

Georgia Bar Journal

April 2013 ■ Volume 18 ■ Number 6

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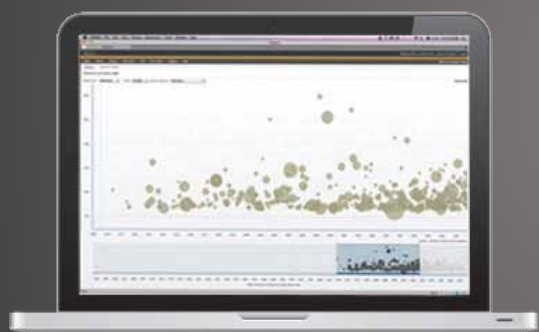
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by Robin Frazer Clark

All I Really Know About Professionalism I Learned in Golf

You probably recall Robert Fulghum's popular book, *All I Really Need to Know I Learned in Kindergarten*, which was first published

in 1988. Its premise was that the world would be a better place if we simply adhered to the basic rules of kindergarten, such as sharing, being kind to one another, cleaning up after ourselves, etc.

If I had the opportunity to suggest a sequel specifically for lawyers, its title might be *All I Really Need to Know about Professionalism I Learned on the Golf Course*. As golf stands out from other sports as a "gentleman's game," the ideals of professionalism in the practice of law are aimed at ensuring our field remains a "high calling" and not "just a business like any other," enlisted in the service not only of the clients, but of the public good as well.

"But lawyers must always bring our 'A' games, and when it comes to professionalism, we would do well to incorporate golf's lessons of honesty, integrity and courtesy into our service to the public and the justice system."

The game of golf is governed jointly by the Royal and Ancient Golf Club (R&A) of St. Andrews, Scotland, and the United States Golf Association (USGA). But, as stated in the USGA's "The Spirit of the Game" document, "Unlike many sports, golf is played, for the most part, without the supervision of a referee or umpire. The

game relies on the integrity of the individual to show consideration for other players and to abide by the Rules. All players should conduct themselves in a disciplined manner, demonstrating courtesy and sportsmanship at all times, irrespective of how competitive they may be. This is the spirit of the game of golf."

Likewise, the American justice system is governed by our courts, from the U.S. Supreme Court on down. But much of what lawyers do on a daily basis is not in the courtroom or under the direct supervision of a judge. As officers of the court, we each have a duty

to self-regulate our daily practices to—as declared in the Mission Statement of the Chief Justice's Commission on Professionalism—"exercise the highest levels of professional integrity in their relationships with [our] clients, other lawyers, the courts, and the public and to fulfill

[our] obligations to improve the law and the legal system and to ensure access to that system."

If you apply each component of "A Lawyer's Creed," developed by the Chief Justice's Commission on Professionalism (the Commission), to the ideals of integrity in golf—and vice versa—the similarities between the game and the practice of law are even more striking.

To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust. Do you remember how hard law school was? Learning how to play golf can be equally difficult. Once you've learned the basics, improving your game and maintaining a standard high enough to enjoy playing can be even more challenging. Many times, you'll feel like quitting. As in practicing law, golf takes a lifetime of hard work, concentration, training and patience to stay at the top of your game. In golf and in our law practices, we are always seeking to improve.

Everyone knows Tiger Woods, but do you know who Sean Foley is? Only avid golf fans are aware that Sean Foley happens to be the guy who (at present) teaches Tiger how to play golf. Yes, Tiger Woods, the world's current No. 1 player, takes golf lessons. So does Rory McIlroy and Phil Mickelson. So did Jack Nicklaus and most every great golfer you've ever heard of.

Admittedly, the sessions Tiger has with his teacher might not look like the lessons a beginning golfer would take from the local club pro. In the ever-elusive pursuit of the perfect golf swing, Tiger and other professional golfers are in a constant state of fine-tuning the near-perfect.

In the golf grill at Torrey Pines, engraved in the slate above the fireplace, Geoffrey Chaucer is paraphrased: "The lyfe so short, the game so longe to lerne." The point is that, no matter one's experience and expertise, we never stop learning, whether in golf or in legal professionalism, we never stop learning. That is why we are required to take professionalism CLE credits on an annual basis. The Commission approves and oversees more than 500 professionalism CLE sessions per year and produces the curricula and materials for those sessions. The Commission expanded its focus to include judicial professionalism by assisting the Institute of Continuing Judicial Education in developing programs on professionalism for Georgia judges.

To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one. Temper tantrums and other demonstrations of "unsportsmanlike conduct" have no place in the legal profession, or on the golf course.

The great Arnold Palmer tells this story: "In the final of the Western Pennsylvania Junior when I was 17, I let my putter fly over the gallery after missing a short putt. I won the match, but when I got in the car with my parents for the ride home, there were no congratulations, just dead silence. Eventually my father said, 'If

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I ever see you throw a club again, you will never play in another golf tournament.' That wake-up call stayed with me. I haven't thrown a club since."

"Throwing clubs, sulking and barking profanity make everyone uneasy. We all have our moments of frustration, but the trick is to vent in an inoffensive way. For example, I often follow a bad hole by hitting the next tee shot a little harder—for better or worse."

At the end of a round of golf, the members of the foursome shake hands with one another, even if someone if your foursome soundly beat you in the round. It honors the game and your opponent. Likewise, following a trial, adversaries shake hands, regardless of the outcome. I have never had a problem shaking the hand of my able adversary when he or she has conducted himself or herself with integrity and professionalism throughout the litigation. It honors our justice system and your opponent. As Shakespeare wrote in "The Taming of the Shrew," "do as adversaries do in law, strive mightily but eat and drink as friends."

To the courts, and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice. In other words, play by the rules at all times. The R&A states, "... we are reliant upon our own honest adherence to the Rules in order to enjoy the game. As a result we are all occasionally forced to call a penalty on ourselves for infringe-

ments which, often, will go unnoticed by everyone else."

The top golfer of the first half of the 20th century was none other than Atlanta's Bobby Jones. He won 13 major championships and, if not for his own integrity,

would have won another. In the first round of the 1925 U.S. Open, Jones was about to hit a shot out of the rough on the 11th hole at Worcester Country Club near Boston. As he took his stance, the head of his club brushed against the grass and caused a slight movement of the ball. No one saw this except Jones.

After taking the shot, Jones informed his playing partner, Walter Hagen, and the USGA official accompanying their match that he was calling a penalty shot on himself. Hagen and the official tried to talk him out of it, but he insisted he had violated the rules and took the penalty stroke. In what other sport would a situation like this take place?

Had Jones carded a 76 in that first round instead of a 77, he would have ultimately won the championship by one stroke. The penalty forced him into a playoff, which he lost. Jones was praised by sports writers for his honesty, to which he was reported to have replied, "You may as well praise a man for not robbing a bank."

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship. In golf, proper etiquette is just as important as competency, and often more so. For example, you remain still and silent when your fellow competitors are taking their shot. And when on the green, you don't walk in their putting line between the ball and the hole. You congratulate

others' good shots and refrain from laughing at their bad ones.

The R&A says, "All players should conduct themselves in a disciplined manner, demonstrating courtesy and sportsmanship at all times, irrespective of how competitive they may be. Etiquette is an integral and inextricable part of the game, which has come to define golf's values worldwide."

As in the practice of law, time is a valuable commodity in golf. Show up promptly for your tee time. Maintain an appropriate pace of play, and let faster players play through. In short, show consideration to others at all times—whether on the course, in your office or in the courtroom. When in doubt, refer to the Golden Rule.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service. In golf, this is called taking care of the course. In the fairway, replace your divots. On the green, repair your ball mark and one more that someone else failed to fix. After hitting from the sand, rake the bunker completely. You do these things not to help yourself but to leave the course in the same or better condition for the golfers behind you.

Attorneys are called into the profession of law to serve others. At the recent launch of the second annual Georgia Legal Food Frenzy to fight hunger, I used Supreme Court of Georgia Justice Robert Benham's recollection that when he was a little child, each morning at the breakfast table, his father would first ask, "What are you going to do today?" His next question was always, "What are you going to do for someone else today?"

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients. The raging issue in golf these days is over the R&A and USGA's decision to ban the use of the long putters that some players anchor

against their bodies to steady their putting stroke, much to the chagrin of many successful players on the professional tour who use those long putters. But regardless of how that matter is resolved, protecting and improving the game is the ultimate responsibility of those who play the game. The same is true for the legal system. We are, after all, in this together.


When making the case for the unified State Bar in 1963, Georgia Bar Association President H. Holcombe Perry said, "It has been pointed out that in relation with the public the Bar has always been and always will be a unit. The actions and sayings of one lawyer reflect credit or discredit on the rest of his professional brethren in the eyes of the public. The interests of all lawyers are inextricably woven together. Through such an organization, with all lawyers participating, we will come to have a better appreciation of the fact that we are all members of a great and honor-

able profession of which we should be proud, a more adequate understanding of our mutual problems, a keener knowledge of our faults and our virtues, with a mutual determination to eliminate the former and preserve and enhance the latter; and finally we will have the opportunity of establishing among ourselves a sense of brotherhood, mutual respect and trust and through all of this to strive diligently to improve the administration of justice in our state."

There is, of course, one huge difference between golf and legal professionalism. Golf is just a game. For most of us, a good day or a bad day on the course won't be life-altering. That is not the case in our law practices. We are responsible for protecting the rights of our clients. Many times, the outcome of our work can have life-changing consequences. No one is perfect, and winners and losers in the legal system are often determined by circumstances we cannot control. But lawyers must

always bring our "A" games, and when it comes to professionalism, we would do well to incorporate golf's lessons of honesty, integrity and courtesy into our service to the public and the justice system.

A closing thought: Many of us whose favorite avocation is playing golf have no doubt fantasized about trading in our day jobs for a career of fame and fortune on the professional tour. But consider that the aforementioned Bobby Jones, the most accomplished golfer of his era who later co-founded the Augusta National Golf Club and the Masters Tournament, never turned professional.

In fact, Jones retired from competitive golf all together at the age of 28 in favor of his chosen profession: Georgia lawyer. 

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

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by Jon Pannell



2nd Annual Georgia Legal Food Frenzy

More than 1 in every 4 Georgia children (26.3 percent) live in “food insecure” households. That comes

to more than 640,000 children under the age of 18. Overall, Georgia has a 17.4 percent food insecurity rate; nearly 1 in 5 Georgians, or more than 1.9 million people. The USDA defines food insecurity as the lack of access to nutritionally adequate food resulting from the lack of money and other resources.

Hunger is not limited to the unemployed and the homeless. To be eligible for federal food nutrition programs, an applicants’ gross income must fall at

or below 185 percent of the U.S. Poverty Income Guidelines. Thirty-nine percent of the food insecure children in Georgia live in households making above the 185 percent of poverty rate and are likely ineligible for federal programs. These families are truly a part of the “working poor” in today’s economy.

“I encourage all Georgia lawyers to participate in the 2013 Legal Food Frenzy. Your donations will not only impact hunger all over the state but will help reduce hunger in your own hometown.”

The Georgia Food Bank Association is comprised of seven regional food banks located across the state, which are a part of the Feeding America network. The Atlanta Community Food Bank (metro-Atlanta and northwest Georgia), The Food Bank of Northeast Georgia (Athens), Feeding the Valley (Columbus), Middle Georgia Community Food Bank (Macon), Golden Harvest Food Bank (Augusta), Second Harvest of South Georgia (Valdosta/Albany) and America’s Second Harvest

of Coastal Georgia (Savannah) provide assistance in all 159 counties of Georgia. Food banks do not distribute food directly to those in need of assistance, but they collect, inspect and inventory food for distribution to more than 2,300 partner agencies in Georgia. Partner agencies include food pantries, youth programs, senior centers,

community kitchens, day care centers, night shelters and rehabilitation centers. The association distributes more than 90 million pounds of food throughout Georgia on an annual basis.


Last year, under the leadership of Attorney General Sam Olens, the Young Lawyers Division of the State Bar of Georgia teamed up with the Georgia Food Bank Association to launch the inaugural Georgia Legal Food Frenzy. The 10-day statewide food drive competition challenged Georgia lawyers to raise money and donate food to their local food banks. In 2012, 228 law firms and organizations signed up for the competition and helped raise more than 600,000 pounds of food for the Georgia Food Bank Association.

The second annual Legal Food Frenzy will take place from April 22 - May 3, for all law firms, corporate law departments and legal organizations. Law schools will compete from April 1 - April 12, (so as not

to conflict with final exams). This year the goal is to raise more than 750,000 pounds of food. Like last year, the timing of this event is very important for those battling hunger in our state. The spring is an important time as food banks are preparing for the critical summer months when there is a spike in demand. Nearly 60 percent of Georgia's public school students are eligible for either a free or reduced lunch each day, and families of many of these children rely on food bank partner agencies to provide a complete, balanced meal when their children are not in school.

Registration for the 2013 Georgia Legal Food Frenzy began March 5, and will remain open for all Georgia attorneys up until the first day of the competition. The firm or organization which raises the most food and money, on a per person basis, will be awarded the Attorney General's Cup. Awards will also be given to the winners of several different categories.

To learn more about the food drive, please visit www.galegalfoodfrenzy.org. The website has all of the information about the 2013 Georgia Legal Food Frenzy, including links for firms and legal organizations to sign up for the drive and contact information for the co-chairs of this year's event, Jessica Nix and Lisa Robinson. After signing up, each firm or organization will be sent an electronic packet that has all the information needed to run a successful campaign.

I encourage all Georgia lawyers to participate in the 2013 Legal Food Frenzy. Your donations will not only impact hunger all over the state but will help reduce hunger in your own hometown. 

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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Whose Money Is It Anyway?

How Garnishments Are Affected by a Bankruptcy Filing

by David A. Kleber



Litigators are typically trained in the art of proving their client's case in court. There are extensive motions, complex evidentiary objections and trial tactics to engage a jury. Lawyers take years to hone these crafts to obtain verdicts in favor of their clients. When the trial is over, though, sometimes the case is just beginning. When there is no insurance coverage and no deep-pocketed defendant to write a prevailing plaintiff a check, or when a prevailing defendant is entitled to a monetary judgment for attorney's fees or costs, it is often necessary to engage in post-judgment litigation to recover a judgment. There are processes and procedures under the law to enforce a judgment and compel payment, but these processes are not always as simple as they appear. Add to them the specter of bankruptcy protection, and you may face a real minefield.

Georgia law empowers a judgment creditor to enforce its judgment and collect the amount owed it

by, among other methods, a strict statutory process called garnishment.¹ A garnishment is an action against a third party, the garnishee, who holds money or property belonging to the judgment debtor or owes a debt to the judgment debtor.² This garnishee could be, for example, a bank, a tenant, a customer, or an employer or contractor. Through the garnishment, the creditor may obtain the debtor's property, including cash funds, to satisfy the debtor's obligation under the judgment. The question addressed here is what happens when a judgment debtor files bankruptcy during the pendency of a garnishment case.

The garnishment action begins by the issuance of a summons of garnishment. The summons of garnishment is similar to a civil suit summons. For example, a regular civil summons requires a defendant to file an answer to the allegations within 30 days or risk entry of a default judgment against it. Similarly, the garnishment summons requires the garnishee to file an answer to the allegations within 45 days or risk entry of a default judgment against it.³ Unlike a regular civil summons, though, the garnishment summons also requires the garnishee to turn over the judgment debtor's property it holds, or pay the money it owes to the debtor to the creditor instead, in order to pay the debtor's debt.⁴ The creditor essentially steps into the shoes of the debtor, with respect to the garnishee, and obtains the rights to the debtor's property or the right to obtain wages or the proceeds of a contract. Rather than the garnishee paying the money or property directly to the creditor, though, Georgia garnishment procedure requires the garnishee to turn over the property or funds to the court along with its answer, and serve a copy of the answer on the creditor.⁵ The court holds the money until it is disbursed to the proper party as discussed below. In

this way, the court can oversee the process and ensure due process to the debtor.

Garnishment is considered a *quasi in rem* proceeding,⁶ as it is an action against the garnishee and the debtor's property and not the debtor personally. In fact, the judgment debtor is not actually a party to the garnishment action.⁷ There is one statutory mechanism by which the debtor may become a party to the garnishment action. She may file a traverse of the creditor's affidavit of garnishment.⁸ A traverse is a claim by which the judgment debtor may challenge the existence of the judgment or the amount claimed due thereon, or she may plead any other matter in bar of the judgment except the validity of the judgment. The debtor may become a party in this way "at any time before judgment is entered on the garnishee's answer or before any money or other property subject to garnishment is distributed."⁹ In this way, the debtor's due process rights are protected. She has the right to object and challenge the creditor's rights to the property or funds before the court turns over the property or funds to the creditor.

If the debtor files a traverse, then a hearing must be scheduled within 10 days, and "no further summons of garnishment may issue nor may any money or other property delivered to the court as subject to garnishment be disbursed" until the hearing is held.¹⁰ In other words, if a debtor files a proper challenge to the garnishment, then the case is stayed, at least so far as the creditor's rights, until the challenge is resolved. The court determines which party has the superior legal claim to the property and disburses it accordingly. If no traverse is filed¹¹ within 15 days of the garnishee's answer, then the clerk of court must disburse any money it has received with the garnishee's answer to the creditor on his application.¹² The garnishee is then relieved of any liability and the case is closed.

A judgment creditor may also seek to obtain a portion of the debtor's wages an employer owes to her. Such a right to collect future wages is a chose in action. Choses in action are not subject to levy or attachment, and may only be obtained by the filing of a garnishment. In the case of regular wages, Georgia law provides a process of continuing garnishment against the debtor's employer.¹³ As opposed to a single answer due within 45 days of service, the continuing garnishment affects the debtor's wages for 179 days from service,¹⁴ and requires continuing answers from the garnishee.¹⁵ In all other respects, the procedures are basically the same as regular garnishments as discussed above.

The process of continuing garnishment typically runs smoothly, according to the strictly defined statutory rules, until a debtor files bankruptcy. Federal bankruptcy law supersedes state garnishment law, and puts additional obligations and restrictions on the process. First, the filing of the bankruptcy petition invokes an automatic stay of all proceedings¹⁶ except under some specific exceptions.¹⁷ The effect of the automatic stay is to hold the debtor's property, and the rights and liabilities of parties in conflict with the debtor, in place. At the moment of filing the petition, everything in relation to legal actions against the debtor and/or her property is frozen in time.¹⁸ Everyone, including the garnishee and garnishment court, is prohibited from transferring or affecting any property of the bankruptcy estate without approval from the bankruptcy court.¹⁹ Accordingly, any garnishment filed after the filing of a bankruptcy petition is void and must be dismissed.²⁰ If a garnishment is pending prior to the bankruptcy filing, then it does not need to be dismissed. Any wages earned by the debtor after filing bankruptcy, however, are protected, and may not be affected by the continuation of the garnishment. So, the stay requires the credi-

tor who has issued a pre-petition garnishment action to take affirmative efforts to ensure the garnishee makes no deductions from the debtor's post-petition wages.²¹ This obligation does not extend, however, to dismissal of the garnishment case, or even to releasing the garnishment,²² so long as the garnishee is notified to stop deductions under the case. The question remains, however, what about property and money in the garnishment "pipeline"? What is the legal status of such property or wages which have been identified by the garnishee as subject to the garnishment, and what if that property has been deposited in the registry of the court, or already paid to the creditor?

Because the stay applies only to actions against "property of the [debtor's] estate," the first relevant question is whether pre-petition wages, which have been deducted from the debtor's pay prior to bankruptcy, are "property of the estate." The bankruptcy courts in Georgia are divided on this question. The Bankruptcy Court for the Middle District of Georgia has repeatedly taken the position that if funds were deducted from the debtor's pre-petition wages, then the funds are not property of the estate.²³ These decisions reasoned that the debtor is not a party to the garnishment case, and if the wages had been deducted from the debtor's pay prior to filing, then the debtor was already deprived of the property at the moment of filing. Because it is the debtor's interest in property that comprises the bankruptcy estate, if the debtor had no interest in the funds already deducted from her pay, then those funds could not be property of the estate. The Middle District reasoned, based on state law, that the only way a debtor could assert any interest in the funds was by filing a traverse. So, if no traverse was pending when the bankruptcy was filed, then the debtor could not assert any interest in the funds.²⁴

The Bankruptcy Court for the Northern District of Georgia has reached a different conclusion. This court expressly rejected the Middle District's holding in *In re: Antley*,²⁵ reasoning that because a debtor could file a traverse at any time prior to disbursement of the funds, the debtor had some interest in the undisbursed funds at the time of filing her bankruptcy petition even if the debtor had not, in fact, filed a traverse.²⁶ Because the funds were not yet disbursed to the creditor, the debtor had not been fully deprived of her interest in the property. The court ruled that this remaining interest in the property, however small, is sufficient to make the funds being held in the garnishment court property of the estate.²⁷ A second bankruptcy court for the Northern District of Georgia recently accepted and adopted this holding.²⁸ The Bankruptcy Court for the Southern District of Georgia does not appear to have any published decisions on this issue. Further, neither the U.S. Court of Appeals for the 11th Circuit nor the U.S. Supreme Court has any published decisions on this issue, and, therefore, there is no binding precedent in future cases. So, the question whether pre-petition deductions paid in to court prior to the bankruptcy are property of the estate remains unsettled.

The significance of this question is tremendous. The automatic bankruptcy stay applies to property of the debtor's estate and actions affecting property of the estate. One could argue, then, that if the funds in the registry of the garnishment court are not property of the estate, the automatic stay does not apply to those funds and the creditor is free to request disbursement of the funds as if the bankruptcy had not been filed. A creditor should be cautioned against this action, however, without a specific comfort order from the bankruptcy court. If the bankruptcy judge disagrees and finds the funds are ruled as property of the estate, then any request for the funds, or attempt to compel the garnishee to pay funds into the court, could be deemed a willful violation of the bankruptcy stay. Such a willful violation could be met with an adversary action for damages by the debtor and/or direct sanctions by the bankruptcy court.²⁹ For the purposes of this article, then, we will assume that the undisbursed garnishment deductions are property of the estate.

