award, presented by the Anti-Defamation League of B'Nai B'rith.

In addition to his exemplary law practice at Jones, Cork & Miller in Macon and King & Spalding in Atlanta and his tireless efforts for the good of his profession, Jones was an equally distinguished leader in the community, serving as either president or board chairman of the Macon Chamber of Commerce, United Givers Fund of Macon-Bibb County, Atlanta and Macon chapters of the American Red Cross, Georgia Public Telecommunications Commission, Great Park Authority, Atlanta Symphony Orchestra League, and Atlanta Chamber of Commerce Cultural Affairs Board. In addition, he served as a trustee or board member of Emory University, Mercer University Law School, Wesleyan College, the Carter Center and the Georgia Judicial Qualifications Commission. He also served as chairman of the Administrative Board and Board of Trustees of Vineville United Methodist Church in Macon, where he taught an adult Bible class for more than 60 years.

His fellow Georgia lawyers will always remember and be inspired by Frank Jones' forward-thinking vision, his willingness to accept challenging assignments and the stellar performance of his duties, which were always integral to the success of the State Bar of Georgia on many fronts and earned Jones the respect of his colleagues across the nation.

He is survived by his wife of 61 years, Annie Anderson Jones, and by four children, seven grandchildren and one great grandchild.

The funeral service was held Sept. 1 at Vineville United Methodist Church with Dr. Marcus Tripp presiding. Burial was in Rose Hill Cemetery.

Memorial contributions may be made either to Vineville United Methodist Church, 2045 Vineville Ave., Macon, GA, 31204, or to The Methodist Home for Children and Youth, P. O. Box 2525, Macon, GA 31203-2525.