It is, however, only the debtor's interest in the funds which is property of the estate, and not the property itself. So, what is the debtor's interest in the property which has already been deducted

from her pay? The legal status of the debtor's property changes as it travels through this process from the garnishee to the creditor. First, the service of the summons of garnishment on the garnishee creates a lien on the judgment debtor's money and/or property in the hands of the garnishee as well as any such property which comes into the hands of the garnishee from the date of service until the date of the answer.³⁰ In the case of continuing garnishment, the lien attaches also to future wages earned during the 179-day garnishment period.³¹ Procedurally, the debtor's post-garnishment wages never actually come into the hands of the debtor. The moment the wages are earned, 25 percent of those wages are set aside to the judgment creditor pursuant to the pre-existing garnishment lien.³² In other words, the creditor does not seize the wages from the debtor. The garnishment seizes the chose in action, or the right to be paid the wages. In essence, when the debtor earns wages subject to a continuing garnishment, 25 percent of those wages are earned on behalf of the creditor, and the garnishee/employer pays those wages to the creditor.

That said, the creditor does not obtain the wages in the same manner as the debtor would. The



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debtor would be paid at regular intervals, often biweekly, and often by direct deposit into her designated bank account. Instead, the garnishee sets aside the funds pursuant to the lien, and holds the funds to accumulate for the next garnishment answer. The garnishee pays all such accumulated funds to the court every 30-45 days with its garnishment answer. Each garnishment answer may encompass parts of several pay periods. The funds paid in to the court with these answers are then accumulated and held by the court until the creditor applies for disbursement.³³ Because this application for disbursement occurs any time more than 15 days after the garnishment answer is filed, the court may be holding funds of several answers at once. All this time, the creditor has a lien on the funds, but not possession of the money. Because the debtor may file a traverse, or another party may file a claim, at any time prior to disbursement, the transfer is not irrevocable until the funds are disbursed by the court. Further, as a practical matter, some courts do not complete the disbursement to the creditor for weeks, or even months, after the application. So, the creditor may be eligible to receive the transfer of the funds, and may be legally entitled

to the transfer of the funds, for quite some time before it actually receives the funds.

In the bankruptcy context, even disbursement to the creditor does not make the transfer irrevocable. Garnishment deductions are "transfers" within the meaning of 11 U.S.C. § 547.³⁴ As such, any garnishment deductions made within 90 days of the bankruptcy filing may be set aside as a preferential transfer. This power to undo a garnishment deduction, and put the property back into the hands of the debtor, and thus into the bankruptcy estate, is vested in the bankruptcy trustee.³⁵ If the trustee can prove that the transfer occurred within 90 days, and that it gave a creditor more than it would have received under a chapter 7 liquidation, then the transferred property may be recaptured into the estate for administration for the benefit of the creditors as a whole. The creditor may even be compelled to return money it has received and spent.³⁶

For the purposes of this 90-day window, it is clear that the date of the "transfer" is the date the debtor earned the wages.³⁷ When a continuing garnishment is served on the garnishee, any wages earned by the debtor within 179 days are immediately set aside to the creditor pursuant to its lien.

As discussed above, when wages are earned by a debtor subject to a continuing garnishment, the creditor's portion is essentially earned by the creditor at that time. The 90-day preference period, then, runs from the date the wages are earned, irrespective of when the garnishee pays them to the court or when the court pays them to the creditor. In this context, the creditor is not affected by any delay from the garnishee or the court in expediting the disbursement of the actual funds from garnishee to court to creditor. The trustee may only look back 90 days of wages earned.

Often, as a practical matter, the funds involved are insufficient for the trustee to make the effort to file a preference action even if one is authorized. The preference action is an adversarial process requiring time and expenses to file. If the trustee chooses not to act on a preferential transfer, then the debtor may do so directly.³⁸ There are proof requirements, and again, the time, trouble, and expenses are often not justifiable in light of the sums involved. In fact, neither the trustee nor the debtor is even authorized to set aside garnished wages if the funds deducted within the 90-day period total less than \$600.³⁹

If the transfer is set aside by the bankruptcy court, or the parties consent, then the garnishment funds are made property of the estate and whoever holds the funds, be it the garnishment court or the creditor, may be required to send the funds to the trustee for distribution.⁴⁰ Otherwise, during the pendency of the bankruptcy case, any funds in the garnishment court are frozen in time pursuant to the automatic stay. The rights of the interested parties, including the creditor's lien and debtor's right to file a traverse, remain in place. The parties are simply stayed from asserting such rights during the bankruptcy. As such, the court is obligated to hold the garnished funds, subject to the creditor's lien, until the stay is lifted, either by bankruptcy court

order or by operation of law. The automatic stay terminates upon closure of the bankruptcy case, either by dismissal, discharge or a denial of discharge.⁴¹


So if the garnishment seizure is not undone by way of a preference action, what can happen during the bankruptcy that would impact the garnishment funds? Assuming again that the funds are property of the estate, the debtor may exempt that property from administration by the bankruptcy court.⁴² If the debtor has available exemptions, then she may exempt the funds from the bankruptcy.⁴³ Such an exemption only removes the property from the bankruptcy estate, and prevents distribution of those funds to the creditors through the bankruptcy case. The money itself remains subject to the creditor's lien, which is superior to the debtor's interest. Exempting the garnished funds does not authorize the debtor to obtain the funds from the garnishment court. Bankruptcy law does, however, provide the debtor a method to request the creditor's lien rights be eliminated to the extent that the judicial garnishment lien impairs the debtor's property interest in the exempted funds.⁴⁴ The debtor may request the bankruptcy court judicially eliminate the lien, a process known in the bankruptcy code as lien avoidance.

The lien avoidance applies to garnishment proceeds differently than the preference action. The lien avoidance is limited by the debtor's available exemptions, but it has no minimum amount like the preference claim. In addition, the debtor may move to avoid the lien on any garnished funds so long as they have not been disbursed to the creditor.⁴⁵ So, a lien avoidance may affect property held by the court for more than 90 days, but it cannot reclaim funds already disbursed to the creditor, even if such disbursement was only days prior to the bankruptcy filing. Unlike a preference action, in order to seek this lien avoidance, the debtor need only file a motion in the bank-

ruptcy proceeding and serve the creditor.⁴⁶ The creditor has a constitutional right to object and have a hearing on the matter, but if the court grants a debtor's motion to avoid the lien, then the creditor's garnishment lien is wiped away.⁴⁷ In such a scenario, the creditor would no longer have a claim on the funds being held by the garnishment court, and the debtor may reclaim the funds. However, any lien avoidance ordered by the bankruptcy court is only effective if the case is successfully completed and discharged. Any such order would be void, and have no effect, if the bankruptcy case is dismissed.⁴⁸ As such, the debtor, even with an order avoiding the creditor's lien, is not entitled to disbursement of the garnishment funds until the case is discharged. The garnishment court should not disburse the garnishment funds, then, absent a specific order of distribution from the bankruptcy court, unless and until the bankruptcy case is discharged. Once the bankruptcy case is closed, and the stay is lifted, the garnishment court is free to disburse the funds.⁴⁹

So what is the status of the funds after discharge? The creditor's lien rights "pass through" the bankruptcy case unless the bankruptcy court issues some affirmative order affecting those rights.⁵⁰ Neither the filing of the bankruptcy petition, nor the issuance of a discharge, has any direct impact on the creditor's garnishment lien. Only if the debtor exempted the garnished funds *and* obtained an order avoiding the creditor's lien on those funds can the debtor then claim the funds in the garnishment court. Otherwise, the funds are subject to disbursement to the creditor upon application pursuant to O.C.G.A. § 18-4-89.⁵¹

In summary, the state court's involvement in a garnishment case is simple. It receives the answers and any property filed by the garnishee, holds hearings on any traverses and then disburses the funds to the creditor upon applica-

tion. Although the filing of a bankruptcy by the debtor interrupts that process, it does not impose further obligations on the garnishment court. The state court need only stay the case, and hold the process and property status quo, until further order of the bankruptcy court or termination of the automatic stay. When the stay is lifted, either by bankruptcy court order or operation of law, the garnishment case picks up where it left off. If funds remain in the registry of the court, then a debtor may file a traverse to challenge the garnishment or obtain possession of the funds, or the funds are subject to disbursement to the creditor upon its application. 



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Kleber in Decatur. Kleber is past president of the Georgia Collectors Association and a frequent speaker on creditors' rights and bankruptcy issues. He was the 1988 Truman Scholar from Georgia. Kleber graduated from the University of Georgia in 1990 as the top graduate in the criminal justice program and from the University of Georgia School of Law in 1993.

Endnotes

1. O.C.G.A. § 18-4-60 states, "in all cases where a money judgment shall have been obtained in a court of this state or in a federal court sitting in this state, the plaintiff shall be entitled to the process of garnishment." Note, there is a process by which one may file a garnishment prior to judgment, but this situation is beyond the scope of this article.
2. O.C.G.A. § 18-4-20(b) states that, "all debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon the garnishee and all debts accruing from the garnishee to the defendant from

- the date of service to the date of the garnishees' answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment."
3. O.C.G.A. § 18-4-62; O.C.G.A. § 18-4-90.
 4. O.C.G.A. § 18-4-62; O.C.G.A. § 18-4-84.
 5. O.C.G.A. § 18-4-62; O.C.G.A. § 18-4-82; O.C.G.A. § 18-4-83; O.C.G.A. § 18-4-84.
 6. *Morris W. Haft & Bros. v. Wells*, 93 F.2d 991, 993 (10th Cir. 1937) (citing, *inter alia*, *A. B. Baxter & Co. v. Andrews*, 131 Ga. 120, 124, 62 S.E. 42, 44 (1908)).
 7. *Stone v. Peoples Bank*, 127 Ga. App. 588, 588-89, 194 S.E.2d 276, 277 (1972); *Flournoy v. Pate* (In re: *Antley*), 18 B.R. 207, 211 (Bankr. M.D. Ga. 1982).
 8. O.C.G.A. § 18-4-93; O.C.G.A. § 18-4-65.
 9. O.C.G.A. § 18-4-93.
 10. *Id.*
 11. A debtor may file a traverse of the creditor's affidavit under O.C.G.A. § 18-4-93, a creditor may file a traverse of the garnishee's answer under O.C.G.A. § 18-4-86, and any other party may file a claim of superior lien under O.C.G.A. § 18-4-95.
 12. O.C.G.A. § 18-4-89.
 13. O.C.G.A. § 18-4-110.
 14. O.C.G.A. § 18-4-111.
 15. O.C.G.A. § 18-4-113.
 16. 11 U.S.C. § 362.
 17. For example, under 11 U.S.C. § 362(c)(4), the automatic stay does not apply to a debtor who has had two or more bankruptcy cases dismissed within the preceding year. 11 U.S.C. § 362(b) lists a number of other exemptions to the automatic stay, such as garnishments for domestic support obligations under certain circumstances.
 18. 11 U.S.C. § 362 reads in relevant part as follows:
[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of--
(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor . . . ;
(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; [and]
(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title[.]
 19. 11 U.S.C. § 541 defines what comprises the property of the estate.
 20. *See, e.g., Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982).
 21. *Buchanan v. First Family Fin. Servs.* (In re: *Buchanan*), 273 B.R. 749, 751 (Bankr. M.D. Ga. 2002).
 22. *Ameron Protective Coatings Div. v. Georgia Steel, Inc.* (In re: *Georgia Steel*), 25 B.R. 781, 786 (Bankr. M.D. Ga. 1982).
 23. *Lord v. Carragher* (In re: *Lord*), 270 B.R. 787, 795 (Bankr. M.D. Ga. 1998); In re: *Antley*, 18 B.R. at 207, 211-12 (Bankr. M.D. Ga. 1982).
 24. In re: *Antley*, 18 B.R. at 210-11.
 25. 18 B.R. 207 (Bankr. M.D. Ga. 1982).
 26. In re: *Williams* 460 B.R. 915, 917-19 (Bankr. N.D. Ga. 2011).
 27. *Id.* at 919-920.
 28. In re: *Johnson*, 479 B.R. 159, 170, 178 (Bankr. N.D. Ga. 2012).
 29. *See, e.g., Roche v. Pep Boys, Inc.* (In re: *Roche*), 361 B.R. 615, 623-24 (Bankr. N.D. Ga. 2005). Note that in *Roche*, the court held that the creditor's failure to dismiss the garnishment upon the bankruptcy filing was sanctionable, *but see* Judge Bonapfel's explanation as to why this is incorrect in *In re: Johnson*, *supra* note 27.
 30. *Ownby v. Wagner*, 64 Ga. App. 433, 436, 13 S.E.2d 686, 688 (1941); *Shabaz v. Henn* 48 Ga. App. 441, 443-44, 173 S.E. 249, 251 (1934).
 31. *Mathis v. West Cent. Ga. Bank* (In re: *Mathis*), 256 B.R. 653, 655-56 (Bankr. M.D. Ga. 1996).
 32. O.C.G.A. § 18-4-20.
 33. O.C.G.A. § 18-4-89; O.C.G.A. § 18-4-112.
 34. *Evans v. Citi Fin. Servs., Inc.* (In re: *Evans*), 16 B.R. 731, 732 (Bankr. N.D. Ga. 1982).
 35. 11 U.S.C. § 547 (b) provides that, "[e]xcept as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property. . . ." (emphasis added).
 36. 11 U.S.C. § 550.
 37. *Ellenberg v. Gen. Motors Acceptance Corp.* (In re: *Morton*), 44 B.R. 750, 751-52 (Bankr. N.D. Ga. 1984); *Roberts v. Household Finance Corp. of Ga.* (In re: *Roberts*), 44 B.R. 752 (Bankr. N.D. Ga. 1984).
 38. 11 U.S.C. § 522 (h) provides The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if--
(1) such transfer is avoidable by the trustee. . . and
(2) the trustee does not attempt to avoid such transfer.
 39. 11 U.S.C. § 547; In re: *Newell*, 71 B.R. 672, 674 (Bankr. M.D. Ga. 1987).
 40. 11 U.S.C. § 550.
 41. 11 U.S.C. § 362 (c). Note this section sets forth numerous why the stay may be terminated earlier.
 42. 11 U.S.C. § 522.
 43. In Georgia, O.C.G.A. § 44-13-100 defines the available bankruptcy exemptions.
 44. 11 U.S.C. § 522 (f).
 45. In Re: *Johnson*, 479 B.R. 159, 170, 171 (Bankr. N.D. Ga. 2012).
 46. U.S.C.S. Bankruptcy R. 4003(d).
 47. 11 U.S.C. § 522(f)(1)(A).
 48. 11 U.S.C. § 349 provides, in relevant part:
(b) Unless the court, for cause, orders otherwise, a dismissal of a case...
(1) reinstates—
(B) any transfer avoided... and
(C) any lien voided under [11 USC § 506(d)];
(2) vacates any order, judgment, or transfer ordered . . . and
(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.
 49. 11 U.S.C. § 363(c).
 50. In re: *Johnson*, 479 B.R. 159, 169-70 (bankr. N.D. Ga. 2012).
 51. *See* 11 U.S.C. § 362.

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Georgia Bar Media & Judiciary Conference in Its 22nd Year

by Stephanie J. Wilson

For 22 years, judges, attorneys and journalists have gathered to discuss current issues impacting the First Amendment. This year's conference focused heavily on the consequences—good and bad—of social media and its use. Whether you use Facebook, Twitter, LinkedIn, YouTube or all of the above, the program provided useful information.

The first session was “Lawyers and Social Media: Promoting Practices and Protecting the Profession.” Hyde Post, Hyde Post Communications, Saint Simons Island, served as moderator. The panelists were Robin Frazer Clark, president, State Bar of Georgia, Robin Frazer Clark PC, Atlanta; Jay Cook, past president (2006-07), State Bar of Georgia, Cook Noell Tolley & Bates LLP, Athens; Toby Bloomberg, director of social integration, Cox Media Group, Atlanta; and Allison Fabella, director of search engine optimization and social media, Primedia, Atlanta.

As Fabella told the audience, “Your reputation online is very important.” You can use your website and social media to set you apart from the crowd. But she warned, “Be sure to always look professional, even in your personal life.”



Hon. Robert Leonard, Cobb County Superior Court, responds to a question during “Judges and Social Media: Harnessing the Beast.”

Photos by Stephanie J. Wilson

The second panel of the day was “Judges and Social Media: Harnessing the Beast” moderated by Ed Bean, editor-in-chief and associate publisher, *Daily Report*, Atlanta. Hon. Robert Leonard, Cobb County Superior Court, Marietta; Hon. Leslie Spornberger Jones, Municipal Court of Athens-Clarke County, Athens; and Hon. Robert Struble, past member, Judicial Qualifications Commission, Mountain Judicial Circuit Superior Court, Toccoa, served as the panelists.

Prior to the next panel a social media survey was distributed to the audience. The survey asked users to complete the following questions:

- I am on:
 - Facebook (69 percent answered yes)
 - Twitter (43 percent answered yes)
 - LinkedIn (65 percent answered yes)
 - None of them, ever (18 percent answered yes)
- I am friends with judges on Facebook. (18 percent answered yes)
- Would you consider asking a judge to recuse if he or she was friends with an opposing attorney on Facebook? (46 percent answered yes)
- Where the presiding judge in a criminal case has accepted the prosecutor assigned to the case as a Facebook “friend,” would a reasonably prudent person fear that he could not get a fair and impartial trial, so that the defendant’s motion for disqualification should be granted? (46 percent answered yes)

The final question was offered in response to an advisory opinion issued by The Florida Bar in which judges are not allowed to accept Facebook “friend” requests from attorneys who might appear in their court. They are likewise not allowed to accept LinkedIn connection requests.



President Robin Frazer Clark listens as Past President Jay Cook (2006-07) expresses his views during the “Lawyers and Social Media: Promoting Practices and Protecting the Profession” panel.

Struble, the more senior of the panelists, who also admitted to being a “monk” when it comes to social media, stated that judges must avoid the appearance of impropriety. When asked if judges should have social media policies for their employees and family members, Struble said, “Yes. It’s in the code of judicial conduct.” He also felt that judges who are Facebook “friends” with anyone appearing in their court should recuse themselves. Leonard didn’t go quite that far but did say that recusal would be appropriate if a judge had made commentary on a case or had communication with a lawyer.

Leonard shared his belief that campaign contributors, golf buddies and fishing buddies are closer friends than those on Facebook. He said that Facebook can be a valuable tool in campaigning. In fact, many judicial candidates create special election Facebook pages. This practice is so prevalent that “you almost *have* to do it now.”

Jones, who purposefully does not have a personal Facebook

page, said that when she decided to accept a judgeship, she agreed to “walk the line.”

The third panel, “New Journalists and Journalism: Opportunities and Challenges Facing the Next Generation of Reporters,” allowed panelists Sara Ganim, Pulitzer Prize winning reporter, CNN, Atlanta; Polina Marinova, former editor-in-chief, *The Red & Black*, Athens; Kristen Rasmussen, formerly with Reporters for the Committee for Freedom of the Press, now Dow Lohnes PLLC, Atlanta; and Tim Regan-Porter, director, Center for Collaborative Journalism, Mercer University, Macon, to discuss how new ideas, new rules of engagement and a new generation of journalists are changing the media landscape. Frank LoMonte, Student Press Law Center, Arlington, Va., served as the moderator.

Many other fresh-faced journalists were in the audience and asked questions of the panelists regarding the benefits and drawbacks of making the transition from print to digital media. Marinova shared that



Paul M. Barrett and CNN's Jessica Thill discuss his book, *Glock: The Rise of America's Gun*.



Chief Justice Carol Hunstein and Hon. Michael P. Boggs, Court of Appeals of Georgia, commiserate while serving as panelists on "Criminal Justice Reform: The Next Chapter."

she, "enjoyed working on a daily newspaper" but that she realizes that "that's not the direction this industry is headed."

Regan-Porter discussed the teaching hospital approach that the Center for Collaborative Journalism has taken on the campus of Mercer University. Student journalists get to shadow seasoned journalists from Macon's newspaper *The Telegraph* and from Georgia Public Broadcasting gaining invaluable real-world experience. Mercer and its partners have created one of the largest

journalism/community projects in the country and a model for higher education/media collaborations in other cities.

For the lunch session, Paul M. Barrett, author of *Glock: The Rise of America's Gun*, was on hand for a conversation and audience Q&A about all things to do with guns titled, "Glock, Gun Control and the American Love Affair with Firearms." Barrett is also an adjunct professor at NYU School of Law and an assistant managing editor and senior writer at *Bloomberg Businessweek*. Jessica

Thill, CNN, Atlanta, facilitated the discussion. One of the many timely gun-related topics covered by Barrett and Thill was that of gun control. A Glock 17 pistol was among the weapons used by a mentally disturbed George Hennard in the 1995 mass murder at a Luby's cafeteria in Killen, Texas. Barrett said, "Mass killers—who don't intend on escaping and living through the incident—are mentally disturbed. Talking about mental illness when discussing gun control is essential."

Following the lunch session, Richard Griffiths, CNN, Atlanta, was back again to serve as interlocutor for a Fred Friendly style panel. In this year's salacious scenario, Larry Headstrong is a Formula 2 race car driver who is accused of spiking his gas tanks with jet fuel. Headstrong is facing perjury charges and a lifetime ban from racing. All the panelists had a role to play as the story unfolded: Shannon McCaffrey, *Atlanta Journal-Constitution*, Atlanta, was the reporter who broke the story; Vic Reynolds, district attorney, Cobb County, was the DA considering filing charges; Karen Zuker, CNN, Atlanta, was the talk show booker attempting to get Headstrong to sit for an interview; Tom Donahue, Porter Novelli, Atlanta, was the public relations consultant; and Seth Kirschenbaum, Davis Zipperman, Kirschenbaum & Lotito, Atlanta, was the defense attorney trying his best to counsel his client.