**Alton D. Kitchings**
Savannah, Ga.
University of Georgia School of Law (1949)
Admitted 1949
Died July 2012

**George Ulysses Lane Jr.**
Atlanta, Ga.
Harvard University Law School (1976)
Admitted 1977
Died July 2012

**Roy M. Lilly**
Thomasville, Ga.
Mercer University Walter F. George School of Law (1940)
Admitted 1947
Died June 2012

**William H. Long**
Quitman, Ga.
Georgetown University Law Center (1937)
Admitted 1938
Died April 2012

**Morris W. Macey**
Atlanta, Ga.
Harvard University Law School (1947)
Admitted 1943
Died August 2012

**Tommy C. Mann**
Macon, Ga.
Mercer University Walter F. George School of Law (1960)
Admitted 1960
Died July 2012

**Frank K. Martin**
Columbus, Ga.
University of Georgia School of Law (1964)
Admitted 1964
Died August 2012

**Robert E. Maxey**
Celebration, Fla.
Emory University School of Law (1982)
Admitted 1984
Died August 2012

**Frank M. McKenney**
Macon, Ga.
Mercer University Walter F. George School of Law (1959)
Admitted 1958
Died May 2012

**James T. Perry**
Duluth, Ga.
University of Georgia School of Law (1979)
Admitted 1979
Died April 2012

**J. Taylor Phillips**
Macon, Ga.
Mercer University Walter F. George School of Law (1955)
Admitted 1954
Died June 2012

**Charles L. Ratterree**
Atlanta, Ga.
Emory University School of Law (1949)
Admitted 1950
Died April 2012

**William Ennis Shanks Jr.**
Birmingham, Ala.
Emory University School of Law (1976)
Admitted 1976
Died September 2011

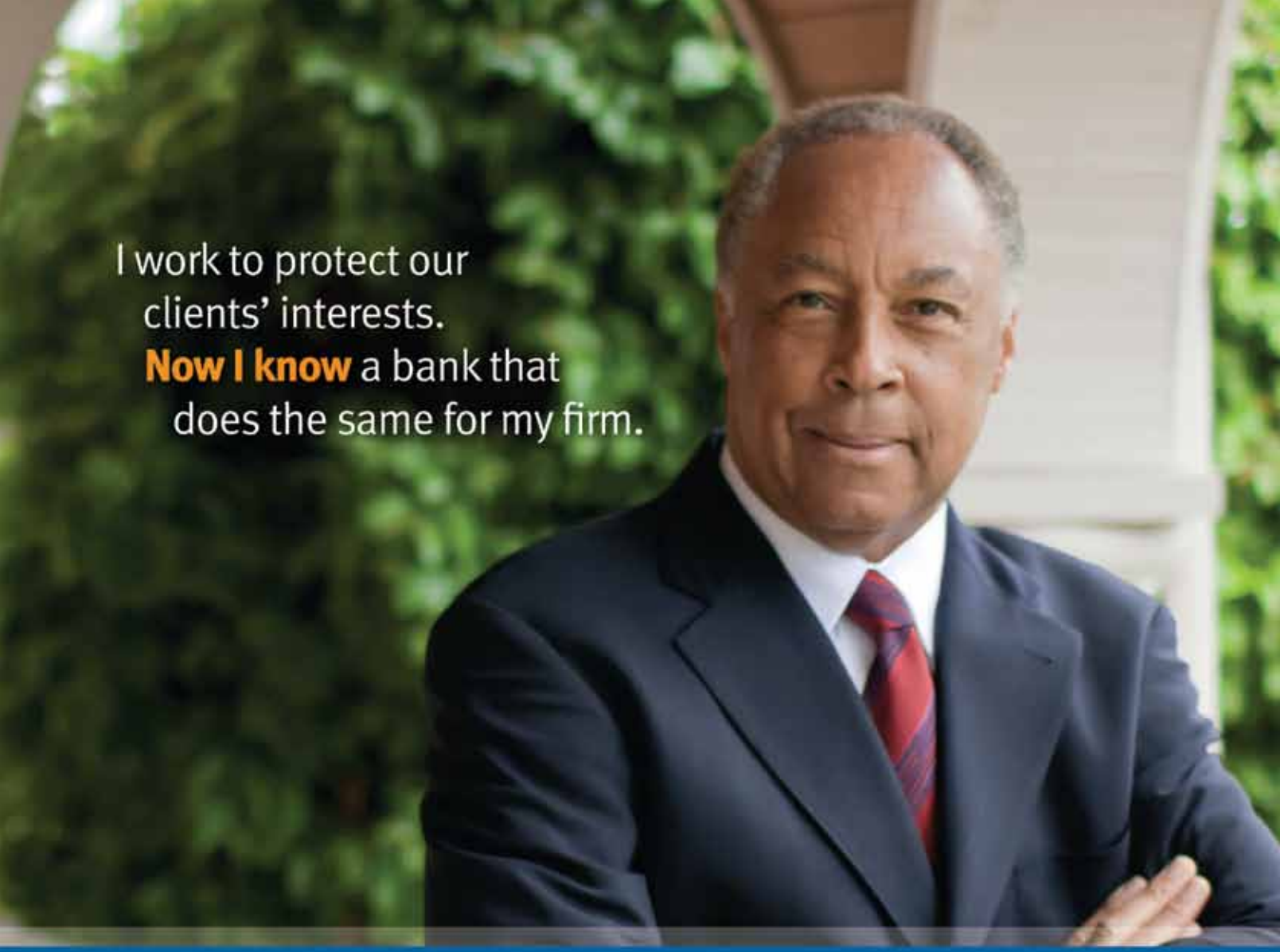
**William E. Smith**
Americus, Ga.
University of Georgia School of Law (1939)
Admitted 1940
Died December 2011

**Sidney O. Smith Jr.**
Atlanta, Ga.
University of Georgia School of Law (1949)
Admitted 1948
Died July 2012

**William B. Stark**
Duluth, Ga.
University of Georgia School of Law (1949)
Admitted 1949
Died August 2012

**Ralph Gerald Walker**
Canton, Ga.
University of Alabama School of Law (1973)
Admitted 1973
Died March 2012

**Neil Williams Jr.**
Atlanta, Ga.
Duke University School of Law (1961)
Admitted 1962
Died August 2012

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9 CLE

**OCT 12**
ICLE
*Basic Fiduciary Practice*
Macon, Ga.
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6 CLE

**OCT 12**
ICLE
*Premises Liability*
Atlanta, Ga.
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ICLE
*IP Boot Camp*
Atlanta, Ga.
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3 CLE