The final session was "Criminal Justice Reform: The Next Chapter," a follow-up to last year's "Criminal Justice Reform: Opportunities and Obstacles." Once again, Mike Klein, Georgia Public Policy Foundation, Atlanta, moderated the panel discussion. Chief Justice Carol Hunstein, Supreme Court of Georgia; David McDade, district attorney, Douglas County; and Rep. Wendell Willard (R-Sandy Springs) made a reappearance as panelists. Joining them this year were Judge Michael P. Boggs, Court of Appeals

of Georgia; and Bill Rankin, *Atlanta Journal-Constitution*.

The panelists presented some staggering statistics:

- Georgia has the fourth largest prison population in the United States.
- One in 13 Georgia citizens is on parole, on probation or in jail.
- The annual cost to house an adult inmate is \$19,000.

This last figure is why many jurists advocate for drug courts, which cost far less per year at only \$4,300. If the figures for adult incarceration seem high, consider those for juveniles: \$90,000 per bed, per year at a detention center. And the recidivism rate? Sixty-four percent of juveniles will be re-incarcerated within three years of their release.


Both adult and juvenile criminal justice reform have been hot topics in the Legislature this session. As of this printing, HB 242, the Juvenile Justice bill, passed the Senate by unanimous vote. The bill moves the state away from a prison-based system of juvenile punishment toward an increased focus on community-based programs aimed at rehabilitating juvenile offenders and returning them to the community as productive citizens. The adult counterpart, HB 349, also passed the Senate this session.

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The Georgia First Amendment Foundation honored Chief Justice Carol Hunstein as the 2013 recipi-

ent of the Charles L. Weltner Freedom of Information Award on March 14. Hunstein was chosen because of her unwavering support of public access to the courts and a strong proponent of government transparency at all levels.

This year's banquet also honored the late Otis Brumby Jr. as an Open Government Hero. For more than 40 years as publisher of the *Marietta Daily Journal*, Brumby, who died in September, campaigned in print and often in court to hold public officials accountable to the state's sunshine laws. 



Stephanie J. Wilson is the administrative assistant in the Bar's communications department and a contributing writer for the *Georgia Bar Journal*.

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2012 Georgia Corporation and Business Organization Case Law Developments

by Thomas S. Richey and Michael P. Carey

This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2012. The full version of the survey, which can be downloaded or printed at <http://www.bryancave.com/2012-ga-survey>, contains a more in-depth discussion and analysis of each case. This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the authors only and not Bryan Cave LLP. The authors would like to acknowledge and thank Vjollca Prroni, Danielle Parrington, Ann Ferebee and Tiffany McKenzie for their valuable assistance with this article.

This article catalogs decisions dealing with Georgia corporate and business organization law issues handed down by the Georgia state and federal courts during 2012. The past year saw only a few cases with significant precedential value, but, as always, there were decisions addressing questions of law for which there is little settled authority. Even those cases in which the courts applied well-settled law are instructive for the types of claims and issues that are currently being litigated in corporate and business organization disputes.

Highlights include two important decisions in 2012 concerning common law claims for nondisclosure in different contexts—to stock purchasers in a private placement and in communications with existing shareholders. The federal courts handed down multiple rulings in 2012 regarding the effect of the business judgment rule on claims for ordinary negligence in FDIC litigation against former bank directors and officers. Several cases

addressed unusual claims of alter ego liability between legal entities. Other cases of special interest involved shareholder buy-sell agreements, the effect of a no-action clause in a trust indenture on bondholder claims, a question whether an attorney-client relationship was formed between corporate counsel and an officer/shareholder, and decisions addressing partnership dissolution issues, LLC derivative action procedure and the admissibility of expert witness testimony on matters of corporate governance.

The first sections of the survey address decisions specific to entity type—business corporations, nonprofit corporations, limited liability companies and partnerships. The rest of the survey deals with issues generally applicable to all forms of business organizations: (1) transactional issues and (2) litigation issues, including secondary liability, jurisdiction and venue, evidence questions and insurance issues. Finally, we cover some of the significant decisions handed down by the Fulton County Business Court during the year 2012.

Duties and Liabilities of Corporate Directors, Officers and Employees

Two of the most significant decisions of 2012 addressed novel issues relating to corporate disclosure duties under Georgia law. In *Greenwald v. Odom*, 314 Ga. App. 46, 723 S.E.2d 305 (2012), the Court of Appeals of Georgia held that alleged oral misrepresentations regarding an earnings forecast and a transaction in



progress could give rise to fraud and negligent misrepresentation claims, despite the general rule that false representations must relate to existing facts or past events. The court in *Greenwald* also held that the investor's claims were not barred by a merger clause in his subscription documents because a separate "reliance" clause that documented the plaintiff's free access to information was construed to authorize reliance on the oral representations forming the basis of his claim. In *Anderson v. Daniel*, 314 Ga. App. 394, 724 S.E.2d 401 (2012), the Court of Appeals held that communications sent to all shareholders, such as annual reports and audited financial statements, did not satisfy the "direct communication" requirement for plaintiffs seeking to assert a "holder claim" under the principles laid out in the Supreme Court of Georgia's decision in *Holmes v. Grubman*, 286 Ga. 636 (2010) which permits shareholders to assert claims alleging that they were misled into retaining their stock.

2012 yielded several corporate governance decisions dealing with

the aftermath of the recent crisis in the Georgia banking industry. The U.S. District Court for the Northern District of Georgia issued five significant decisions in cases brought by the Federal Deposit Insurance Corporation (FDIC) as receiver for failed banks against their former directors and officers. In *FDIC v. Skow*, No. 11-cv-00111-SCJ (N.D. Ga. Feb. 27, 2012) the Northern District held that former directors of Integrity Bank were not exculpated from liability to the FDIC by the bank's articles of incorporation. In the same order, the court held that the business judgment rule insulated the bank's former directors from claims based on alleged ordinary negligence. In *FDIC v. Blackwell*, 2012 WL 3230490 (N.D. Ga. Aug. 3, 2012), *FDIC v. Briscoe*, No. 11-cv-02303-SCJ (N.D. Ga. Aug. 14, 2012), *FDIC v. Whitley*, No. 12-cv-00170-WCO (N.D. Ga. Dec. 10, 2012) (O'Kelley, J.), and *FDIC v. Miller*, No. 12-cv-00042-WCO (N.D. Ga. Dec. 26, 2012) (O'Kelley, J.), the district court followed the holding in *Skow* with respect to the effect of the business judgment

rule on ordinary negligence claims. The *Skow* decision is currently on appeal to the 11th Circuit. In the *Briscoe* and *Miller* cases, the courts also denied motions to dismiss the FDIC's gross negligence claims. *Miller* is particularly noteworthy in that the district court suggested that the FDIC's allegations may support a failure of oversight claim against an executive officer under the principles stated in *In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996), perhaps the first Georgia court decision that has applied *Caremark* in a Georgia corporate governance case.

In *Macke v. Cadillac Jack, Inc.*, 316 Ga. App. 744, 730 S.E.2d 462 (2012), the Court of Appeals held that summary judgment in favor of the defendants was proper in a case involving an alleged interested party transaction under the Georgia Business Corporation Code, because the plaintiff failed to produce evidence showing that the transaction was unfair, raising questions about allocating the burden of proof in such cases. In *VanRan Communications Services*,

Inc. v. Vanderford, 313 Ga. App. 497, 722 S.E.2d 110 (2012) a petition for removal of directors under O.C.G.A. §§ 14-2-940 and 14-2-941 was denied where plaintiff failed to show evidence of alleged fraud in the preparation of a company's tax returns; a mere discrepancy between the returns and preliminary internal reports was held insufficient evidence of fraud. The Court of Appeals held in *Grot v. Capital One Bank (USA), N.A.*, 317 Ga. App. 786, 732 S.E.2d 305 (2012) that an officer who opened a credit card account in the company's name was personally liable for the credit card debt incurred due to language in the cardholder agreement indicating that the defendant had agreed to become individually and jointly liable for the debt. Finally, two decisions reiterated the settled point that a director or officer who directly participates in a tort may be personally liable to injured third parties. In *Georgia Cash America, Inc. v. Greene*, 318 Ga. App. 355, 734 S.E.2d 67 (2012), the Court of Appeals held that an officer who drafted and negotiated certain contracts with out-of-state banks that formed the basis for liability under the Payday Lending Act could be personally liable under the statute. In *Collins v. King America Finishing, Inc.*, 2012 WL 5473565 (S.D. Ga. Nov. 9, 2012) and several related actions, the U.S. District Court for the Southern District of Georgia held that an officer was not fraudulently joined to prevent removal because a potentially valid claim could be made that the officer directed the corporate conduct giving rise to the claim.

Corporate Stock and Debt—Contracts, Valuation and Standing

The courts dealt with a variety of issues arising from stock transactions among shareholders. In *Bommer v. Reynolds*, 465 Fed. App'x 876 (11th Cir. 2012), the U.S. Court of Appeals for the 11th Circuit held that a shareholder's acceptance of

a buyout offer was valid and binding, and that the purchasing shareholder was entitled to delivery of the seller's shares, even though the parties disputed whether the seller had agreed to certain additional terms imposed by the purchaser. In *Wright v. Cofield*, 317 Ga. App. 285, 730 S.E.2d 421 (2012), the Court of Appeals of Georgia found that an oral agreement to pay a key employee a specified percentage of the proceeds from the sale of a company was sufficiently definite to be enforceable. In *Beale v. O'Shea*, 2012 ____ Ga. App. ____, 735 S.E.2d 29 (2012), the Court of Appeals found that a selling shareholder offered sufficient evidence, through his own opinion testimony as well as that of a venture capitalist involved in financing a buyout of the company, to create an issue of fact that the value of his shares was devalued by the corporation's entering into dilutive change of control agreements.

In *Akanthos Capital Management, LLC v. CompuCredit Holdings Corp.*, 677 F.3d 1286 (11th Cir. 2012), the 11th Circuit, applying New York law, held that the "no action" clause in a trust indenture barred corporate noteholders from asserting claims under Georgia's Uniform Fraudulent Transfer Act. Reversing the district court's decision, the court ruled that the "no-action" clause was enforceable against UFTA claims and found that no exception applied.

Nonprofit Organization Decisions

The Georgia federal district courts issued two noteworthy decisions dealing with the liability of religious organizations and their directors. In *GTAS Asset Solutions, LLC v. African Methodist Episcopal Church*, 2012 WL 3637452 (N.D. Ga. Aug. 22, 2012), the Northern District held that there was an issue of fact sufficient to defeat summary judgment on the question of whether the African Methodist Episcopal Church of the United

States (AME) acted as the alter ego of Morris Brown College and could therefore be held liable for its debts, holding that a jury could find that AME, despite its lack of an ownership interest, exercised control over the college's affairs. In *Light for Life, Inc. v. Our Firm Foundation for Koreans, Inc.*, 2012 WL 4397421 (M.D. Ga. Sept. 24, 2012), the Middle District held that a copyright infringement claim could go forward against a ministry's directors based on allegations that the directors personally participated in the alleged infringement, and that it was therefore unnecessary for the plaintiffs to pierce the corporate veil.

Limited Liability Company Developments

The Court of Appeals addressed the demand requirement for derivative actions under the Georgia Limited Liability Company Act in *Pinnacle Benning, LLC v. Clark Realty Capital, LLC*, 314 Ga. App. 609, 724 S.E.2d 884 (2012), holding that there is no futility exception to the demand requirement for LLCs. The court noted that parallel provisions governing derivative actions for business nonprofit corporations do not allow for futility exceptions. In *Seiz Joint Venture, LLC v. Seiz*, 290 Ga. 719, 723 S.E.2d 672 (2012), the Supreme Court of Georgia held that an LLC could be made party to a divorce action involving one of its members so that one-half of that member's interest could be awarded to the member's spouse. In *Tindall v. H&S Homes, LLC*, 2012 WL 174824 (M.D. Ga. Jan. 20, 2012), the district court held that three trusts that indirectly owned an LLC through its holding company could not be held liable for a judgment against the LLC because there was no evidence that the trusts were involved in the operation or management of the LLC. On a motion for reconsideration, the court vacated its ruling as to one of the trusts based on new evidence regarding its financial deal-

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ings with the LLC. See *Tindall v. H&S Homes, LLC*, 2012 WL 1672898 (M.D. Ga. May 14, 2012).

Partnership Law Developments

The Supreme Court of Georgia addressed and clarified the elements of a wrongful dissolution claim in *Jordan v. Moses*, 291 Ga. 39, 727 S.E.2d 460 (2012). Reversing a 2011 Court of Appeals decision, the court held that a partner claiming wrongful dissolution is not required to show that the defendant misappropriated the “new” prosperity of the partnership; a wrongful dissolution claim may be based on the misappropriation of business opportunities in existence at the time of the dissolution.

The U.S. Bankruptcy Court for the Northern District of Georgia held in *In re Thadikamalla*, 481 B.R. 232 (Bankr. N.D. Ga. 2012), that a limited liability limited partnership was automatically dissolved after the death of its general partner, but its existence is not terminated, and that a bankruptcy trustee holding a majority interest in the limited partnership was entitled to wind up the partnership’s affairs. Finally, the Court of Appeals of Georgia held in *Wright v. Apartment Investment & Mgmt Co.*, 315 Ga. App. 587, 726 S.E.2d 779 (2012) that an employee may owe fiduciary duties to his employer based on the level of autonomy and responsibility given the employee with respect to the management of company funds.

Transactional Cases

In *Robbins v. Supermarket Equipment Sales, LLC*, 290 Ga. 462, 722 S.E.2d 55 (2012), the Supreme Court held that a corporation formed after the foreclosure of a predecessor company had standing to pursue trade secret claims arising from events that occurred before the corporation was formed. In *Jiles v. PNC Bank N.A.*, 2012 WL 3241927 (M.D. Ga. Aug. 7, 2012), the district court held that a holder of a security deed who obtained the deed through a merger with the original deed holder was not required to record an assignment of the deed because the transfer occurred by operation of law.

Two federal decisions addressed issues relating to the relationship between corporations and professional service providers. In *Abdulla v. Klosinski*, 2012 WL 4429179 (S.D. Ga. Sept. 25, 2012), the Southern District held that an attorney who allegedly negotiated a personal guaranty signed by a corporation’s sole shareholder and officer did so in his role as counsel for the corporation, and that the actions undertaken by counsel in representing the corporation did not create an attorney-client relationship with the owner-shareholder. In *Hemispherx Biopharma, Inc. v. Mid-South Capital, Inc.*, 690 F.3d 1216 (11th Cir. 2012), the 11th Circuit held that an investment broker could pursue breach of contract, *quantum meruit*, and other claims against a corporation that allegedly retained it in connection with capital-raising activities, notwithstanding that the corporation failed to sign the broker’s engagement letter.

Litigation Issues

Alter Ego, Piercing the Corporate Veil and Other Forms of Secondary Liability

There was the usual array of alter ego and piercing-the-corporate-veil decisions in 2012. None of these decisions represents any significant extension or shift in the law, but

they illustrate the continuing vitality of the doctrine. Three decisions addressed the use of veil-piercing and other theories in efforts to transfer liabilities from one legal entity to another. In *Bank of the Ozarks v. DKK Development Co.*, 315 Ga. App. 529, 726 S.E.2d 608 (2012), the Court of Appeals declined to find that a failed bank and its holding company were alter egos of one another, concluding that the plaintiff could not set off its debt to the bank against its own loan to the holding company. In *Lloyd's Syndicate No. 5820 d/b/a Cassidy Davis v. AGCO Corp.*, ___ Ga. App. ___, 734 S.E.2d 899 (2012), the court held that evidence that failed to prove an alter ego relationship could demonstrate agency which, in turn, could result in imposition of liability. See also *GTAS Asset Solutions, LLC v. African Methodist Episcopal Church*, 2012 WL 3637452 (N.D. Ga. Aug. 22, 2012), discussed above.

In *Christopher v. Sinyard*, 313 Ga. App. 866, 723 S.E.2d 78 (2012), the Court of Appeals held that purchasers of a newly-built home could recover directly from the construction company's two officers. While no new principle of law is stated in *Christopher*, the opinion lays out the plaintiffs' evidence in considerable detail and provides a useful guide to the sort of facts that are relevant in a piercing-the-corporate-veil case. In *Sun Nurseries, Inc. v. Lake Erma, LLC*, 316 Ga. App. 832, 730 S.E.2d 556 (2012), the Court of Appeals found that piercing the corporate veil was not warranted where an LLC made distributions to members for purposes of facilitating a loan for the LLC's benefit, since the proceeds were reinvested in the LLC and there was no evidence that any of the proceeds were put to personal use.

Veil-piercing concepts were also discussed in *Atlanta Fiberglass USA, LLC v. KPI Co.*, 2012 WL 5945151 (N.D. Ga. Nov. 28, 2012), which ruled that officers cannot not be held personally liable for fraudulent transfers under the Georgia Uniform Fraudulent Transfer Act.

In other cases seeking to extend liability to additional parties, the Court of Appeals in *Koch v. Fred Baruchman & Assocs., P.C.*, 318 Ga. App. 251, 733 S.E.2d 781 (2012) held that a corporate officer was not personally liable for the corporation's debts incurred during the period after the corporation was administratively dissolved and prior to its reinstatement. In *Kent v. Mitchell*, ___ Ga. App. ___, 735 S.E.2d 110 (2012), the Court of Appeals recognized the separateness of a professional corporation and its principal in the context of entering judgment on an arbitration award. The court held that it was error to enter judgment against the individual, since the award itself purported to be against the professional corporation.

In *Nalley v. Langdale*, ___ Ga. App. ___, 734 S.E.2d 908 (2012), (physical precedent only), the Court of Appeals of Georgia found issues of fact with respect to a claim against corporation for allegedly aiding and abetting a trustee's breach of fiduciary duty when it redeemed stock from a trust in which the plaintiffs were beneficiaries.

Jurisdiction, Venue and Service of Process

In a case that raised "novel jurisdictional issues" arising from the FDIC's use of a joint venture with private entities to collect distressed loans, the District Court for the Middle District of Georgia decided in *RES-GA Four, LLC v. Avalon Builders of Ga., LLC*, 2012 WL 13544 (M.D. Ga. Jan. 4, 2012) that the FDIC's status as a member of an LLC that was, in turn, the sole member of an LLC who brought suit destroyed diversity jurisdiction, since the FDIC is not a citizen of any state. The court nonetheless found that it could exercise federal question jurisdiction because the dispute was related to a bankruptcy matter involving the defendant's sole member.

In a wrongful foreclosure case, the U.S. District Court for the Northern District held in *Stubbs v.*

Bank of America, 844 F. Supp. 2d 1267 (N.D. Ga. 2012) that an out-of-state loan servicer was exempt from the requirement under O.C.G.A. § 14-9-902 that foreign limited partnerships register to do business in Georgia. In *Stone v. Bank of New York Mellon, N.A.*, 2012 WL 2285180 (N.D. Ga. June 18, 2012), the district court granted an out-of-state corporation's motion to set aside default, finding that the corporation, which had withdrawn its registration to do business in Georgia, was not properly served with process because no copy was delivered to the corporation as set forth under O.C.G.A. § 14-2-1520(c). In *Cartel Asset Management, Inc. v. Altisource Portfolio Solutions, S.A.*, 2012 WL 39559 (N.D. Ga. Jan. 6, 2012), the district court held that a foreign corporation that had failed to obtain a certificate of authority was properly served under O.C.G.A. § 14-2-1510(b) when its subsidiaries were served at their principal places of business in Georgia. In *Alpha Nursing Services, Inc. v. Vickery*, ___ Ga. App. ___, 732 S.E. 2d 760 (2012), the Court of Appeals of Georgia held that venue was proper in Jackson County pursuant to O.C.G.A. § 14-2-510(b)(2), the Georgia Business Corporation Code's provision for venue in contract cases, as to claims against a corporation under a rent/buy agreement for office space in that county because the defendant corporation, although not a party to the contract, conducted business there. It appears from the opinion that the court employed alter ego principles in reaching its decision.

In *Carson v. Obor Holding Company, LLC*, 318 Ga. App. 645, 734 S.E.2d 477 (2012), the Court of Appeals declined to enforce a forum selection clause in an LLC operating agreement that required actions under the agreement to be brought in Florida, holding that doing so in the case before it would violate Georgia's public policy concerning the enforcement of non-compete agreements. The court also declined to apply Florida law as the forum selection clause

specified. In an interesting decision in *WMV, Inc. v. American Honda Motor Company, Inc.*, 291 Ga. 683, 733 S.E.2d 269 (2012), the Supreme Court of Georgia questioned the Court of Appeals' reliance on the GBCC's venue rules in determining what constitutes a company's "relevant market area" for purposes of the Georgia Motor Vehicle Franchise Practices Act.

Evidence—Expert Testimony on Corporate Governance; Business Records Act Decisions

In *Tindall v. H&S Homes, LLC*, 2012 WL 3241885 (M.D. Ga. Aug. 7, 2012), the U.S. District Court for the Middle District of Georgia found that a proffered expert on corporate governance issues was qualified to testify about "good business practices" based on his knowledge and experience in business, but could not testify regarding Sarbanes-Oxley corporate governance standards because there was no evidence that Sarbanes-Oxley applies to limited liability companies, and could not testify about the business judgment rule because he failed to demonstrate familiarity with Georgia's standard of care or its formulation of the business judgment rule.

There were three instructive Georgia appellate decisions

addressing hearsay challenges to the introduction of business records. In *Angel Business Catalysts, LLC v. Bank of the Ozarks*, 316 Ga. App. 253, 728 S.E.2d 854 (2012), the Court of Appeals held that a bank seeking to collect on a note and guarantees it acquired from another bank satisfied the Business Records Act hearsay exception by producing testimony from its special assets manager and custodian of records, who testified regarding the delivery of the records to the bank from the original lender. In *Capital City Developers, LLC v. Bank of North Georgia*, ___ Ga. App. ___, 730 S.E.2d 99 (2012), the Court of Appeals held that a bank's summarized statements were not admissible, even though a witness authenticated them and testified to having personal knowledge of how the summaries were maintained, because they were generated long after the transactions being summarized and were not accompanied by the business records on which they were based. In *Isbell v. Credit Nation Lending Service, LLC*, ___ Ga. App. ___, 735 S.E.2d 46 (2012), an automobile auctioneer's inspection records were held admissible on the basis of testimony by the auctioneer's controller, even though he did not personally perform the inspections, because he was able to testify from personal

knowledge as to how the company kept its records and the timing of the records in question.

Fidelity Bond Coverage

In *Lubin v. Cincinnati Ins. Co.*, 677 F.3d 1039 (11th Cir. 2012), a fidelity bond coverage dispute, the 11th Circuit held that a bank holding company was not insured against losses allegedly caused by its banking subsidiary's employees, interpreting the operative policy language to restrict the coverage afforded to each insured entity (the holding company and the subsidiary) to losses caused by that entity's own officers and employees.

Superior Court of Fulton County Business Court Decisions

The Superior Court of Fulton County Business Court maintains an archive of selected decisions at http://digitalarchive.gsu.edu/col_businesscourt/. The court issued several decisions in 2012 that bear on Georgia corporations and business organizations law.

Two of the Business Court decisions were rendered in proceedings on remand from appellate rulings discussed above. In *Greenwald v. Odom*, after remand, the Business Court denied the defendants' motion for summary

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judgment on the issue of loss causation, finding a genuine issue of fact as to whether the company's failure to meet its allegedly misrepresented earnings forecast, and the failure of the allegedly misrepresented proposed transaction to occur, caused the plaintiff's loss. The Business Court also granted in part and denied in part a motion to exclude the plaintiff's expert witness, allowing the expert to testify regarding business matters within his expertise but excluding his testimony regarding the specific industry as well as corporate governance practices and fiduciary duty concepts. *Greenwald v. Odom*, No. 2008-cv-154834 (Fulton Sup. Ct. Dec. 21, 2012) (Order on Motion to Exclude Dr. Sanjai Bhagat and Defendants' Motion for Summary Judgment as to the Issue of Loss Causation). In the *Macke v. Cadillac Jack, Inc.* litigation, also on remand, the Business Court conducted a trial in which the jury found that the plaintiff was entitled to compensatory damages and attorneys' fees against one of the defendants. On a motion to set aside the verdict for attorneys' fees, the Business Court held that there was sufficient evidence of bad faith to support the award under O.C.G.A. § 13-6-11. *Macke v. Cadillac Jack Inc.*, No. 2008-cv-158015 (Fulton Sup. Ct. Dec. 3, 2012) (Order on Motion for Judgment Notwithstanding the Verdict).

In *Broadway Capital v. Gerdes*, the Business Court denied a motion to enjoin a two-step tender offer and merger on the basis of alleged disclosure deficiencies, holding that Delaware law, which governed the target company board's disclosure duties, did not require the further disclosures regarding the investment banker's trading of company shares and the negotiations leading to the merger. The case settled thereafter, and the Business Court entered an order approving the settlement. *Broadway Capital v. Gerdes*, No. 2012-cv-213119 (Fulton Sup. Ct. Apr. 16, 2012) (Order Denying Plaintiff's Motion for Interlocutory

Injunction); *In re Transcend Services, Inc. Shareholder Litigation*, No. 2012-cv-213119 (Fulton Sup. Ct. Nov. 9, 2012) (Order and Final Judgment). In *Benfield v. Wells*, the Business Court dismissed a derivative action brought by a SunTrust shareholder on a motion filed by SunTrust under O.C.G.A. § 14-2-744(a), based on the determination by a special litigation committee that the claims lacked merit and that a recovery was unlikely. The Business Court rejected numerous challenges to the independence of the special litigation committee and to the good faith and reasonableness of its investigation. *Benfield v. Wells*, Civil Action File No. 2011CV205554, (Fulton Sup. Ct. Oct. 29, 2012) (Order on Defendants' Motions to Dismiss).

In *Shailendra v. Sabadia*, the Business Court held that previous litigation between the parties relating to certain real estate investments as to which the parties had been partners did not constitute "prior pending" actions because the plaintiffs in the present suit sought to bring claims under the parties' overarching partnership agreement, which had not been at issue in the earlier litigation. *Shailendra v. Sabadia*, Civil Action File No. 2011-CV-195621 (Fulton Sup. Ct. Feb. 17, 2012). Finally, in *O'Brien v. Conza*, the Business Court held that an equityholders' agreement between two partners, one of whom had passed away, did not require the surviving partner to purchase the deceased partner's interest. *O'Brien v. Conza*, Civil

Action File No. 2010-CV-188721 (Fulton Sup. Ct. Feb. 8, 2012 and May 4, 2012).

Finally, in *Silverton Financial Services, Inc. v. Porter Keadle Moore, LLP*, No. 2010-cv-194891 (Fulton Sup. Ct. July 12, 2012), the court held that knowledge and conduct of officers and directors can be imputed to a corporation even when they are acting in a dual capacity, but that an accounting firm cannot defend on the basis of *in pari delicto* if the only allegation of misconduct against the officers and directors is negligence. 




Thomas S. Richey concentrates his practice in corporate, securities, banking and financial litigation and insurance coverage at Bryan Cave

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Business Development Symposium:

Law Partners and In-House Counsel Explain the Art of Business Development

by Marian Cover Dockery

The seventh annual State Bar of Georgia Diversity Program Business Development Symposium, sponsored by Alston & Bird, opened with Part I—Business Development from the Partners’ Perspective on Jan. 27. Part II of the symposium, Developing Business from the In-House Counsels’ Perspective, was held on March 7. Partners and in-house counsel presented in separate panel discussions highlighting invaluable strategies on business development techniques.

In two 90-minute presentations, each of which offered one CLE credit hour (including one professionalism hour), seasoned partners and in-house counsel provided: do’s and don’ts when drumming up business; tips on how corporations measure diversity when retaining law firms; strategies partners have adopted to build relationships and secure business; and advice on retaining clients.

Business Development from the Partners’ Perspective

Christopher J. Chan, partner and member of the intellectual property group at Sutherland, moderated a panel of experienced partners from solo, midsize and large


firms including: Douglas Burrell, partner, Drew Eckl & Farnham, LLP; Jonathan Goins, partner, Gonzalez Saggio & Harlan; Jennifer B. Grippa, shareholder, Miller & Martin PLLC; Chrisna Jones, founding member, The Law Offices of Chrisna D. Jones, LLC; and Sonjui Kumar, founding member, Kumar, Prabhu, Patel & Banerjee, LLC. The panelists shared tips on developing business with companies, strategies to retain clients and the benefits of a diverse group of attorneys pitching the firm at the beauty pageant to secure the client. The panelists agreed that it helps when the CEO is a champion of diversity in a company. That leadership sets the tone for every manager in the company. Joining business organizations, writing articles, speaking on panels and reaching out to members of your family, church, clubs and associations can all prove beneficial when attempting to develop business. Lastly, investing money and time is essential to building business clientele and building and maintaining relationships is essential to any practice. The consensus of the panel was that although hard work is essential, new attorneys must remember that an attorney cannot build a book of business by merely working hard in his or her office.

Developing Business from the In-House Counsels’ Perspective

Brent Wilson, partner, Elarbee, Thompson, Sapp & Wilson, LLP, moderated the in-house panel consisting of: Thomas Best, senior counsel, Home Depot, Inc; Cathy Hampton, chief legal officer, City of Atlanta, Department of Law; Lamis Hossain, lead counsel, paragon group, McKesson Technology Solutions; and Patrise Perkins-Hooker, general counsel, Atlanta Beltline, Inc., gave the in-house counsel perspective on best prac-

tices to develop business and the role diversity plays in that process. These experienced counsel echoed the advice shared by the law partner panelists—the three P’s of building a law practice: patience, preparation and performance. It takes time to build relationships, so be patient because it won’t happen overnight. It is essential to be prepared and understand your client’s business; it is mandatory that you work passionately for your client, demonstrate your commitment to the client’s needs, adhere to the client’s budget and don’t let the client outwork you.

Meetings with In-House Counsel

Part III of the Symposium will be held April 25 at the State Bar from 9:30 a.m. – 3:30 p.m. The final component of the Symposium is one where selected in-house counsel will meet with a diverse group of attorneys one-on-one. The meetings are designed to provide opportunities for these attorneys to introduce themselves to in-house counsel and discuss their experience and expertise for future business opportunities. State Bar members who want “facetime” with in-house counsel can visit the website, www.gabar.org, to complete an application and fill out and submit the online bio form. A nonrefundable \$50 administrative fee is charged for those who wish to apply, but there is no guarantee that any attorney will be selected. The participating companies for Part III are the companies represented by panelists in Part II of the Symposium. 



Marian Cover Dockery is an attorney with a background in employment discrimination and the executive director of

the State Bar of Georgia Diversity Program. For more information on the Diversity Program, go to www.gabar.org.



Photos by Don T. Morgan

Partners who participated in Part I of the Business Development Symposium included: (left to right) Christopher J. Chan, moderator; Sonjui Kumar, Jonathan Goins, Douglas Burrell, Chrisna Jones and Jennifer B. Grippa.



(Left to right) Cathy Hampton, Marian Cover Dockery, Brent Wilson, Thomas Best, Patrise Perkins-Hooker and Lamis Hossain pose before Part II of the Business Development Symposium where in-house counsel shared their views.

2013 GDP CALENDAR

April 25—Business Development Symposium, Part III

May 28 - June 7—High School Pipeline Program

June 2013 (date TBD)—Summer Associates and Judiciary Reception

Sept. 26 (tentative)—Annual GDP CLE and Luncheon

Dec. 2013 (date TBD)—GDP Annual Holiday Celebration (members only)

Meriwether County Courthouse at Greenville

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Created in 1827, Meriwether County was part of the enormous tract west of the Flint River that was ceded to the state of Georgia by the Creek Indians in the 1825 Treaty of Indian Springs. This controversial cession and the land lotteries that followed opened the floodgates for a wild rush to claim new cotton-growing lands in the western part of the state.

In 1830, Meriwether County counted more than 4,000 residents. By 1840, this number had grown to more than 14,000. As the county grew, William Hitchcock's 1832 courthouse rose on the square in Greenville. This sturdy brick building would serve for more than 70 years. In the antebellum period, it stood for simple frontier individualism and bore witness to a modest prosperity centered on the growing of cotton. In 1860, the county produced more than 18,000 bales of the staple, fifth among Georgia's 132 counties. This rich harvest flowed up the old Atlanta and West Point Railroad from the depot at Hogansville to Atlanta. In 1885, the narrow gauge rails of the Columbus and Rome finally made their way from Columbus into Greenville, a town that had remained a comfortable village of about 500 residents.

In the early 1890s, a notable fire and a brutal tornado damaged the old courthouse and swept the town clear of many old wooden buildings. Local historians report

that in this period 16 brick buildings rose to replace those destroyed. By 1900, the town's population was above 800. In 1901, news of The Central of Georgia's efforts to purchase The Chattanooga, Rome and Southern reached Greenville. Spirits soared on the speculation that The Central would extend The Columbus and Rome from Greenville through to Newnan, thus realizing the town's age-old dream of a railroad from Columbus via Greenville all the way to Chattanooga.

Just as these and other railroad dreams appeared, county leaders in Greenville predictably declared the old courthouse unsafe, and were jealously eyeing J. W. Golucke's grand new Classical creation in DeKalb County at Decatur. By October of 1901, a plan created by Golucke and modeled after his work at Decatur was accepted. A contract for construction was let, the old courthouse was demolished and \$30,000 in bonds were authorized and sold. By June of 1902, this grand courthouse began to fill Greenville's tiny square.

James W. Golucke's 1900 DeKalb County Courthouse was perhaps Georgia's most influential public building of the era. With the exception of Andrew J. Bryan's 1895 Stewart County Courthouse at Lumpkin and an 1896 remodeling of the Muscogee County Courthouse at Columbus, Golucke's design at Decatur was the first courthouse in Georgia to reflect the pomp of the American Neoclassical Revival. After the wild success of the "Florentine Renaissance" architecture of the so-called "White City" at Chicago's 1893 Columbian Exposition, waves of the new Classicism swept across the country. Great thrusts of modern American Neoclassical styling and an avant Beaux-Arts Classicism eclipsed the Picturesque and overshadowed the already popular Colonial and Renaissance Revivals




The Meriwether County Courthouse at Greenville, built in 1903, James W. Golucke, architect.

to create a uniquely American Neoclassical Revival which found no counterpart abroad. Outside of the South, all of this architectural pomp and circumstance was part of the national celebration of a new sense of American industrial, financial, military and imperialist might that celebrated the questionable culmination of three decades of greed and unfettered commercial expansion. To be sure, no such celebration seemed appropriate in the American South. In 1900, the region still festered with bitterness, ignorance and intransigence, and, despite the myths of impending progress, the rural South was still desperately trapped in a spiral of exploitation and poverty.

Still, as James Golucke was soon to prove, the South would nonetheless have her Neoclassical Revival. And she would have it on her own terms. If the national symbolism attached to the American Neoclassical Revival was abhorrent to Southern aesthetes, then the region would

substitute her own symbols, and no one had to look far for an appropriate replacement. In the Southern mind of 1900, the columns of the Old South had come to stand for an idealized era dripping with sweetness and light. It was certainly not a great distance from the simple antebellum forms of Thomas Jefferson and Robert Mills to the ornate columns of J. W. Golucke's American Neoclassical Revival courthouses. And it can be no coincidence that James Golucke always employed grand porticos in the Greek temple form as the centerpiece of his court buildings. Although he employed Beaux-Arts ornament with increasing freedom, he always returned to the great temple-like portico. It was a choice that allowed his buildings to simultaneously speak two mythical languages. The modern myth of the New South teetered on the shaky foundations of the myth of the Old South.

In 1976, James Golucke's 1903 Meriwether County Courthouse

was badly damaged by a fire. Rather than take such calamity as opportunity to construct a modern government building, the citizens of Meriwether rallied to restore the old courthouse. Restoration architect, Ed Neal, of Columbus called the project an "adaptive restoration," meaning that the exterior of the building would be faithfully restored while the interior would be remodeled and modernized. The results are stunning. The solid stone columns today support hand carved pediments just as they did in 1903. In true Southern fashion, when the New South finally did arrive in Meriwether County, these columns still served to recall the decades of struggle and quandary that were her past. 

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.

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Kilpatrick Townsend & Stockton LLP announced that **Yendelela Neely Anderson** was voted **chair** of the **Jumpstart Atlanta Advisory Board**. Jumpstart helps bridge the educational achievement gap for thousands of preschoolers living in poverty nationwide.

Delivering high quality programming in 19 states, Jumpstart is the only national, supplemental preschool program of its kind. Anderson has been involved with Jumpstart since 2010.

Of counsel **Wyck Knox** was inducted into **Junior Achievement's Central Savannah River Area (CSRA) Business Hall of Fame**. The CSRA Business Hall of Fame recognizes and celebrates outstanding individuals whose pursuits in business and philanthropy inspire young people to become leaders and community advocates.

Partner **Tina McKeon** was the recipient of a **2013 Georgia Bio Community Service Award**. Each year, Georgia Bio recognizes individuals, companies and organizations for significant contributions to Georgia's life sciences industry. McKeon serves as a member of the Georgia Bio and Southeast BIO Board of Directors. She has been a leader in helping Georgia Bio expand its membership and improve its programming over the years.

Pro bono partner **Debbie Segal** received **Georgia Asylum & Immigration Network's (GAIN) prestigious Pro Bono Partner of the Year Award**. Segal received the award in recognition of her work on behalf of asylum seekers and immigrant victims of human trafficking, domestic violence and sexual assault.

Associate **Meena Dev-Sidhu** was recently elected **co-chair and president** of the Board of **Raksha**. Raksha, meaning "protection" in several South Asian languages, is a Georgia-based non-profit organization for the South Asian community. Raksha's mission is to promote a stronger and healthier South Asian community through confidential support services, education and advocacy.

> The Atlanta office of **McKenna Long & Aldridge LLP** was named the **2012 "GAIN Volunteer Law Firm of the Year"** by the **Georgia Asylum and Immigration Network (GAIN)**. GAIN provides pro

bono legal representation through metro-Atlanta volunteer attorneys to asylum seekers, immigrant victims of human trafficking, domestic violence, sexual assault and other crimes.

>



Brian D. Burgoon was elected **secretary** of the **University of Florida College of Law Alumni Council**. He has served on the Alumni Council since 1997, and as a member of its Board of Directors/Executive Committee since 2009.

Burgoon is a sole practitioner with The Burgoon Law Firm, LLC, in Atlanta, and focuses his practice on civil and commercial litigation.

>



Warner, Bates, McGough & McGinnis attorney **Traci Weiss** was named a **"Top 40 Family Lawyer Under 40"** in Georgia by the **American Society of Legal Advocates**. Warner, Bates, McGough & McGinnis practices exclusively in the

area of matrimonial and family law.

>



Taylor English Duma announced that **Eric Fisher** was appointed to serve a two-year term on the **Board of Directors** of the **Anti-Defamation League (ADL)'s Southeast regional office**. Fisher is a member of the firm's litigation and dispute resolution group, handling matters across the spectrum of litigation.

>



Ronnie Mabra took the oath of office in January 2013 as a member of the **Georgia House of Representative for House District 63**. Mabra is a trial lawyer and founder of the Mabra Firm, LLC, in Atlanta and member of the Fayette

County Chamber of Commerce.

>




McGuireWoods LLP announced that **Jonathan Shils**, a partner with the firm's real estate practice in Atlanta, was elected **president** of the **American College of Real Estate Lawyers (ACREL)**. ACREL, founded in 1978, is a prestigious peer-


selected organization comprised of approximately 1,000 real estate lawyers in the United States, including lawyers in private practice, in-house counsel and academics in the real estate law area.

>


Alston & Bird, LLP, announced that **Kamal Jafarnia** was appointed to the **Board of Directors** of the **Ashford Hospitality Trust, Inc.** Ashford is a self-administered real estate investment trust focused on


investing in the hospitality industry across all segments and at all levels of the capital structure. Jafarnia is currently counsel in the financial services and products group and a member of the REIT practice group in the New York office of Alston & Bird, LLP.

- >  **Boyd Collar Nolen & Tuggle, LLC**, announced the appointment of founding partner **Robert D. Boyd** as **president** of the **Georgia Chapter** of the **American Academy of Matrimonial Lawyers**. Boyd, a fellow of the national organization for 20 years, has practiced exclusively in family law since 1988.



- >  **Weissman, Nowack, Curry & Wilco** announced that **Julie McGhee Howard** was elected to serve as **president-elect** of the national **Community Associations Institute (CAI)**, the leading advocate for community associations. In the organization's 40-year history, she is only the third attorney from Georgia to hold the role, and she will be only the ninth woman to serve as CAI president.

- >  **Burr & Forman LLP** announced that **Ed Snow**, a partner in the Atlanta office, was selected as **co-chair** of the **Board of Advisors** of Emory University's **Michael C. Carlos Museum**. The museum is one of the Southeast's premier ancient art museums with major collections of art objects from ancient Egypt, Nubia, Near East, Greece, Rome, ancient Americas, Africa and Asia, as well as a collection of works on paper from the Renaissance to the present.


- >  **Davis, Matthews & Quigley, P.C.**, announced that shareholder **David N. Marple** was accepted as a **fellow** in the **American Academy of Matrimonial Lawyers (AAML)**. The AAML was founded in 1962 by highly regarded domestic relations attorneys to provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law.


- >  **Crawford & Company** announced that **Allen W. Nelson** was nominated to become a **fellow** of the **American Bar Foundation**. Nelson serves as Crawford's executive vice president, general counsel, corporate secretary and chief administrative officer. Fellows of the American Bar Foundation form an honorary organization of law-

yers, judges, law faculty and legal scholars who have been nominated by their peers because of their outstanding achievements in the legal profession.

- >   **HunterMaclean** announced that partner **Chris Phillips** was inducted into the **American Board of Trial Advocates (ABOTA)**. ABOTA is a national association of trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the 17th Amendment to the U.S. Constitution. ABOTA works to uphold the jury system by educating the American public about the history and value of the right to trial by jury.

Partner **Sarah H. Lamar** was named **co-chair** of the **Georgia Society of Human Resource Management (SHRM) Governmental Affairs Committee**. The committee's mission is to raise awareness of new laws, regulations and legislative initiatives among all SHRM chapters throughout Georgia and to engage SHRM members in the legislative process.

- >  The **Nipissing Branch of the Canadian International Council** welcomed **Laverne Lewis Gaskins** for a discussion of "**The Intersection of Race and the Law: An American Historical Perspective**." Gaskins is the university attorney at Valdosta State University where she is also an adjunct professor who teaches courses on trial advocacy and gender, justice and family.

- >  **Judge Patricia Barron**, chief magistrate judge of Athens-Clarke County, was selected by the **Athens Area Chamber of Commerce** as its **2013 Athena Award recipient**. This is an international award presented each year to a person who demonstrates excellence in the profession and furthers the goals of other professional women. Barron is the second attorney and first judge to receive this award in its 26-year history in Athens.