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ICLE
*Tractor Trailer Collision Cases*
Atlanta, Ga.
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6 CLE

**OCT 18**
ICLE
*Beginning Lawyers*
Atlanta, Ga.
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6 CLE

**OCT 18-19**
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*Business Law Institute*
Atlanta, Ga.
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12 CLE

**OCT 19**
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*Expert Testimony*
Atlanta, Ga.
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6 CLE

**OCT 19**
ICLE
*Technology Law Institute*
Atlanta, Ga.
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*Family Law*
Augusta, Ga.
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# Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, *2011-2012 State Bar of Georgia Directory and Handbook,* p. H-6 (hereinafter referred to as "*Handbook*").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6. The text of this Notice may be included and combined with the text of the Notice published in the August issue, Volume 18, Number 1, of the *Georgia Bar Journal,* pages 84-94, in any motion filed with the Georgia Supreme Court.

This Statement and the following verbatim text are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier
Executive Director
State Bar of Georgia

**IN THE SUPREME COURT**
**STATE OF GEORGIA**

**IN RE: STATE BAR OF GEORGIA**
**Rules and Regulations for its**
**Organization and Government**

**MOTION TO AMEND 2012-2**

**MOTION TO AMEND THE RULES AND REGULATIONS OF THE STATE BAR OF GEORGIA**

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors at its annual meeting on June 2, 2012, and upon the recommendation of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, and published at *2011-2012 State Bar of Georgia Directory and Handbook,* pp. 1-H, *et seq.,* The State Bar respectfully moves that Rule 4-219 of Part IV, Chapter 2 of the Rules of the State Bar of Georgia be amended as follows

**I.**

**Proposed Amendments to Part IV, Chapter 2, Rule 4-219 of the Rules of the State Bar of Georgia**

It is proposed that Rule 4-219 of Part IV, Chapter 2 of the Rules of the State Bar be amended by deleting the struck-through sections and inserting the sections underlined as follows:

**Rule 4-219. Judgments and Protective Orders**

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

(b.) In cases in which the Supreme Court orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar website, notice of the discipline, including the Respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c.) (1.) After a final judgment of disbarment or suspension, including a disbarment or suspension on a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within thirty days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within forty-five days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court, upon its own motion or upon motion of the Office of the General Counsel, and after ten days notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Bar Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interest. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2.) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

(i.) have any contact with the clients of the office either in person, by telephone or in writing; or

(ii.) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

~~(d.) Upon a final determination by the Court that an attorney has disappeared, died, or become physically or mentally incapacitated, or poses a substantial threat of harm to his clients or the public, and that no partner, associate or other appropriate representative is available to notify his clients of this fact the Supreme Court may order that a member or members of the State Bar of Georgia be appointed as receiver to take charge of the attorney's files and records. Such receiver shall review the files, notify the attorney's clients and take such steps as seem indicated to protect the interests of the clients, the attorney and the public. A motion for reconsideration may be taken from the issuance or denial of such protective order by the respondent, his partners, associates or legal representatives or by the State Bar of Georgia.~~

~~(e.) Any member of the State Bar of Georgia appointed by the Supreme Court as receiver to take charge of the files and records of a disciplined, deceased, incapacitated, imprisoned or disappearing attorney under these rules shall not be permitted to disclose any information contained in the files and records in his care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the Court, or upon application by order of the Supreme Court.~~

~~(f.) Any person serving as a receiver under these rules shall be immune from suit for any conduct in the course of their official duties.~~

If the proposed amendments to Rule 4-219 of Part IV, Chapter 2 of the Rules of the State Bar of Georgia are adopted, the new Rule 4-219 would read as follows:

**Rule 4-219. Judgments and Protective Orders**

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

(b.) In cases in which the Supreme Court orders disbarment, voluntary surrender of license or suspension, or the respondent is disbarred or suspended on a Notice of Discipline, the Review Panel shall publish in a local newspaper or newspapers and on the official State Bar website, notice of the discipline, including the Respondent's full name and business address, the nature of the discipline imposed and the effective dates.