On the Move In Atlanta

- >   **Jones Day** named **Elena Kaplan** and **Carrie L. Kiedrowski** as **partners** in the Atlanta office. They were previously associates. Kaplan, a member of the employee benefits practice,

advises employers on providing employee benefits and designing compensation structures in compliance with applicable laws, including ERISA and the Internal Revenue Code. Kiedrowski, a member of the intellectual property practice, focuses on the enforcement of trademark rights on the Internet, global brand development and protection, domestic and international trademark clearance and prosecution, IP due diligence, trademark licensing, and trade dress and copyright matters. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.

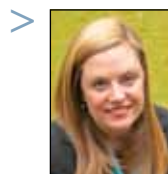


Bunyan

Hammer

Carlock, Copeland & Stair, LLP, announced that **John L. Bunyan** and **Jason W. Hammer** were selected to join the firm's **partnership**. Bunyan practices in commercial litigation with a

focus on professional liability and real estate matters. Hammer specializes in general liability litigation. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; www.carlockcopeland.com.



Stanton Law LLC announced that **Elizabeth Leyda** joined the firm as an **associate**. Leyda focuses her practice advising employers in all aspects of the employer-employee relationship.

The firm is located at 1579 Monroe Drive, Suite F206, Atlanta, GA 30324; 404-881-1288; www.stantonlawllc.com.



Halfman

Taylor

Miller & Martin PLLC announced that **Ashley A. Halfman** was promoted to **member**. Halfman advises clients regarding formation, structuring and management of business entities

including corporations, limited liability companies and partnerships. **Megan A. Taylor** joined the firm as an **associate** in the litigation department. Taylor represents clients in complex civil litigation. The firm is located at 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com.

> **FordHarrison LLP** announced the addition of **F. Carlton King Jr.** as **of counsel**. King was formerly a partner at FordHarrison and managed its litigation practice for seven years, before forming his own firm in 1994. The firm is located at 271 17th St. NW,

Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.

> **McGuireWoods LLP** announced that **Thomas R. Walker** was promoted to **partner**. Walker practices in the areas of restructuring and insolvency and commercial litigation. The firm is located at 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

> **Parker, Hudson, Rainer & Dobbs LLP** announced that **Darren E. Gaynor** was elected to the **partnership**. Gaynor is a member of the firm's litigation practice group, and his practice focuses on defending financial institutions and other corporations in complex civil litigation. The firm is located at 1500 Marquis Two Tower, 285 Peachtree Center Ave. NE, Atlanta, GA 30303; 404-523-5300; Fax 404-522-8409; www.phrd.com.

> **Constangy, Brooks & Smith, LLP**, welcomed **Jason Burk** as an **associate**. He has focused his practice on workers' compensation defense for more than five years. The firm is located at 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; www.constangy.com.

> **Stites & Harbison, PLLC**, announced that **Eric J. Breithaupt** joined the firm's Atlanta office as a **member** of the creditors' rights and bankruptcy service group. His practice focuses on bankruptcy and commercial litigation. 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.

> **Schiff Hardin LLP** announced that **John C. Amabile** joined the office as **counsel** in the litigation group. Amabile, formerly with Pursley Lowery Meeks LLP in Atlanta, is an experienced commercial litigator who assists companies from a variety of industries in achieving optimal dispute resolutions. The firm is located at 1201 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-437-7000; Fax 404-437-7100; www.schiffhardin.com.

>



Nagy



Cancelo



Kowalzyk



Loya



Park



Starcher

Nelson Mullins Riley & Scarborough LLP announced that **Aileen Nagy, Noshay Collins Cancelo, Brandee Kowalzyk, Sarah Loya and Steve Park** were promoted to **partnership** and **Byron**

Starcher was promoted to **of counsel**. Nagy practices in the areas of corporate, financial services, financial institutions and securities law. Cancelo focuses her practice on representing domestic and international clients in arbitration proceedings. Kowalzyk practices in the areas of pharmaceutical and medical device defense, commercial litigation, aviation and product liability. Loya practices general corporate law. Park practices in the areas of finance, corporate and securities law. Starcher practices in the areas of bankruptcy and creditors' rights. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.

> **Joseph R. Neal Jr.**, principal and founder of **Neal Law**, announces the opening of his Atlanta law office. Neal Law is a comprehensive plaintiff's personal injury law firm concentrating in the litigation,

trial and appeal of serious injury and wrongful death damages cases. The firm is located at Perimeter Ridge, 750 Hammond Drive, Building 12, Suite 200, Atlanta, GA 30328; 404-843-1009; Fax 404-843-2009; www.neal-law.com.

>



Jagor



Abernethy

Hall Booth Smith, P.C., announced that **Jo A. Jagor** and **Kevin D. Abernethy** were named **partners** of the firm. Jagor's insurance defense practice is primarily devoted to the defense of

a variety of medical specialties including all types of physicians, dentists, nurses, optometrists, pharmacists, psychologists and professional engineers. Abernethy's litigation practice concentrates on high exposure cases. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.

>



Jones



Kaufold-Wiggins

Balch & Bingham LLP announced that **Walter E. Jones** and **M. Anne Kaufold-Wiggins** were named **partners** with the firm. Jones' practice focuses on the representation of

financial institutions and other creditors in bankruptcy cases (all chapters), adversary proceedings and varying types of litigation. Kaufold-Wiggins' practice consists of trial and appellate matters, including products liability and casualty litigation,

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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.

land use matters, commercial litigation and medical malpractice defense. 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.



Burroughs



Keene



Paulk



Von Schuch

Robert A. Burroughs, Kirk W. Keene, Alan Paulk Jr. and Benjamin Von Schuch announced the opening of **Burroughs, Keene, Paulk, & Von Schuch, LLC**. The firm practices in the areas of small business law, family law, real estate and tenant/landlord law, bankruptcy, trial and litigation and criminal defense. The firm, which also has an office in Lithonia, is located at 2900 Paces Ferry Road SE, Building C-2000, Atlanta, GA 30339; 770-432-2100; Fax 770-432-9561; www.bkpvlaw.com.



Boggs



Thomas

Morris, Manning & Martin, LLP, announced the addition of **Anthony Boggs** and **Gerald V. Thomas II** as **partners** with the firm. Boggs, who was previously a partner in Bryan Cave's

Atlanta office, provides tax-related legal services to all the firm's key practice areas, including real estate, real estate capital markets, international trade, corporate mergers and acquisitions, and technology. Thomas works in the tax, corporate, funds and alternative investments, mergers and acquisitions, and real estate capital markets practices. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.



Littler Mendelson, P.C., elevated **Wesley E. Stockard** to **shareholder**. Stockard advises, represents and trains management clients on a variety of labor and employment matters. The firm is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

Schiff Hardin LLP announced that **Crystal L. Conway** joined the office as an attorney in the litigation group. Conway, formerly the staff attorney for the Fulton County Juvenile Court, focuses her practice in appellate work and corporate compliance. 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.



Thiry



Wilson



Strong

Davis, Matthews & Quigley, P.C., announced that **Matthew R. Thiry** was promoted to **shareholder** with the

firm, and **J. Chase Wilson** and **Hayley S. Strong** joined the firm as **associates**. Thiry practices in the area of business and commercial litigation. Wilson practices in the firm's domestic relations and family law section. Strong practices in the firm's estate planning and probate, corporate law and taxation sections. The firm is located at 3400 Peachtree Road NE, Suite 1400, Atlanta, GA 30326; 404-261-3900; Fax 404-261-0159; www.dmqlaw.com.



James Bates Brannan Groover LLP announced that **Heather D. Hestley** joined the firm as **of counsel**. Hestley practices in the areas of corporate law, business law, real estate law and government guaranteed lending (SBA, USDA). The firm is located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; www.jamesbatesllp.com.



JAMS announced the addition of **Hon. Brenda Hill Cole** to its panel. Cole serves as an arbitrator, mediator and special master in a variety of disputes including business/commercial, class action/mass torts, employment, environmental, personal injury/torts and professional liability. The JAMS Atlanta Resolution Center is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 2650, Atlanta, GA 30309; 404-588-0900; Fax 404-588-0905; www.jamsadr.com.





Sherman & Howard LLC announced that **John F. Wymer III** joined the firm as a **member**. He concentrates his practice in the areas of labor law, employment litigation, wage and hour, wrongful discharge, and advice, counsel and training. The firm is located at 3399 Peachtree Road NE, Suite 470, Atlanta, GA 30326; 404-567-4415; Fax 404-567-4416; www.shermanhoward.com.

Fulton County Law Week Committee's "Future Leaders of America" Project

Patrick G. Longhi with the "Future Leaders of America" program, part of the Fulton County Law Week Committee of local bars and the Fulton County courts chaired by Fulton Superior Court Judge Gail S. Tusan, invites law firms and others for pledges to sponsor scholarships for worthy high school students to study national government and politics this summer in Washington, D.C. The scholarships will be in the names of the sponsors, payable directly to Washington Workshops, a 501 (c)(3) foundation, and presented by a

representative of each sponsor to its winning scholarship recipient at the committee's annual awards ceremony on May 3, 2013, at the Fulton County Juvenile Court in Atlanta. The \$1,600 scholarship includes the student's airfare, room and board, tuition and transportation in and around Washington. Joint sponsorships are possible for scholarships that would be in the names of both sponsors. For additional information or questions, please call 404-256-1600 or email longhilaw@comcast.net at your earliest convenience.


>  **Nall & Miller, LLP**, announced that **Clinton F. Fletcher** was named **partner**. Fletcher practices in the areas of products liability, aviation, premises liability, motor carrier and business litigation. The firm is located at 235 Peachtree St. NE, Suite 1500, North Tower, Atlanta, GA 30303; 404-522-2200; Fax 404-522-2208; www.nallmiller.com.


>  **Warshauer Law Group, P.C.**, announced that **Darl H. Champion Jr.** was promoted to a **partner** of the firm. His personal injury practice is primarily focused on cases involving automobile and trucking accidents, defective products, medical malpractice and FELA claims. The firm is located at 3350 Riverwood Parkway, Suite 2000, Atlanta, GA 30339; 404-892-4900; Fax 404-892-1020; www.warlawgroup.com.

> **Charles N. Pursley Jr., Stephanie Friese Aron and Christian F. Torgrimson** announced the formation of **Pursley Friese Torgrimson**. The firm specializes in real estate transactions and litigation, including acquisition and sale of property services, condemnation and eminent domain, corporate real estate services, leasing negotiation and agreements, lending institution services for real estate financing, real property disputes and litigation, transportation, and workouts and foreclosures. The firm is located at Promenade II, Suite 1200, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-876-4880; www.pftlegal.com.

> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Joseph R. Delgado Jr. and Michael S. Haber** joined as **members** of the firm's business department. Delgado, who joins as a shareholder, represents clients in all aspects of corporate and partnership law and handles a variety of securities issues for both public and private

companies. Haber joins the firm as senior counsel and is a corporate lawyer focused on financial institutions with a national practice centered on commercial transactions and bankruptcy law. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

>  **Sheley & Hall, P.C.**, announced that the firm's name changed to **Sheley, Hall & Williams, P.C.**, with the addition of **David Williams** as a **partner**. Williams' practice focuses primarily on transactional real estate with an emphasis on private equity joint ventures. The firm is located at 303 Peachtree St. NW, Suite 4440, Atlanta, GA 30308; 404-880-1350; Fax 404-880-1351; www.sheleyhall.com.

>  **Gardner Groff Greenwald & Villanueva PC** announced that **Clark A. D. Wilson** was elected **partner**. Wilson concentrates his practice in patent and trademark prosecution and opinion counseling, particularly for medical and mechanical device clients. The firm is located at 2018 Powers Ferry Road, Suite 800, Atlanta, GA 30339; 770-984-2300; Fax 770-984-0098; www.gardnergroff.com.

>    **Bryan Cave LLP** announced that **Mica Germain, Rebecca McCorvey and Jessica Wood** joined as **associates**. Germain joined the firm's real estate client service group. McCorvey works in the firm's corporate finance and securities client service group. Wood joined the firm's banking, business and public

finance client service group. The firm is located at One Atlantic Center, 14th Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.bryancave.com.

- > **Jana Lauren Harris**, formerly of Garland, Samuel & Loeb, P.C., announced the opening of her private practice of law, **Jana Lauren Harris, LLC**. The firm is located at 3151 Maple Drive NE, Atlanta, GA 30305; 404-365-4902.

In Albany



Lee

Durham

Orlowski


Brock

Partners **Donald W. Lee, Joseph P. Durham Jr., David W. Orlowski** and **Lauren M. Brock** announced the new name of their firm, **Lee Durham, LLC**. The firm, founded in October 1990, was formerly known as Langley & Lee, LLC. In 2012, upon the departure of one of its founders, the firm changed its corporate name becoming Lee Durham, LLC. The firm is dedicated to continuing the tradition of excellent service to its clients and the community, specializing in health care law, medical malpractice, general trial practice, banking, corporate law and real estate. The firm is located at 1604 W. Third Ave., Albany, GA 31707; 229-431-3036; Fax 229-431-2249; www.leedurham.com.

In Alpharetta

- > **Meriwether & Tharp, LLC**, a divorce and domestic litigation firm, announced that **Catherine Knight Danz**, formerly of Boyd Collar and Knight, joined the firm as a **senior associate** and team leader, and **Amy Latrese Martin** joined the firm as an **associate**. The firm is located at 11475 Great Oaks Way, Suite 125, Alpharetta, GA 30022; 678-879-9000; www.mtlawoffice.com.


In Augusta

- >  **Moses Law Group** announced that **Courtney L. Bodie** joined the firm as an **associate**. She practices in the areas of business law, probate and estate matters and intellectual property. The firm is located at 6 George C. Wilson Ct., Augusta, GA 30909; 706-860-8030; Fax 855-529-4899; www.moseslawgroup.com.

In Brunswick

- >  **HunterMaclean** announced that **Will Gallagher** joined the firm as an **associate** with the corporate and tax practice group, with a focus on estates and trusts. The firm is located at 777 Gloucester St., Suite 400, Brunswick, GA 31520; 912-262-5996; Fax 912-279-0586; www.huntermaclean.com.


In Columbus

- >  **Don Morgan, P.C.**, announced that **Jennifer A. Curry** joined the firm as an **associate**. Curry concentrates her practice in areas of trademark registration, business law and commercial litigation. The firm is located at 18 Ninth St., Suite 401, Columbus, GA 31901; 706-221-5286; Fax 706-221-5066; www.donmorganpc.com.

In Gainesville

- > **Stow, Garvin & Glenn** announced their relocation to the historic J. Carter house in Gainesville. The firm specializes in the areas of workers' compensation, social security disability, personal injury and mediation. The firm is now located at 657 Main St. SW, Gainesville, GA 30501; 770-534-5265; Fax 770-534-5266.

In Macon

- >  The **Superior Court Clerk's Office of Bibb County** announced the appointment of **Stephanie Woods Miller** to the position of **chief deputy clerk**. Miller comes to the position after a career in private practice specializing in civil litigation and business development. The clerk's office is located at 601 Mulberry St., Room 216, Macon, GA 31201; 478-621-6527; Fax 478-621-6033; www.co.bibb.ga.us/superiorcourtclerk/superiorcourtclerk.aspx.

In Marietta

- >   **Justin O'Dell** and **Leslie O'Neal** announced the opening of **O'Dell & O'Neal Attorneys**. The firm focuses their practice in the areas of civil litigation, family/domestic law, personal injury and probate law. The firm is located at 506 Roswell St., Suite 210, Marietta, GA 30060; 770-405-0164; www.odelloneal.com.

Fulton County Launches Veterans Court

by Hon. Todd Markle

On Nov. 11, 2012, the Superior Court of Fulton County announced the receipt of a \$750,000 grant from the Substance Abuse and Mental Health Services Administration to fund and establish a Veterans Court for the residents of Fulton County. The Veterans Expanded Treatment Service (VETS) Program will be a component of the Accountability Court. Fulton County has a long history with such problem-solving courts. Begun in 1997, the drug court in Fulton County is one of Georgia's oldest. In 2006, the court added a behavioral health division. Judge Doris Downs and Judge Bensonetta Tipton Lane ably lead these two courts that seek to make a difference in the lives of non-violent offenders who are otherwise plagued by substance abuse and mental illness.

Through the VETS initiative, the Accountability Court will enhance the treatment alternatives for veterans who have entered the criminal justice system as a result of substance abuse and deteriorating mental health. Eligible veterans will be identified through evidence-based screening and assessments. Rather than proceeding through the traditional court system, they will be diverted into a non-adversarial program that has as its goal the restoration of the health of the defendant/offender. They will voluntarily participate in a judicially supervised treatment plan that will be developed by the court, health care professionals and peer mentors from local veteran groups. The court will actively manage and supervise the participants to ensure compliance and successful completion of the program through graduated sanctions in lieu of more traditional punishment. The VETS initiative will also collaborate with the U.S. Department of Veterans Affairs health care networks, the Veterans Benefits Administration and other veterans' family support organizations.

Accountability courts work. A 2010 statewide audit of Georgia's drug courts found that they reduce recidivism with much less expense. In fact, such courts are often underutilized in jurisdictions where they exist but remain unavailable to many Georgia residents. The experience of Fulton County is similar; that is, drug courts appear to have a dramatic impact in the reduction of crime at a much reduced cost.

Fulton County is home to an ever increasing number of returning veterans. Perhaps because of the stress endemic to their past service, many will succumb to alcohol and drug dependency, leading to unemployment, homelessness and worse. There is a need in our community for such a court and we are grateful to receive the grant to allow the establishment of such a program. By offering treatment alternatives specifically tailored to veterans rather than merely incarceration and punishment, we hope to return these offenders to a more productive, law-abiding lifestyle. It is the least we can do for those who have given so much for their country.

>



Dana Tucker Davis announced the opening of **Tucker Davis Law, LLC**. Davis, previously an associate of Weinstock & Scavo, P.C., and Taylor English Duma LLC, focuses her practice on homeowner association law, community association law, creditors' rights, business disputes, restaurant management law and debt collection. The firm is located at 2470 Windy Hill Road, Suite 327, Marietta, GA 30067; 770-618-3016; www.tuckerdavislaw.com.

In Martinez

> **Warlick, Tritt, Stebbins & Murray, LLP**, announced that **Jennifer T. Kerr** joined the firm. She practices in the areas of real estate, wills, trusts and probate, and business law. The firm is located at 119 Davis Road, Martinez, GA 30907; 706-860-7595; Fax 706-860-7597; www.wtsmlaw.com.

In Savannah

>



Hunter Maclean announced that **Nicholas J. Laybourn** was named a **partner** with the firm. His practice areas include medical malpractice, business litigation, transportation law and products liability. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Thomasville

> **Whelchel & Carlton, LLP**, announced that **Kyle T. Swann** joined the firm as an **associate**. The firm is located at 203 E. Washington St., Thomasville, GA 31792; 229-228-4333; Fax 229-226-9170; www.wcgalaw.com.



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In Valdosta

>



Kennerly



Miller

Young, Thagard, Hoffman, Smith, Lawrence & Shenton, LLP, announced that **Leslie Kennerly** and **Brian J. Miller** were named **partners** in the firm. They will continue their practice of civil defense litigation throughout South Georgia. The firm is located at 801 Northwood Park Drive, Valdosta, GA 31604; 229-242-2520; Fax 229-242-5040; www.youngthagard.com.

>



Jordan



Watt

Coleman Talley LLP announced that **L. Lake Jordan** and **C. Hansell Watt IV** were promoted to **partners** of the firm. Jordan's practice focuses on real estate, corporate

transactions, including mergers and acquisitions, business planning, entity formations, corporate governance and state and federal trademark matters. Watt's practice focuses in the areas of insurance defense, tort liability, professional negligence and malpractice, local government and municipal law. The firm is located at 910 N. Patterson St., Valdosta, GA 31601; 229-242-7562; Fax 229-333-0885; www.colemantalley.com.

In Beverly Hills, Calif.

>

Kilpatrick Townsend & Stockton LLP announced the opening of a new office. The firm is located at 9720 Wilshire Blvd. PH, Beverly Hills, CA 90212; 310-248-3830; Fax 310-860-0363; www.kilpatricktownsend.com.

In Chicago, Ill.

>



John A. Thorner is the new **executive director/CEO** of the 38,000-member **Academy of General Dentistry (AGD)**. Thorner previously served as executive vice president of the American Society of Anesthesiologists and as founding president of the Anesthesia Quality Institute, an organization dedicated to compiling patient safety data. The AGD is located at 211 E. Chicago Ave., Suite 900, Chicago, IL 60611; 888-243-3368; Fax 312-335-3443; www.agd.org.

In Knoxville, Tenn.

>



Bass, Berry & Sims PLC announced that **Shayne R. Clinton**, a former associate in the firm's Knoxville office, was elected to **membership** in the firm. Clinton focuses his practice on busi-

ness and securities litigation working with clients in the financial products, broker-dealer and banking industries. The firm is located at 1700 Riverview Tower, 900 S. Gay St., Knoxville, TN 37902; 865-521-6200; Fax 865-521-6234; www.bassberry.com.

In Opelika, Ala.

>



Constangy, Brooks & Smith, LLP, welcomed attorney **Thomas Eden** as a **partner**. Eden concentrates his practice in a full range of labor and employment law litigation defense and management counseling as well as immigration compliance and training. The firm is located at 3120-D Frederick Road, Opelika, AL 36801; 334-246-2900; Fax 334-521-7017; www.constangy.com.

In Washington, D.C.

>



Venable LLP announced that **Sarah Moore Johnson** was elected **partner**. Johnson practices in the tax and wealth planning group with a focus on estate planning for high net worth clients. The firm is located at 575 7th St. NW, Washington, DC 20004; 202-344-4000; Fax 202-344-8300; www.venable.com.

In West Palm Beach, Fla.

>

Ford & Harrison LLP merged with Christine D. Hanley & Associates. The firm is located at 1450 Centrepark Blvd., Suite 325, West Palm Beach, FL 33401; 561-345-7500; Fax 561-345-7501; www.fordharrison.com.

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Sheila Baldwin at sheilab@gabar.org
or 404-526-8618.



Make Me an Offer

by Paula Frederick

BigCo would love to get this resolved,” you tell opposing counsel, “but the highest we can go is \$10,000. It’s a fair offer, and you don’t want to try this one—juries in Tightwad County are notoriously stingy.”

“That’s just because they’ve never seen a plaintiff as sympathetic as my client! She’ll have them eating out of her hand,” opposing counsel predicts. “I tell you what—I’ll talk to her, but you know it’ll take \$20,000 to fully compensate her.”

“We’re not prepared to go that high,” you counter as you and your associate pack up and leave the conference room. “Get back to me when you hear from your client.”

Your associate trots to keep up as you head for the car. “Didn’t BigCo authorize us to offer up to 20?” she asks.

“Yep,” you respond.

“So that was all a big lie?” your associate wonders.

“No!” you exclaim, shocked and indignant. “That’s just negotiating! Everybody does it!”

Really? How much creative license may a lawyer take during negotiations?


Obviously Bar Rules prohibit a lawyer from engaging in dishonest conduct. On the other hand, negotiation is a process that involves give and take. It would not work if each party confessed its bottom line and stood firm.

The Rules of Professional Conduct try to strike a balance between the need to recognize the nature of negotiation while not sanctioning less-than-honest conduct. Rule 4.1 distinguishes posturing in negotiation from “false statements of material fact,” which are prohibited under the rule. Comment 2 provides that “under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact.” It further states “. . . a party’s intentions as to an acceptable settlement of a claim are in this category”



So—an estimate of what the client might accept by way of settlement is *not* a statement of material fact. On the other hand, disciplinary case law makes it clear that a lawyer may not negotiate and settle a case without revealing that her client has died or misrepresent the amount of insurance coverage available. (See cases cited in ABA Formal Opinion 06-439.)

And while the rules give a lawyer leeway to engage in “puffing” during negotiations with an opposing party, there is no tolerance for being less than honest with a judge—even when the judge is monitoring pre-trial negotiations.

Honesty is still the best policy. When involved in negotiation, however, you might want to hedge your bets. 



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



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Discipline Summaries

(January 5, 2013 - February 13, 2013)

by Connie P. Henry

Voluntary Surrender/Disbarments

Benjamin Christopher Free

Winder, Ga.

Admitted to Bar in 1995

On Jan. 22, 2013, the Supreme Court of Georgia disbarred attorney Benjamin Christopher Free (State Bar No. 275160). The following facts are admitted by default: Free abandoned the legal matters of five clients, including dismissing two actions without prejudice and without notifying his clients. He repeatedly failed to respond to his clients' inquiries and misrepresented his actions when he did communicate with them. One client obtained a fee arbitration award that Free has failed to pay. Additionally, Free failed to file sworn responses to the Notices of Investigation, and in the unsworn responses he did file, he lied or misrepresented the facts regarding the status of several of his clients' legal matters. In aggravation of discipline the Investigative Panel found that Free acted willfully and dishonestly in multiple cases and that he received a Review Panel reprimand in 2011 for similar conduct.

David Alan Friedman

Louisville, Ky.

Admitted to Bar in 1977

On Jan. 22, 2013, the Supreme Court of Georgia disbarred attorney David Alan Friedman (State Bar No. 277550). The Supreme Court of Kentucky permanently disbarred Friedman for failure to account for, or distribute to his clients, tens of thousands of dollars that they were entitled to receive, and repeated

misrepresentations to those clients about the status of their funds.

Suspensions

Tony C. Jones

Albany, Ga.

Admitted to Bar in 1984

On Oct. 3, 2011, the Supreme Court of Georgia suspended attorney Tony C. Jones (State Bar No. 403935) from the practice of law in Georgia for a period of 18 months with a condition for reinstatement. On Jan. 7, 2013, the Supreme Court suspended Jones for an additional six months, for a total of 24 months with conditions, effective as of Oct. 3, 2011. Jones filed a petition for voluntary discipline to resolve three pending grievances.

Jones was paid \$2,500 in a domestic relations matter, but failed to communicate with his client and ultimately abandoned the matter to the client's detriment. In a federal criminal matter, he failed to file a notice of appeal or transcript order form as directed by the 11th Circuit Court of Appeals and did not respond to a show cause order regarding his dilatory conduct in handling the appeal. In the third matter he was paid \$1,200 to represent a client in obtaining title to property that she was awarded in her divorce; as a result, he traveled to Randolph County to review the divorce file and land records, communicated with his client and obtained a hearing date. After the client's ex-husband provided documents showing that he had conveyed the property to the client as required, Jones canceled the hearing and notified his client that

the deed records showed that she owned the property.

Jones's reinstatement is conditioned on return of \$2,500 to his domestic relations client, participation in fee arbitration regarding the \$1,200 fee and certification from a licensed psychiatrist or clinical psychologist to the Bar's Office of the General Counsel of his fitness to practice law.

George D. Houser

Smyrna, Ga.

Admitted to Bar in 1976

On Jan. 22, 2013, the Supreme Court of Georgia accepted the petition for voluntary discipline of George D. Houser (State Bar No. 369225) and ordered that he be suspended from the practice of law pending appeal of his felony convictions on one count of conspiracy to commit federal health care fraud, eight counts of failure to account for and pay employee payroll taxes, and two counts of failure to file personal income taxes.

Cassandre M. Galette

Decatur, Ga.

Admitted to Bar in 2005

On Jan. 22, 2013, the Supreme Court of Georgia granted the request of Cassandre M. Galette (State Bar No. 920625) to suspend her license to practice law pending the outcome of criminal charges against her in the Superior Court of Fulton County for allegedly impersonating another in the course of action and of violation of oath by public officer.

Reinstatements Granted

Morris P. Fair Jr.

Atlanta, Ga.

Admitted to Bar 2000

On Jan. 7, 2013, the Supreme Court of Georgia reinstated attorney Morris P. Fair Jr. (State Bar No. 581019), to the practice of law nunc pro tunc to Oct. 3, 2012.

Benjamin Lanier Bagwell

Cumming, Ga.

Admitted to Bar 1992

On Jan. 22, 2013, the Supreme Court of Georgia reinstated attor-

The following Discipline Summaries were inadvertently left out of the February 2013, Volume 18, Issue 5, Georgia Bar Journal.

Voluntary Surrender/Disbarments

(Oct. 20, 2012 through Jan. 4, 2013)

Patrick Jeffery Stubbs

Decatur, Ga.

Admitted to Bar in 2002

On Oct. 29, 2012, the Supreme Court of Georgia disbarred attorney Patrick Jeffery Stubbs (State Bar No. 689747). The following facts are deemed admitted by default: During 2010 and 2011, Stubbs filed and pursued a civil action on behalf of a client when he knew that his license to practice law had been suspended. On June 3, 2011, opposing counsel notified the court and Stubbs failed to appear at a hearing on June 6. Shortly thereafter, Stubbs filed a dismissal of the case, without prejudice.

In aggravation, the Investigative Panel considered that Stubbs failed to cooperate with the Investigative Panel; that his actions were willful; that a formal complaint involving similar misconduct in 2009 is currently pending against Stubbs; and that Stubbs received an Investigative Panel reprimand in 2008.

Joseph Seth Shaw

Atlanta, Ga.


Admitted to Bar in 1994

On Nov. 19, 2012, the Supreme Court of Georgia disbarred attorney Joseph Seth Shaw (State Bar No. 638599). The following facts are deemed admitted by default: A client paid Shaw \$1,500 to defend him in a DUI case. Shaw appeared at the initial court appearance where the case was bound over to state court. When the client received notice of the next court date, he could not locate Shaw. Ultimately, the client appeared in court without counsel and the court continued the matter. Shaw did nothing further in the case and did not refund any of the unearned fee.

The State Bar noted in aggravation of discipline that Shaw failed to respond to the Notice of Investigation and that this would be the third instance of discipline.

ney Benjamin Lanier Bagwell (State Bar No. 031480), to the practice of law.

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 Jan. 4, 2013, one lawyer has been suspended for violating this Rule and none have been reinstated. 



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

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Accepting the Chair Position for ABA TECHSHOW 2014

by Natalie R. Kelly

During my 17 years with the State Bar, I have had the honor of managing many different jobs that assist our members with their daily office lives. I have likewise had the privilege of working on a national level at the American Bar Association with additional programs impacting law office management. One of the most exciting achievements from our national level of participation has come to fruition for the Law Practice Management Program as I become the chair of ABA TECHSHOW 2014.

So what does this have to do with State Bar of Georgia lawyers? A whole lot! We want to make sure that our members are receiving top-notch access to legal technology information, products and services; and being a leader charged with helping organize one of the leading legal technology conferences in the world is just a starting place for us to help bring this goal about locally. We have been able to secure national speakers on cutting edge legal technology topics, and boast of the in-state relationships we've developed with some of the top legal technology consultants in the nation who reside right here in Georgia.



The products and services that we have been exposed to at ABA TECHSHOW over the years have allowed us to develop invaluable insight into the legal technology


review and selection process for hundreds of firms.

Why is legal technology so important? It's important because it provides members tools to assist them in more efficiently operating firms and legal departments. Technology is that hammer in getting the job of providing legal services done. So, whether members are self-proclaimed techno-dinosaurs or always showing us tips and tricks from the bleeding edge of technology, we know that mastering the know-how of law office technology tools can greatly impact the effectiveness of any legal practice.

Why should ABA TECHSHOW be on your radar, and hopefully your calendar, for next year? Because not only do I selfishly want my own cheering section from Georgia in Chicago from March 27-29, but I'd love to have more involvement from State Bar of Georgia members when it comes to the discussion of what tools should be used by lawyers, and what and how legal needs can be met by lawyers using technology. This information and more can come out of the conference.

What happens at the ABA TECHSHOW? It is a three-day conference with several hundred legal technology vendors and more than 60 different CLE sessions from top legal technology experts from around the world. A riveting keynote is another highlight. For instance, David Pogue of the *New York Times* is the keynote presenter for 2013. (Ask me how I got Ben Stein as the keynote for TECHSHOW 2012 the next time you see me.) Daily networking and social activities are packed into the conference, and you are guaranteed to return knowing more than you ever had about legal technology and its serious impact on our profession generally, and your office or department, specifically. Some of the greatest tricks and tips are fired off each day, and this is the place if you want to learn about cloud computing, Mac usage in the law office, solo and small firm technology, litigation technology and a whole lot more.

So, I humbly accept my role as chair of ABA TECHSHOW 2014 knowing that the members of the State Bar of Georgia are serious about their role in the advancement of legal technology alongside the practice of law. And more importantly, I am confident of a reply when I ask that you help me during my year as chair by providing feedback and guidance in your and other lawyers' conversations about technology and the practice of law here in Georgia.

I hope to see you in Chicago for ABA TECHSHOW next year! 



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.

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Intellectual Property Law Section Hosts Gala Honoring Federal Judges

by Derrick W. Stanley

On March 1, the Intellectual Property Law Section held the Inaugural Georgia Intellectual Property Summit Dinner Gala honoring members of the judiciary following the CLE “Judges’ Panel,” co-sponsored with ICLE. Both events were held at the High Museum of Art.

The afternoon started with the mock trial argument *Wart-Hog Wands, Inc. v. T. Fiddle, Inc.*, Case No. 11-11315, Appeal, from the fictional District of Little Whining, in the fictional 15th Circuit. The panel included: Virginia Carron, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, moderator; Mike Morin, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, arguing on behalf of the appellant; Adam Conrad, King & Spalding, arguing on behalf of appellee; Hon. Raymond C. Clevenger III, U.S. Court of Appeals for the Federal Circuit, presiding; Hon. Sharon Prost, U.S. Court of Appeals for the Federal Circuit, presiding; and Hon. Stanley F. Birch Jr. (Ret.), U.S. Circuit Judge on the 11th Circuit Court of Appeals, presiding.

The case presented involved an appeal to the U.S. Court of Appeals for the Federal Circuit from the District of Little Whining. The case laid out two primary issues: (1) declaratory judgment jurisdiction; and (2) induced infringement. The appeal arises from a declaratory judgment suit filed by *T. Fiddle, Inc. (Fiddle)* against *Wart-Hog Wands, Inc. (Wands)*. *Fiddle* sought declaratory judgment that it does not infringe claim 1 of U.S.




Photos by Philip Burrus

Patent No. 9,876,543 (the ‘543 patent). After conducting limited discovery on the declaratory judgment issue, *Wands* filed a motion to dismiss the declaratory judgment complaint. This motion to dismiss was denied. *Wands* then filed a cross-complaint/counterclaim alleging that *Fiddle* was liable for induced infringement

of the '543 patent. After further discovery, the court granted summary judgment in favor of *Fiddle* on the induced infringement issue. Since *Fiddle* had not challenged the invalidity of the '543 patent, and because the parties stipulated that *Fiddle* does not directly infringe the '543 patent, the case was ripe for appeal. *Wands* appeals the district court's order denying its motion to dismiss *Fiddle's* declaratory judgment action, and appeals the district court's order granting *Fiddle's* summary judgment motion on the issue of induced infringement.

The panel was a huge success and ended in time for a cocktail reception where attendees could mingle and discuss the outcome. There was also an opportunity to enjoy a private viewing of "Frida & Diego: Passion, Politics, and Painting." This major exhibition of work by Frida Kahlo and Diego Rivera, features some of the best examples of art from two central figures of Mexican modernism.

After the cocktail reception and gallery tour, a seated dinner was served and each federal judge in attendance was acknowledged and thanked for making this event possible through their participation. As dinner wound down, the crowd was entertained by the Julian Lage Trio, consisting of Grammy-nominated virtuoso guitarist Julian Lage, percussionist Tupac Mantilla and bassist Jorge Roeder.

With more than 190 in attendance, the evening was a success. The gala is just one example of how sections give back to their members by producing quality programming that includes networking with peers, judges, students and celebrities. To join a section, simply log in to your account at www.gabar.org and click the "Join a Section" link. 



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



The judges' panel argues a mock case in the Hill Auditorium.



The Julian Lage Trio perform a sound check assisted by Chair Philip Burrus.

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Online Research Strategy

by Sheila Baldwin

Attorneys are often not confident in their online research skills. This may be due to the fact that there is no easy way to know if you conducted a good search leaving no stone unturned. As a researcher, you are generally searching for a concept rather than a particular phrase or set of words. Because electronic or online research is based on word searching, the approach will be different and require practice. This article will highlight a few techniques that may be helpful in honing your skills in this trial and error process.

The first step is to define the question of law in your case and the related issues. Write it down and think of ways these concepts might be expressed in a legal argument. Concepts can be communicated using a variety of words or phrases that can have several meanings, so try to include enough related words in your search to steer it toward cases on point. An initial “natural language” search will quickly find cases you can view that will enable you to become familiar with the terminology the courts use in discussing your particular issue. Search statutes to get ideas on word choices and legal concepts. Create an annotated list of cases by entering the statutes citation in the query box. This is useful because you can filter the highly cited cases to the top of the results page and browse influential cases to discover references that will be good research material. Don’t limit yourself to words



and phrases, use numbers, citations, amendments and statutes in your search as well as generic terms such as reversed, remanded and overruled.

Fastcase is based on searching documents by keyword. Boolean logic is the method the system uses to relate words and concepts. Knowing how a system uses Boolean operators is essential to create an effective search. A novice Spanish speaker may be able to use the language to communicate very basic needs but would be ineffective in expressing or discovering precise information. A reminder of the Boolean operators with examples can be seen below the search box for your convenience.


The main operators are: and, or, not, between two words or phrases and the symbols w/n (within a number of words), * (root word expander), " " (quotation marks) and () (parenthesis). These will be famil-

iar as they are commonly used in most search engines. In Fastcase, the w/n function only uses numbers and will not search within a sentence or paragraph. The asterisk brings any variation of the root word when placed at the stem. Parentheses define the order of operations; when misplaced or disregarded results might vary drastically just as in algebra. A search of (security or pledge) and assignment will bring results that contain security and assignment or pledge and assignment, while using security or pledge and assignment without the parenthesis results in documents that contain security or (pledge and assignment). For a complex example, consider the following query, *"arbitration /50 agreement or contract or clause /70 "employee handbook" /70 invalid or illusory or unenforceable*. This will bring a variety of cases many which will have no relevancy. Using parenthesis correctly one could construct the query in this manner, *((arbitration /50 (agreement or contract or clause)) /70 "employee*

handbook") /70 (invalid or illusory or unenforceable).

Unlike this example, it is best to start small by creating a limited search query and a wide open jurisdiction and date range. This will enable you to avoid mistakes in the Boolean construction while providing a large range of results from which you can easily narrow. Continue to add terms once you see that the initial query produced no error messages. Browse through the cases that rate high in relevancy to see if you are on track. You will probably have a large pool of results and will need to add more specifics to your query and reformulate the way in which you construct it and rerun the search. At this point, narrow to a more specific jurisdiction and date range and eliminate redundant words. This is the trial and error part of your research; it may take a little time but in the long run will save having to read extraneous cases. A legal research law professor told me that the way

you know you are finished with your research is when you keep coming up with the same cases after each attempt. One could say it's more of an art than a science.

Hopefully, you have a better idea on how to do your research. You may also be interested in taking the Fastcase webinar on this topic. The schedule is included on the calendar of our website with a link to register. Ultimately, as in most things, practice makes perfect, or at least better. Don't forget to take advantage of all the help options available at the Fastcase website, www.fastcase.com and feel free to contact me at 404-526-8618 or sheilab@gabar.org with any comments or questions. 



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

We wish to express our sincerest appreciation to those who volunteered to serve as attorney coaches, regional coordinators, presiding judges and scoring evaluators during our state mock trial season.

The 2013 State Champion Team is from Middle Georgia Christian Homeschool Association in Macon

*The State Champion Team will represent Georgia at the
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For more information about the program or to make a donation to the state champion team to support their participation at nationals, please contact the mock trial office:
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Using Legal Writing and Research Skills to Win at Summary Judgment

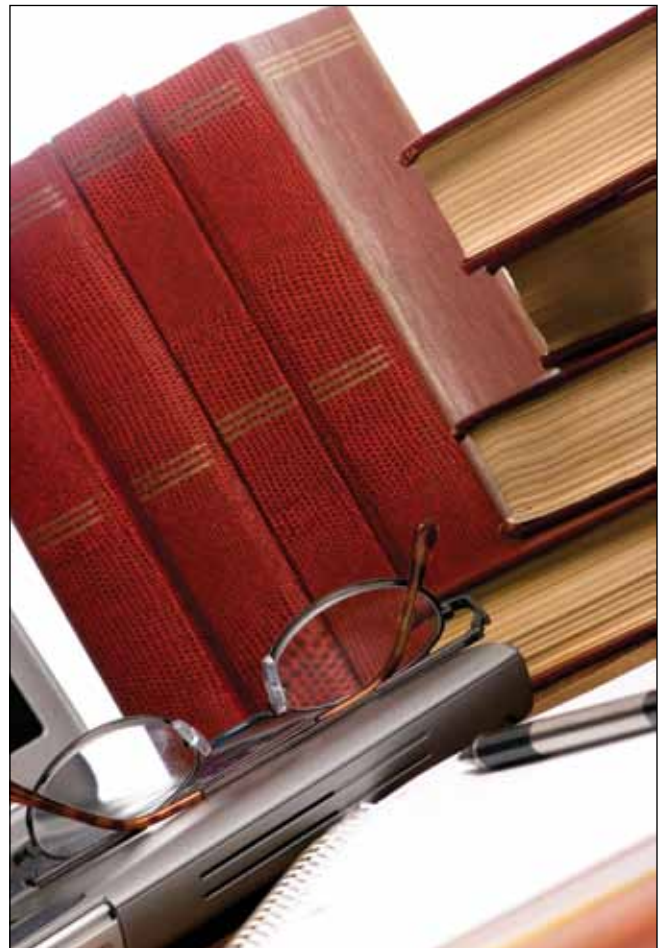
by Megan E. Boyd

Summary judgment motions are powerful tools for civil practitioners. However, the standard for obtaining summary judgment is high because a grant of summary judgment deprives the non-moving party of the opportunity for a jury trial. Thus, the importance of a party's motion for summary judgment cannot be understated. Every legal writer should strive to draft a motion that is so clear and persuasive, the judge has no choice but to grant it. The following techniques will help you draft effective motions for summary judgment.

Begin With the End in Mind

Always know what you need to prove (or disprove) before you engage in discovery. Research the applicable statutes, case law and standards prior to sending written discovery or taking depositions. Know the information necessary to prove your client is entitled to summary judgment.

For example, in a slip-and-fall case, the plaintiff's status governs the premises owner's standard of care. If the plaintiff was a licensee or trespasser, the owner owed no special duty of care and, to show entitlement to summary judgment, need only prove the owner refrained



from wanton or willful conduct. Thus, before drafting your motion for summary judgment, you should ascertain the reasons why the plaintiff was in the area where the plaintiff slipped. Was the plaintiff a customer in a store? Was the plaintiff a pharmaceutical rep making an

unsolicited visit to a doctor's office? Did the plaintiff fall in an area not accessible to the general public?

Knowing the answers to these questions is critical to determining the duty of care owed and, ultimately, framing your summary judgment argument. Plan ahead. If, prior to engaging in discovery, you thoroughly research the issues in your case, you will obtain the information you need to file your motion.

Statements of Material Facts Should Contain Only Facts

Most jurisdictions require that a summary judgment motion be accompanied by a statement of material facts. As the name suggests, a statement of material facts should contain just that—facts. Legal conclusions disguised as facts should not be included because they will not be considered by courts. For example, the following is a fact: “The plaintiff was using the plaintiff’s cell phone to text a friend at the time of the accident.” This sentence, however, is a legal conclusion: “The conduct of the plaintiff is the sole, proximate cause of the plaintiff’s injuries.” Stick to facts, and only facts, in your statement of material facts.