(c.) (1.) After a final judgment of disbarment or suspension, including a disbarment or suspension on

a Notice of Discipline, the respondent shall immediately cease the practice of law in Georgia and shall, within thirty days, notify all clients of his inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of his clients. Within forty-five days after a final judgment of disbarment or suspension, the respondent shall certify to the Court that he has satisfied the requirements of this Rule. Should the respondent fail to comply with the requirements of this Rule, the Supreme Court, upon its own motion or upon motion of the Office of the General Counsel, and after ten days notice to the respondent and proof of his failure to notify or protect his clients, may hold the respondent in contempt and, pursuant to Bar Rule 4-228, order that a member or members of the State Bar of Georgia take charge of the files and records of the respondent and proceed to notify all clients and to take such steps as seem indicated to protect their interest. Motions for reconsideration may be taken from the issuance or denial of such protective order by either the respondent or by the State Bar of Georgia.

(2.) After a final judgment of disbarment or suspension under Part IV of these Rules, including a disbarment or suspension on a Notice of Discipline, the respondent shall take such action necessary to cause the removal of any indicia of the respondent as a lawyer, legal assistant, legal clerk or person with similar status. In the event the respondent should maintain a presence in an office where the practice of law is conducted, the respondent shall not:

(i.) have any contact with the clients of the office either in person, by telephone or in writing; or
(ii.) have any contact with persons who have legal dealings with the office either in person, by telephone, or in writing.

SO MOVED, this _____ day of _____, 2012

Counsel for the State Bar of Georgia

_____

Robert E. McCormack
Deputy General Counsel
State Bar No. 485375

OFFICE OF THE GENERAL COUNSEL
State Bar of Georgia
104 Marietta Street NW, Suite 100
Atlanta, Georgia 30303
404-527-8720

# Proposed Amendments to Uniform Superior Court Rules 1, 6, 31 and 36.

At its business meeting on July 26, 2012, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 1, 6, 31 and 36. A copy of the proposed amendments may be found at the Council's website at www.cscj.org.

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, Jan. 7, 2013.

**The State Bar of Georgia Handbook is available online at www.gabar.org/barrules/.**

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Editor (Name and complete mailing address): Bridgette E. Eckerson, One Premier Plaza, Suite 900 5605 Glenridge Drive, Atlanta, GA 30342

Managing Editor (Name and complete mailing address): Sarah Coole, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, Fulton Co., GA 30303-2743

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

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| | Atlanta, GA 30303-2743 |

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12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
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| 13. Publication Title: Georgia Bar Journal | 14. Issue Date for Circulation Data Below: August 2012 | |
|---|---|---|
| 15. Extent and Nature of Circulation | Average No. Copies Each Issue During Preceding 12 Months | No. Copies of Single Issue Published Nearest to Filing Date |
| a. Total Number of Copies (Net press run) | 28,612 | 32,113 |
| b. Paid and/or Requested Circulation (1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies) | 27,662 | 31,320 |
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| e. Free Distribution Outside the Mail (Carriers or other means) | 94 | 106 |
| f. Total Free Distribution (Sum of 15d. and 15e.) | 273 | 287 |
| g. Total Distribution (Sum of 15c. and 15f.) | 27,935 | 31,607 |
| h. Copies not Distributed | 154 | 173 |
| i. Total (Sum of 15g. and h.) | 28,089 | 31,780 |
| j. Percent Paid and/or Requested Circulation (15c. divided by 15g. times 100) | 99.0 | 99.1 |

16. Publication of Statement of Ownership
☑ Publication required. Will be printed in the October 2012 issue of this publication. ☐ Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner: Director of Communications — Date: 9/20/12

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including penalties).

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5. If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
6. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
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## Advertisers Index






# Annual Fiction Writing Competition

## Deadline Jan. 18, 2013

The editorial board of the Georgia Bar Journal is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the Journal, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact Sarah I. Coole, Director of Communications, State Bar of Georgia, 404-527-8791 or sarahc@gabar.org.

## Rules for Annual Fiction Writing Competition

The following rules will govern the Annual Fiction Writing Competition sponsored by the Editorial Board of the Georgia Bar Journal:

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted electronically.
5. Articles will be judged without knowledge of the author's identity. The author's name and State Bar ID number should be placed on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Sarah I. Coole, Director of Communications, by email to sarahc@gabar.org. If you do not receive confirmation that your entry has been received, please call 404-827-8791.
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.