Cite to the Record and Be Objective

Any fact contained in a statement of material facts should be supported by a citation to evidence in the record. Courts generally will refuse to consider fact statements not supported by cites to the record, such as deposition testimony, documents produced in discovery, responses to written discovery requests and affidavits. You should not include fact statements for which you have no record support.

Keep your facts objective and don’t try to sway the court by “fudging” the facts. If a deponent said one thing in a deposition, do not extrapolate to make the depo-

nent say something different. For example, if the defendant testified that he is not sure if he checked his rearview mirrors before changing lanes, do not suggest to the court that the defendant admitted he did not check his mirrors. That is not what the defendant said. Your adversary will almost certainly point this out to the court, and you will lose credibility.

Be Forthright About Authority

Good legal writers do not miscite authority or misrepresent the status of the law to the court. For example, it is inappropriate to suggest to the court that “one not in privity of contract with another lacks standing to assert any claims arising from violations of the contract.” *Dominic v. Eurocar Classics*, 310 Ga. App. 825, 828, 714 S.E.2d 388, 391 (2011). While this statement is a direct quote from *Dominic*, it is not a complete representation of the law. Third party beneficiaries also have standing to sue for breach of contract under O.C.G.A. § 9-2-20(b). Make sure your writing, like your other dealings with the court, is honest and forthright.

Additionally, be sure to let the court know if you have changed a quote. Use ellipses to show you omitted portions of a quote or brackets to show you modified a quote. For example:

“[I]f scientific, technical, or other specialized knowledge

will assist the trier of fact . . . a witness qualified as an expert . . . may testify thereto in the form of an opinion or otherwise.”

Fed. R. Evid. 702.

Finally, make sure that your case is still “good law.” Don’t make the court question whether you were aware that a case has been overruled, reversed or abrogated. If you cite a case that is no longer “good law” on at least one point, be sure to let the court know that through the use of a parenthetical citation. For example:

To prevail on motion for summary judgment, the moving party “must demonstrate that there is no genuine issue of material fact, and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant a judgment as a matter of law.” O.C.G.A. § 9-11-56(c); *Lau’s Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991) (abrogated on other grounds).

Don’t Forget the Analysis

Do not neglect the analysis section of your brief. Many lawyers have made the mistake of presenting the applicable statutes and case law (or both) while failing to thoroughly analyze and apply the facts of the case to the controlling legal authority. Don’t assume the judge will make the connection between

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the authority cited and the facts of your case. Be sure your analysis answers important questions, including why the statutes cited are applicable and support your position, why helpful case law is controlling and why unhelpful case law is distinguishable.

You probably will have to devote the majority of your brief to outlining the factual background and controlling authority; however, a good rule of thumb is to use at least 15-20 percent of your brief space for analysis. For example, in a 20 page brief, at least three to five pages should be devoted to analyzing the facts of the case in light of the cited authority.

In addition, avoid conclusory statements (e.g. Case X is applicable and Case Y is inapplicable.). Instead, show the court why Case X is applicable by comparing Case X to your case. Do your case and Case X share similar common facts? Are policy arguments outlined in Case X applicable to your case? If so, point this out to the court.

Also, show the court why Case Y is inapplicable by contrasting the facts of your case to those of Case Y. Was Case Y decided under a different statute with different language? Was Case Y decided under common law principles but a statute now applies? Don't assume the court will understand these differ-

ences. Tell the court about them. You will strengthen your motion substantially by providing a thorough, convincing analysis.

Make Sure the "Little Things" Are Correct

While you may still win at summary judgment if you fail to do the "little things," a judge is substantially less likely to grant summary judgment to a party that lacks credibility. What's one of the easiest ways to lose credibility with a judge? File sloppy documents. If a lawyer cannot be bothered to ensure that a brief is presented accurately and professionally, how can the judge be sure the lawyer's substantive representations aren't sloppy too?

For example, do the local rules contain font or margin requirements or limit the number of pages in a summary judgment brief? Many local rules do. Be sure to check the requirements in the local rules before finalizing your motion for summary judgment.


Similarly, did you double check your citations to ensure both the case name and citation are correct? Nothing irritates judges and their clerks more than being unable to find a case you miscited in your summary judgment brief.

Typographical and grammatical errors are distracting. Did you

use a spell-check feature and carefully proofread your motion for typos and grammatical errors? It is much easier to catch errors when proofreading on paper, so print out each document before proofreading. Also, double check that small words are correct—"is" and "it" are common typos, as are "on," "or" and "of." Spell-check will not catch these errors. Do these "little things" to ensure your brief is accurate and professional.

Don't Sink Your Motion Before You File It

Many courts give parties 30 days after the close of discovery to file motions for summary judgment. Some courts, however, shorten that time. Double check to see if the time for filing your motion has been shortened by local rule or court order. Calendar your summary judgment deadline in advance, and remember that deadlines in state courts and federal courts are often different. Courts generally refuse to consider motions for summary judgment that are not timely filed.

Persuasive brief writing is an art, not a science, and while nothing can ensure a successful summary judgment motion, these tips can help you improve your writing skills and increase the chance your next motion for summary judgment will be granted. 



Megan E. Boyd is an associate attorney at Carlock, Copeland & Stair, LLP, where she practices in the areas of coverage and bad

faith defense, transportation and trucking law, and construction litigation. She also serves as an adjunct professor of law at Mercer Law School, teaching advanced legal writing courses. In her spare time, Boyd maintains a blog on legal writing, Lady (Legal) Writer, at <http://ladylegalwriter.blogspot.com/>.



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2013 Justice Benham Community Service Awards

by Avarita L. Hanson

The 14th annual Justice Robert Benham Awards for Community Service were presented on Feb. 26, before a crowd of more than 250 guests and honorees. The Chief Justice's Commission on Professionalism (the Commission), in collaboration with the State Bar of Georgia, honored Georgia judges and attorneys for their outstanding community and public service. The awards were handed out in a special ceremony that included personalized video presentations depicting each recipient's community and public service contributions.

Chief Justice Carol W. Hunstein welcomed attendees on behalf of the Supreme Court of Georgia after the event was called to order by Avarita L. Hanson, executive director of the Commission. State Bar President Robin Frazer Clark welcomed honorees, friends, family members and colleagues. WXIA-TV Business Editor and Help Desk Manager William "Bill" Liss introduced Justice Robert Benham who brought the charge

to serve—advising the audience that lawyers are the “healers of society.”

David H. Gambrell, senior counsel, Baker Donelson Bearman Caldwell Berkowitz, PC, Atlanta, was the recipient of the Lifetime Achievement Award. Gambrell is a past president (1967-68) of the State Bar of Georgia and Atlanta Bar Association (1965-66), as well as a former U.S. Senator. Gambrell was appointed by President Jimmy Carter and served in Congress from 1971-72. A lawyer for more than 60 years, Gambrell remains actively involved in public and professional affairs with the Buckhead Coalition, Inc., the Atlanta Legal Aid Society, Inc., The Carter Center, State YMCA of Georgia and Habitat for Humanity of Atlanta.

Hon. Kimberly M. Esmond Adams, Superior Court of Fulton County, Atlanta, is an outstanding jurist, dynamic leader and public servant. She serves through speaking, teaching and leading in the community, her church, sorority, bar associations and other organizations. Since 2009, Adams has spoken before more than 50 audiences while serving on the boards of the Atlanta Technical College Foundation, Georgia Black Women Attorneys Foundation, Boys and Girls Club of Metro Atlanta, Restorative Justice Board of the Atlanta Municipal Court and Atlanta Volunteer Lawyers Foundation. An active member of Cascade United Methodist Church for nearly three decades, she has chaired its witness division, staff parish pastor relations committee, served on its trust-



Photos by Don Morgan Photography & Video

Friends, family and co-workers from Baker Donelson Bearman Caldwell & Berkowitz, PC, celebrate with David Gambrell. (Front row, left to right) Henry Gambrell, Bonnie Johnson, Past President Linda Klein (1997-98), Luck Gambrell, Past President David Gambrell (1967-68), Chief Justice Carol W. Hunstein, Mary Bell Stolz and Charles Huddleston. (Back row, left to right) Nedon Haley, Michael Smith, Michael Neuren, Ivy Cadle, Jed Beardsley, Bob Brazier, Gary Barnes, Irwin Stolz, Joshua Tropper, H. Fielder Martin, President-Elect Charles L. "Buck" Ruffin and Tee Barnes.

ee board and sings with the New Advent choir and praise team.

Peter J. Anderson, partner, Sutherland, Atlanta, is best known for his decade of service to ServeHAITI, an organization that originated at Sacred Heart Church in Atlanta in the late 1990s. He was a founding member of this group that bolsters the quality of life for residents of the Haitian mountain village of Grand-Bois, and has served on its board of directors from the start and presently serves as its treasurer. He has had leadership roles with The Childhood Autism Foundation, Alumni Board of Dickinson College and the Paideia School Board.

Hon. Joe C. Bishop, Chief judge Superior Court, Pataula Judicial Circuit, Dawson, gives his time generously to the Boy Scouts of America, serving as merit badge counselor at camps, taking crews to High Adventure bases around the country and coaching students to prepare them for the American Legion Oratorical Contest. He currently serves as an executive board member

of the Southwest Georgia Council of the Boy Scouts of America, troop leader of Troop 414 and has led a youth contingent to Philpmont Scout Reservation in New Mexico since 2003. He has also served as president of the Dawson Rotary Club, Terrell County Chamber of Commerce, Terrell Heart Association, on the trustee board of the Deerfield Windsor School in Albany and is a deacon and Sunday school teacher at Sherwood Baptist Church.

J. Michael Cranford, Law Office of J. Michael Cranford, Macon, is one of Bibb County's most prominent civic leaders. He has more than 25 years of legal experience and 45 years as a successful business owner. He served on the Macon City Council from 1995-99 and 2005-11, working on the following committees: public safety, appropriations, public properties, historic Fort Hawkins preservation and terminal station oversight. He worked with the Boy Scouts of America as an assistant scoutmaster, merit badge counselor and took boys on field

trips and outings. He has uplifted the arts through leadership with the Museum of Arts and Sciences, Fort Hawkins Preservation Committee, Georgia Children's Museum, Georgia Sports Hall of Fame, Georgia Music Hall of Fame, Macon Arts Alliance and the Douglas Theater.

Hon. Robert M. "Mack" Crawford, judge, Superior Court, Griffin Judicial Circuit, Thomaston, has more than 30 years of public service, including previously serving as the director of the Georgia Public Defender Standards Council and as a member of the Georgia House of Representatives where he chaired the Joint House-Senate Legislative Oversight Committee on Indigent Defense, Public Safety-Judicial Appropriations Subcommittee and on the Judiciary, Agriculture, Public Safety and Appropriations committees. Crawford chairs the deacons at Concord Baptist Church and is on the Pike County High School FFA Advisory Council.

Audra Ann Dial, partner, Kilpatrick Townsend & Stockton



(Front row, left to right) Honorees, special guests and emcees: President Robin Frazer Clark, Justice Robert Benham, Chief Justice Carol W. Hunstein, David H. Gambrell, Avarita L. Hanson. *(Middle row, left to right)* J. Michael Cranford, Audra Ann Dial, Hon. Kimberly M. Esmond Adams, Laura C. Nehf, Hon. Asha F. Jackson, Hon. Maziar Mazloom, Hon. Robert M. Crawford and William "Bill" Liss. *(Back row, left to right)* Peter J. Anderson, Peter A. Gleichman, Rev. Dexter M. Wimbish and Hon. Joe C. Bishop.

LLP, Atlanta, has directed her leadership and attention largely to positively affecting children's lives and families from all walks of life facing challenges and crises. She was president of the Junior League of Atlanta through which she worked to publicize the travesty of child sex trafficking. She serves on the boards of the Special Olympics of Georgia, Atlanta Speech School and Trees Atlanta and was on the board of the Atlanta Children's Center.

Peter A. Gleichman established his law practice in Woodstock, and combines his conscientious advocacy with his community service and musical endeavors. A member of Congregation Or VeShalom, an Atlanta synagogue, he is deeply involved in the Habitat for Humanity ministry, serving on the Cherokee County Habitat board of directors. A past president and member of the Canton Rotary Club, he has received its honors in every category, while continuing to play with the Seacoast Wind Ensemble and giving free community concerts. Before coming to Atlanta, Gleichman practiced in

Maine where he had been a working musician and radio reporter while in college and law school. In Maine, he led the education committee and preschool at Temple Israel and served as an alumni interviewer for Tufts Alumni Admissions Program.

Hon. Asha F. Jackson serves on the Superior Court of DeKalb County in Decatur. She founded and served as a leader of the Atlanta Urban League Young Professionals. By Atlanta mayoral appointment, Jackson served on the Atlanta Coordinating Responsibility Authority to plan for redevelopment of blighted Atlanta neighborhoods. With her church, Ray of Hope Ministries, she works on various community projects. She was a big sister, den mother, district fundraising captain and law merit badge counselor for the Atlanta Area Boy Scout Council. She has also chaired the National Advisory Board of Forever Family, Inc.

Hon. Maziar "Mazi" Mazloom serves as an associate judge of the Municipal Court of Marietta while maintaining his active practice

with the Mazloom Law Firm, LLC. A leader in many community organizations, Mazloom chaired several committees of the American Cancer Society, was president of the Stonegate Homeowners Association and the Reconnecting Families and Cobb County Library Foundation boards. A member of the Kiwanis International and mentor for the Marietta Housing Authority's At-Risk Kids Mentoring Program, he serves on the boards of the Cobb Landmarks and Historical Society, Georgia Metropolitan Dance Theatre and the Cobb Alcohol Task Force. He is treasurer of the Marietta City Schools PTSA Executive Council and is a member of the Cobb County Chamber of Commerce.

Laura C. Nehf, sole practitioner, is an arts advocate, activist and supporter in Athens. A board member and president of the Athens Area Arts Council, Nehf helped create a city-wide arts coalition. Under mayoral appointment, she served on the Athens Public Art Task Force that created the Athens Cultural Affairs Commission and Percent for Art Funding, on which


she continues to serve. She has also been on the boards of the Georgia Lawyers for the Arts, Friends of the Georgia Museum of Art, University Women's Club and Advisory Board of the Athens Convention and Visitors Bureau and now serves on the statewide Georgia Arts Network. Active with St. Gregory the Great Episcopal Church, Nehf served as a Stephen Minister.

Rev. Dexter M. Wimbish combines work as an attorney and provider of diversity management expertise in Madison, while serving as assistant pastor of Greenville Baptist Church in his hometown of Greensboro. Wimbish has nearly two decades of personal and professional community service as an attorney, activist, fundraiser, former adjunct professor, father and clergyman. Known for assisting African-American churches in North Georgia targeted by arsonists, he has helped with rebuilding structures and congregations and with the development the National

Coalition of Burned Black Churches. Wimbish works with the Northeast Black Leadership Council, founded the North Georgia Black and Brown Alliance and works with youth on environmental concerns through the Community Bucket Brigade and Ruby Wilkins Community Garden in Gainesville. He is the founding president of the SCLC Henry County Chapter, a founder of the Georgia State SCLC Chapter and a member of the Advisory Committee of the Georgia Diversity Council.

The efforts of many are greatly appreciated in making the Justice Robert Benham Awards for Community Service Program a success. Many thanks to the members of the selection committee: Janet C. Watts, chair, Lisa E. Chang, Mawuli M. Malcolm Davis, Elizabeth L. Fite, Laverne Lewis Gaskins, Michael D. Hobbs, W. Seaborn Jones, William J. Liss and Brenda Carol Youmas. We gratefully acknowledge the support of the Young Lawyers Division: Jon

Panell president, Mary McAfee, director and volunteers Sam L. Brannen Jr., Ivy N. Cadle, Dane P. Cooper, Aaron Jones, Brittany Jones and Jon C. Martin. Other volunteers include Colin H. Alexander, Mary McCall Cash and Angela Hinton. Special gratitude is also extended to the Commission staff, Terie Latala, assistant director, and Nneka Harris-Daniel, administrative assistant.

Nominations for the Justice Robert Benham Community Service Awards are always welcome. Look for the call for nominations in the fall of 2013 on the State Bar of Georgia website, www.gabar.org, or contact professionalism@cjcpga.org for information. 



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

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¹Profile of Legal Malpractice Claims: 2008 – 2011, American Bar Association, September 2012.

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ESI ROUNDTABLE

2013 ESI Roundtable – Atlanta, Ga.

Schedule

All 2013 CLE programs will be held from 8:30 – 9:30 a.m.
Burr & Forman, 171 17th St., Ste. 1100, Atlanta, GA

- **March 15** – Meet & Confer/Special Master: *Jennifer Keaton*
- **May 17** – Search Methodology/TAR/Preservation: *Rose J. Hunter Jones*
- **August 16** – Social Media: *Beth K. Toberman*
- **October 18** – Healthcare & Privacy: *David W. Bignault*
- **December 6** – Update in Case Law: *Lorene F. Schafer*

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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 Bar. 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.

Gerald Warren Abendroth

McDonough, Ga.
University of Wisconsin Law
School (1991)
Admitted 1994
Died December 2012

Lerone Bennett III

Atlanta, Ga.
Texas Southern University
Thurgood Marshall School of Law
(1988)
Admitted 2005
Died January 2013

George W. Carreker

Smyrna, Ga.
Woodrow Wilson College of Law
(1956)
Admitted 1958
Died February 2013

Harold G. Clarke

Forsyth, Ga.
University of Georgia School
of Law (1950)
Admitted 1950
Died February 2013

William Henry Cooper Jr.

Suwanee, Ga.
Atlanta Law School (1939)
Admitted 1939
Died October 2012

S. T. Ellis

McDonough, Ga.
Atlanta Law School (1950)
Admitted 1950
Died February 2013

James Morris Flournoy

Atlanta, Ga.
Georgia State University College
of Law (1987)
Admitted 1987
Died February 2013

Cliffe Lane Gort

Atlanta, Ga.
Emory University School of Law
(1974)
Admitted 1974
Died January 2013

John A. Helms

Atlanta, Ga.
Harvard Law School (1964)
Admitted 1964
Died January 2013

Regina Smith Jenkins

Decatur, Ga.
Wayne State University Law
School (1978)
Admitted 1991
Died September 2012

Harold Jose

Evans, Ga.
University of Georgia School of
Law (1966)
Admitted 1966
Died November 2012

Oliver Lee

Lithonia, Ga.
Vanderbilt Law School (1975)
Admitted 1975
Died February 2013

Marsh D. Marsh

College Park, Ga.
Woodrow Wilson College of Law
(1951)
Admitted 1951
Died February 2013

William H. McNiel

College Park, Ga.
Atlanta Law School (1947)
Admitted 1947
Died February 2013

James S. Owens Jr.

Atlanta, Ga.
Mercer University Walter F.
George School of Law (1966)
Admitted 1969
Died February 2013

Andrew Ross Pachman

Atlanta, Ga.
Emory University School of Law
(1991)
Admitted 1991
Died March 2013

J. Philip Self

Macon, Ga.
University of Georgia School
of Law (1970)
Admitted 1971
Died October 2012

John Patrick Sinnott

Valdosta, Ga.
Northern Kentucky University
Chase College of Law (1960)
Admitted 2000
Died December 2012

Jack B. Smith

Decatur, Ga.

Emory University School of Law
(1952)

Admitted 1952

Died November 2012

Frank Sutton

Birmingham, Ala.

Admitted 1961

Died November 2012

R. L. Swearingen Jr.

Reynolds, Ga.

Mercer University Walter F.

George School of Law (1962)

Admitted 1961

Died December 2012

Thomas J. Waldrop

Atlanta, Ga.

Georgia State University College
of Law (1985)

Admitted 1985

Died February 2013

Reuben M. Word

Carrollton, Ga.

Emory University School of Law
(1950)

Admitted 1950

Died October 2012



Former Chief Justice of the Supreme Court of Georgia **Harold G. Clarke** of Forsyth, Ga., passed away in February 2013. Clarke

was born Sept. 28, 1927, in Forsyth to Jack H. and Ruby Lumpkin Clarke. A lifelong resident of Forsyth, Clarke attended Mary Persons High School and was an active member and elder of Forsyth Presbyterian Church where his father served as minister for more than 30 years.

Clarke earned his undergraduate degree from the University of Georgia where he was a member of Sigma Alpha Epsilon and Gridiron Secret Society. He joined the U.S. Army during World War II and was assigned to the staff of the *Pacific Stars and Stripes* in Japan where he was the newspaper's managing editor. He was

awarded the Army Commendation Ribbon and the Far East Command Certificate of Merit for his service.

He obtained a law degree from the University of Georgia and was admitted to the Bar in 1950. Clarke married Nora Gordon of Athens, in 1952. Early in his career, he founded Clarke, Haygood and Lynch and practiced law with his partners, Charlie Haygood and Larry Lynch, as well as owning and operating the *Monroe Advertiser*, the local newspaper formerly owned by his father.

In 1961, Clarke was elected to the Georgia House of Representatives and served a decade in the legislature. He was a leader of the movement to transform the Georgia Bar Association into the organized State Bar of Georgia in 1964 and served as president of the State Bar in 1976-77. In December of 1979, Justice Clarke was appointed to the Supreme Court of Georgia by Gov. George Busbee and served as chief justice from 1990-92 and from 1992-94. While serving as chief justice in 1992, he temporarily stepped aside to allow his good friend and colleague Charles Weltner, who was struggling with cancer, the honor of serving his last few months as chief justice. Following the swearing-in ceremony, Chief Justice Weltner returned to his office to find stationery reflecting his new title, courtesy of Justice Clarke.

The consummate Southern gentleman, Clarke will long be remembered for putting others first. Among his many accomplishments, Clarke was chairman of the Institute of Continuing Legal Education and president of the Flint Circuit Bar Association. He served as a trustee of the Institute of Continuing Judicial Education and chairman of the Judicial Council of Georgia. He also served on the Board of Directors of the American Judicature Society and Board of Visitors of the University of Georgia School of Law. He was a fellow of the American Bar Foundation and American College

of Trial Lawyers. He was an elder in the Forsyth Presbyterian Church and served as commissioner from the Atlanta Presbytery to the General Assembly of the Presbyterian Church in the United States.

Clarke was instrumental in creating the Chief Justice's Commission on Professionalism, the first body of its kind in the nation, the Georgia Office of Dispute Resolution and the Equality Commission. In 1994, he was honored with the Lewis F. Powell Jr. Award for Professionalism and Ethics, an award given each year by the American Inns of Court to recognize a person who has rendered exemplary service to the legal profession in the areas of legal excellence, professionalism, civility and ethics. After his retirement from the Supreme Court, Clarke joined the law firm of Troutman Sanders as of counsel and chaired the firm's Alternative Dispute Resolution group.

This year Clarke was recognized by The Southern Center for Human Rights for the 2013 Lifetime Achievement Award. Friends and family take comfort in knowing that Clarke's words, reflections and humor can still be shared in his 1995 book *Remembering Forward*. He will forever be remembered as a devoted husband, father, grandfather and friend.



Hon. Juanita D. Marsh of College Park, Ga., died in February 2013. Marsh was the daughter of E. R. "Bud" and Jessie Stratton Daniel.

Marsh was born in December 1926 and raised in Elberton, in a loving family. She graduated first in her class at Centerville High School and attended the University of Georgia on scholarship, where she graduated in 1946 with a degree in Home Economics. She loved her time at the university and told stories of working at the dining hall, the bookstore and the dorm for room, board and books. She also



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What is the Consumer Assistance Program?

The State Bar's Consumer Assistance Program (CAP) helps people with questions or problems with Georgia lawyers. When someone contacts the State Bar with a problem or complaint, a member of the Consumer Assistance Program staff responds to the inquiry and attempts to identify the problem. Most problems can be resolved by providing information or referrals, calling the lawyer, or suggesting various ways of dealing with the dispute. A grievance form is sent out when serious unethical conduct may be involved.

Does CAP assist attorneys as well as consumers?

Yes. CAP helps lawyers by providing courtesy calls, faxes or letters when dissatisfied clients contact the program.

Most problems with clients can be prevented by returning calls promptly, keeping clients informed about the status of their cases, explaining billing practices, meeting deadlines, and managing a caseload efficiently.

What doesn't CAP do?

CAP deals with problems that can be solved without resorting to the disciplinary procedures of the State Bar, that is, filing a grievance. CAP does not get involved when someone alleges serious unethical conduct. CAP cannot give legal advice, but can provide referrals that meet the consumer's need utilizing its extensive lists of government agencies, referral services and nonprofit organizations.

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

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2. Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
3. A court compels the production of the information.

The purpose of the confidentiality rule is to encourage open communication and resolve conflicts informally.

**Call the State Bar's Consumer Assistance Program
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studied at Teachers College, Columbia University.

After graduation, she went to Statesboro, to work as a home demonstration agent. There she met and later married George Elliott Marsh Sr. in December 1947. They moved to Atlanta where George worked for H.M. Patterson & Son and later Delta Airlines before his death in 1989. Marsh attended law school at night, and was admitted to the State Bar of Georgia in 1951. She taught elementary school in Atlanta and Fulton County for many years and had four children.

In 1971 she was selected judge of the City Court of College Park. She was always very proud of being one of the first women judges in the state. As judge of College Park, she was very active in her profession, helping to write the early handbook for Municipal Court judges and serving on the Judicial Council of Georgia. She was named Ms. South Fulton, and recognized with many awards and commendations throughout her life.

While serving as judge she saw first-hand the problems of sub-

stance abuse. As a result, in the early 1970s she began to look for treatment options for people with substance abuse and mental health issues. After facing many challenges with her youngest son, and convinced of the need for better care for those afflicted with substance addiction, Marsh founded Anchor Hospital of College Park in 1986. She never stopped working to help individuals and their families dealing with substance abuse and mental health issues.

Marsh never met a stranger and thoroughly enjoyed being with others. She helped countless numbers of people from all walks of life and tried to make a positive difference.




James S. "Sandy" Owens Jr. of Bozeman, Mont., and Atlanta, Ga., died in February 2013 in Rochester, Minn. Owens attended

Emory University and graduated from Mercer University Walter F. George School of Law in 1966. He also served in the U.S. Air Force. After joining the Atlanta law firm of Nall & Miller in 1970, he became

a well-respected and admired civil trial lawyer and was especially proud of his affiliation with Nall & Miller as the sole firm with whom he worked, serving as a leader and mentor for the firm for more than 40 years.

One of Owens' most remarkable legacies is that of the trial lawyers he trained and educated throughout his career. Owens generously gave his time to almost every trial academy in Georgia. Since 1985 Owens was an invited faculty member at The Atlanta College of Trial Advocacy, the Emory University School of Law Trial Techniques Program and the Georgia Defense Lawyers Trial Academy, where he also served as chairman.

In addition to his legal skills, Owens was an accomplished commercial photographer during the 1996 Atlanta Olympics and was featured in numerous magazines and galleries in the West. Owens and his wife moved to Bozeman, Mont., in 2003 where he became a regular explorer of Yellowstone National Park. 

The Lawyer Assistance Program of the State Bar of Georgia

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ETHICS DILEMMA?

Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log in to www.gabar.org and submit your question by email.

The World Class Rainmaker: Raising the Bar in Your Law Practice

by Robin M. Hensley and Lance J. LoRusso, 107 pages

reviewed by Robert D. Ingram

*"He that won't be counseled can't be helped."
– Benjamin Franklin*

Whether you struggle with procrastination or you are a workaholic, *The World Class Rainmaker* provides you with practical insight on how to take your law practice to the next level. Business development coach, Robin Hensley, who specializes in assisting attorneys and CPAs on how to maximize their rainmaking skills and who authored *Raising the Bar—Legendary Rainmakers Share Their Business Development Secrets*, has teamed up with successful trial lawyer, Lance LoRusso, to co-author this book. The book includes practice pointers pulled from many resources which, if implemented, will make any lawyer more efficient, productive and successful at managing their law practice and originating business, while still maintaining balance between their personal and professional lives.

The World Class Rainmaker: Raising the Bar in Your Law Practice



By
Robin M. Hensley
The Business Development Coach for
World Class Rainmakers
and
Lance J. LoRusso, Esq.
Principal Attorney and Owner
LoRusso Law Firm

Lawyers Know Little About Business

Most of us are better lawyers than we are businessmen and women. Law school does little to prepare lawyers for the task of operating a business, much

less how to originate business. The days when lawyers would graduate from law school, pass the bar, hang out a shingle near the courthouse and watch the clients roll in are no more. Whether you are a sole practitioner or a partner in a large established law firm, few tasks are more daunting or important than rainmaking. Yet, I am still waiting to meet a lawyer who received instruction and training on how to effectively originate business while in law school. Accordingly, most of us stand to benefit from some coaching or counseling on how to become a rainmaker. *The World Class Rainmaker: Raising the Bar in Your Law Practice* gives you the practical instruction you need to do just that.

Changing Legal Landscape

As a profession, lawyers have experienced phenomenal growth over the past three decades. The number of persons per lawyer in the United States has dropped considerably over the past few decades, currently down to approximately one lawyer for every 250 residents.¹ With more lawyers comes increased competition and an increase in the willingness of many clients to move their legal business in an effort to save money and seek better results. This realization has motivated many lawyers to employ an array of strategies in an effort to retain and attract legal business. More and more firms are advertising, developing firm brochures, preparing firm newsletters and hiring marketing consultants. The bottom line is that, in the modern legal profession, lawyers need to develop a strategy to attract legal business.

World Class Rainmaker Topics

"The most important thing about having goals is having one."
— Geoffrey F. Abert

Hensley draws from her many years of experience as a business development coach and LoRusso draws from his trial practice experience to provide lawyers, young and old, with strategies and tactics to aid lawyers in reaching their rainmaking potential. The book tackles many topics that will help lawyers in developing a game plan to leverage your firm's time and talent into business building, including:

- Goal setting: Taking time to plan and set realistic goals.
- Time priorities: Establishing time priorities to help you avoid the "tyranny of the urgent." The trap of constantly dealing with the urgent, such as instantly responding to every email and text, to the detriment of accomplishing the important, such as big-picture strategy and diligent case development. The book gives practical advice on how to avoid getting caught in this trap.
- Work delegation: Increase your productivity through appropriate delegation of tasks and the implementation of techniques that help you delegate. The book shows you why you need to have enough confidence in yourself to let the lawyers around you take some risks. *"Good partners never put off until tomorrow what they can get an associate to do today."* — Robert Ingram
- Task priority: Committing to the practice of tackling your worst and most important jobs first. Doing so helps you embrace the truth that you cannot escape the responsibility of tomorrow by evading it today.
- Meeting pointers: Managing the time you spend in meetings. They include practical tips and pointers on how to use meetings effectively and efficiently, and how to avoid allowing the meetings to become a waste of time and resources.

- Balancing professional and personal demands: Balancing the demands of your profession with your personal life. The book provides practical pointers on how to avoid burn-out and how to stay refreshed, which includes specific scheduling for time off, such as an annual sabbatical.
- Acknowledging staff: Recognizing those that contribute the most to the firm's success by giving them a meaningful role and acknowledging their value.
- Relationship building: Maximizing your new and old relationships through various techniques and strategies. This includes learning when to say "no" to the good so that you can say "yes" to the best. It also includes pointers on how to effectively utilize sincere and personal handwritten notes in building relationships.
- Electronic communications: Leveraging email and electronic communications and making them a friend and asset to your practice, rather than a dreaded enemy.

Legal and Ethical Issues

While Hensley addresses the practical development techniques to help build relationships and enhance your rainmaking potential, LoRusso addresses the legal and ethical issues which inevitably arise in a law practice such as:

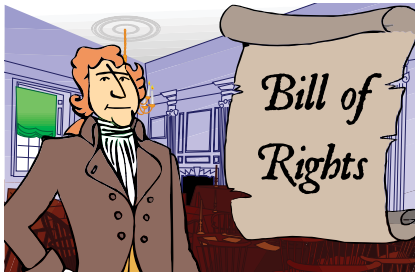
- Delegating tasks,
- Advertising,
- Accepting new clients,
- Referring clients, and
- Discharging clients.

LoRusso also includes helpful and practical insight on how to implement the rainmaking strategies while complying with the Rules of Professional Conduct.

Common Sense

Some lawyers might argue that the instruction and tips included

Trial By Jury: What's the Big Deal?



"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics and Government performance standards.

This animated presentation reviews the history and importance of trial by jury through a discussion of the Magna Carta, the Star Chamber, the trial of William Penn, the Constitutional Convention in 1787, the Constitution and the Bill of Rights. Also covered in the presentation are how citizens are selected for jury duty, the role of a juror, and the importance of an impartial and diverse jury.

The State Bar of Georgia's Law-Related Education Program offers several other opportunities for students and teachers to explore the law. Students can participate in Journey Through Justice, a free class tour program at the Bar Center, during which they learn a law lesson and then participate in a mock trial. Teachers can attend free workshops correlated to the Georgia Performance Standards on such topics as the juvenile and criminal justice systems, federal and state courts, and the Bill of Rights. The LRE program also produces the textbook *An Introduction to Law in Georgia* for use in middle and high school classrooms.

You may view "Trial By Jury: What's the Big Deal?" at www.gabar.org/forthepublic/forteachersstudents/lre/teacherresources. For a free DVD copy, email stephaniew@gabar.org or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.



within the book on how to attract clients and grow a law practice are common sense. As a story from one of my partners reveals, however, common sense to one lawyer is not necessarily common sense to another. His story also drives home the point made in the book about the importance of relationship-building and the application of “what goes around comes around.”

Years ago my partner was sitting in a superior court judge’s office awaiting a jury verdict while talking with the judge’s legal assistant. In walked a middle-aged lawyer with a look of desperation. The lawyer, in a panicked voice, explained that he had a consent order which needed to be presented to the judge on an emergency basis. The lawyer groveled for a few moments to the legal assistant and went to great lengths about the urgency of his need to have the order presented immediately for execution and entry. As soon as the lawyer walked out of the office, the legal assistant took the proposed order and placed it at the bottom of a foot high pile of documents in the judge’s inbox, stating that she would make sure the judge would not see the order for quite some time. She then explained that the lawyer was normally a complete jerk and only acknowledged her existence when he needed her help. The moral of the story is that legal assistants, and courthouse employees in general, can be a lawyer’s best friend or worst enemy. Your behavior and interaction with them when you don’t need their help will often determine their response when you are in desperate need of their assistance.

Balance Between Professional and Personal Lives


The portion of the book which encourages lawyers to re-energize their rainmaking potential by finding balance between their

professional and personal lives through building a sabbatical into their law practice dovetails well with a recent sermon I heard where the minister used passages of scripture to help me realize my workaholic tendencies do not always work to my advantage. In fact, I’ll never forget the admonition during the sermon to find one day each week to intentionally “waste” time with God, family and friends. Although sometimes difficult to accept and practice, my minister spoke the truth. Henesly and LoRusso give practical suggestions on ways to find the balance we all need to stay refreshed and avoid the burnout that is so common within our profession.

Relationships

The book’s emphasis on maximizing old and new relationships to enhance your rainmaking potential cannot be overstated. I have personally observed this play out when a reputable law firm containing several of my friends decided to split up. Several of the more experienced and capable trial lawyers were being compensated based upon their seniority, experience and excellent trial skills. When the firm split, however, the clients moved the business to the lawyers who had spent their time cultivating great relationships and not with those lawyers who were more experienced and more capable in a courtroom. Watching that play out drove home the point that clients send business to lawyers they know and like, and not necessarily to those perceived to be the most experienced or capable. The bottom line is that he who has the relationship with the client often controls the business. Relationships and competence are both necessary to maintain business, but without relationships, lawyers never get a chance to demonstrate their competence. The book focuses on ways to enhance old client relationships while building new ones.

Conclusion

Hensley and LoRusso do a good job in their book of laying out the basic blocking and tackling skills needed to become a rainmaker. All lawyers eventually discover that when it comes to generating rain, you never “arrive.” When you stop following the fundamentals laid out in this book, the rain will soon turn to drizzle, and eventually will stop altogether. Stay after it and utilize the tools advocated in *The World Class Rainmaker: Raising the Bar in Your Law Practice* to keep the rain flowing. 

The quickest way to crush whatever laurels you have won is for you to rest on them. — Unknown



Robert D. Ingram, partner with Moore Ingram Johnson & Steele, is a past president of the State Bar of Georgia and

Cobb Bar Association. He is an accomplished attorney in commercial and insurance defense litigation matters in state and federal courts and has served on many committees and boards in service to the profession. He received his undergraduate degree from Kennesaw College with honors and his law degree from Emory University School of Law.

Endnote

1. See American Bar Association, 2011 Total National Lawyer Count, available at: http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/total_national_lawyer_counts_1878_2011.xls (last accessed November 30, 2012); U.S. Census Bureau, National Totals: Vintage 2011, Annual Population Estimate as of July 1, 2011, available at <http://www.census.gov/popest/data/state/totals/2011/tables/NST-EST2011-01.xls> (last accessed November 30, 2012).

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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, *2012-2013 State Bar of Georgia Directory and Handbook*, p. H-6-7 (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.

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 2013-1

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

COMES NOW, the State Bar of Georgia, pursuant to the authorization of its Board of Governors at its midyear meeting on January 12, 2013, 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 *2012-2013 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, The State Bar respectfully moves that Rule 1-202(e) regarding disabled members be amended

as set out below; that Georgia Rules of Professional Conduct 7.5 and 9.4 be amended as set out below; and that a new Rule 6.5 be added to the Georgia Rules of Professional Conduct.

I.

Proposed Amendments to Part I, Creation and Organization, Chapter 2, Rule 1-202(e) of the Rules of the State Bar of Georgia

It is proposed that Rule 1-202(e) regarding Disabled Members in Part I, Chapter 2, of the Rules of the State Bar of Georgia be amended by deleting the current version of the rule and inserting the language set out below:

~~(e) — Disabled Members. Any member of the State Bar of Georgia who is found to be permanently disabled by the Social Security Administration or is in the process of applying to the Social Security Administration for such status may retire from the State Bar of Georgia upon petition to and approval by the Executive Committee. Such disabled member shall hold disabled status and shall annually confirm in writing to the Membership Department this disabled status. A disabled member of the State Bar of Georgia holding disabled status under this paragraph shall not be privileged to practice law nor be required to pay dues or annual fees. A disabled member may be reinstated to active membership upon application to the State Bar of Georgia.~~

NEW RULE

(e) **Disabled Members.** Any member of the State Bar of Georgia may petition the Executive Committee for disabled status provided the member meets one of the following criteria:

- (1) the member has been determined to be permanently disabled by the Social Security Administration, or;
- (2) the member is in the process of applying to the Social Security Administration for permanent disability status, or;

(3) the member has been determined to be permanently disabled or disabled for a period in excess of one year by an insurance company and is receiving payments pursuant to a disability insurance policy, or;

(4) the member has a signed statement from a medical doctor that the member is permanently disabled or disabled for a period in excess of one year, and unable to practice law.

Upon the Executive Committee's granting of the member's petition for disability status, the disabled member shall be treated as an inactive member of the State Bar of Georgia and shall not be privileged to practice law. A member holding disabled status shall not be required to pay dues or annual fees. A disabled member shall continue in such status until the member requests reinstatement by written application to the membership department of the State Bar of Georgia.

II.

Proposed New Rule 6.5 to be placed in Part IV, Chapter 1, Georgia Rules of Professional Conduct

It is proposed that a new Rule 6.5 regarding Nonprofit and Court-Annexed Limited Legal Services Programs be added to Part IV, Chapter 1, of the Georgia Rules of Professional Conduct as set out below:

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs.

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client, normally through a one-time consultation, without expectation by either lawyer or the client that the lawyer will provide continuing representation in the matter and without expectation that the lawyer will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided by paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) The recipient of the consultation authorized under paragraph (a) is, for purposes of Rule 1.9, a former client of the lawyer providing the service, but that

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lawyer's disqualification is not imputed to lawyers associated with the lawyer for purposes of Rule 1.10.

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

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as consultation clinics for advice or help with the completion of legal forms -- that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or *pro se* counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides free short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation

in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

III.

Proposed Amendments to Part IV, Chapter 1, Georgia Rules of Professional Conduct, Rule 7.5

It is proposed that Rule 7.5 of the Georgia Rules of Professional Conduct regarding Firm Names and Letterheads be amended by deleting the struck-through sections as follows:

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) A trade name may be used by a lawyer in private practice if:

- (1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; and

(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.

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

Comment

[1] Firm names and letterheads are subject to the general requirement of all advertising that the communication must not be false, fraudulent, deceptive or misleading. Therefore, lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law. ~~Nor may a firm engage in practice in Georgia under more than one name. For example, a firm practicing as A, B and C may not set up a separate office called "ABC Legal Clinic."~~

[2] Trade names may be used so long as the name includes the name of at least one or more of the lawyers actively practicing with the firm. Firm names consisting entirely of the names of deceased or retired partners have traditionally been permitted and have proven a useful means of identification. Sub-paragraph (e)(1) permits their continued use as an exception to the requirement that a firm name include the name of at least one active member.

If the proposed amendments to the Rule are adopted, the amended Rule 7.5 Firm Names and Letterheads would read as follows:

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) A trade name may be used by a lawyer in private practice if:

(1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm name consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm; and

(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection.

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

Comment

[1] Firm names and letterheads are subject to the general requirement of all advertising that the communication must not be false, fraudulent, deceptive or misleading. Therefore, lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

[2] Trade names may be used so long as the name includes the name of at least one or more of the lawyers actively practicing with the firm. Firm names consisting entirely of the names of deceased or retired partners have traditionally been permitted and have proven a useful means of identification. Sub-paragraph (e)(1) permits their continued use as an exception to the requirement that a firm name include the name of at least one active member.

IV.

Proposed Amendments to Part IV, Chapter 1, Georgia Rules of Professional Conduct, Rule 9.4(b)

It is proposed that Rule 9.4 of the Georgia Rules of Professional Conduct regarding Jurisdiction and

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

Reciprocal Discipline be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 9.4 Jurisdiction and Reciprocal Discipline

(a) ...

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of the General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been suspended for no less than six months or disbarred in another jurisdiction, the Office of the General Counsel ~~shall~~ may obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Board. Nothing in the Rule shall prevent a lawyer suspended or disbarred in another jurisdiction from filing a petition for voluntary discipline under Rule 4-227.

If the proposed amendments to the Rule are adopted, the amended Rule 9.5(b) would read as follows:

Rule 9.4 Jurisdiction and Reciprocal Discipline

(a) ...

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of the General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been suspended for no less than six months or disbarred in another jurisdiction, the Office of the General Counsel may obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Board. Nothing in the Rule shall prevent a lawyer suspended or disbarred in another jurisdiction from filing a petition for voluntary discipline under Rule 4-227.

SO MOVED, this _____ day of _____, 2013.

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 St. NW, Suite 100
Atlanta, Georgia 30303
404-527-8720

Proposed Amendments to Uniform Superior Court Rules 8, 17, and 31

At its business meeting on Jan. 24, 2013, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 8, 17 and 31, and proposed new rule 48. 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, Georgia 30334, or fax them to 404-651-8626. To be considered, comments must be received by Monday, July 8, 2013.

Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after March 19, 2013, from the court's website at

www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by April 19, 2013.



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