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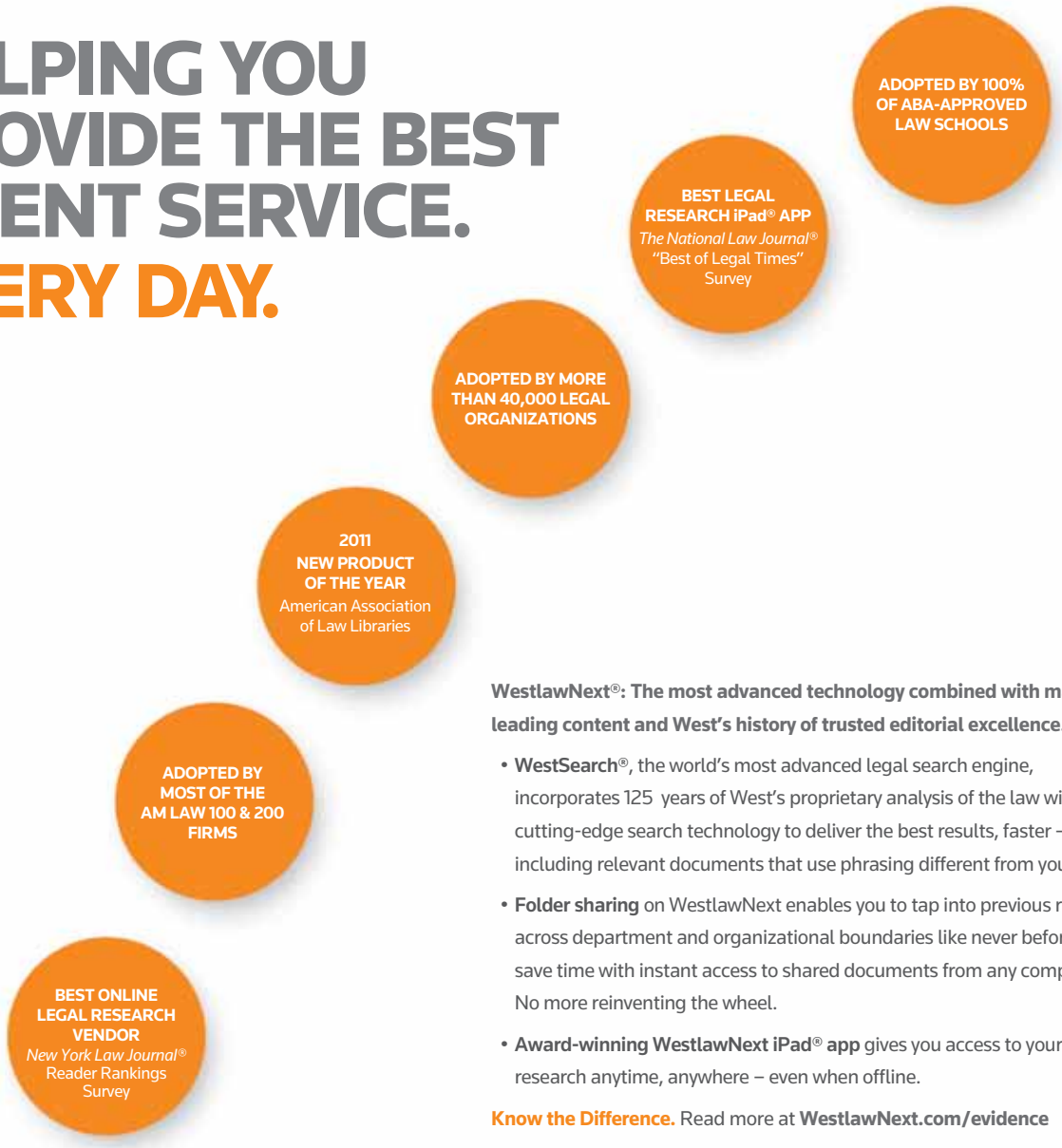


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