

J Georgia Bar Journal

August 2011 ■ Volume 17 ■ Number 1



Kenneth L. Shigley
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by Kenneth L. Shigley

A Lawyer's Calling

It was a Sunday in December nearly 40 years ago at my grandparents' rural home at Mentone, Ala., a bucolic spot best known for summer camps, midway between Chattanooga and Gadsden on the hundred-mile-long plateau that is Lookout Mountain. Within a mile radius were the simple houses, church, school, woods, fields and country graveyards which helped define "home" for several generations of a family steeped in a morality so strict that, for some of us, it proved more aspirational than operational.

"With a look of profound concern on his weathered face, Uncle Leonard jabbed a work-scarred finger into my chest and demanded, 'Kenneth, don't you know that it's impossible for a lawyer to go to heaven?'"

At the "children's table," off the kitchen with my cousins, I could faintly hear the conversation of our elders at the "grownup table" in the dining room. My father said something about "Ken" and "law school," as he told of the path I hoped to pursue after college. The response to his announcement was strangely muted. He then explained how, similar to ministry or teaching, law could be a calling too. My grandfather, the family patriarch who served a lifetime as a minister and builder all over Alabama, and who I remember as the image of rectitude, both in the pulpit on Sundays and in a pressed work shirt and securely tucked-in tie on construction sites, made some quiet expression of resigned acceptance.

Ours was a family of preachers, teachers and builders, upright, hard-working and devout country people. Not only had there never been a lawyer in the family in living memory, but so far as I knew then, no one in the extended family had ever considered a legal career.¹ We lived in Mentone until I was 12, across a pasture from the grandparents who helped mold me. Many

happy hours were spent roaming the woods and catching tadpoles in a cattle pond, and I learned to shoot a rifle before I learned to ride a bike. When it came time to start school, my parents took me to work with them, 10 miles away to Menlo, Ga. Menlo was an idyllic Mayberry where my father was a school principal who wielded an effective “board of education” and my mother was a teacher and librarian who strongly encouraged memorization of inspirational poems. By the time I entered high school, we migrated to the “big city” of Douglasville, Ga.—then a country town of about 5,000 on the route of an unfinished I-20—where at night on a rural hilltop restless teenagers could see the lights of Atlanta twinkling in the distance. Visits home to the mountain grew less and less frequent.

When the remains of the feast were cleared away, and the womenfolk were clattering dishes and talking in the kitchen, Uncle Leonard took me aside. He was the only one of his generation who seldom left the mountain for more than a few days, except to pick up a piece of German shrapnel that he would carry in his body all his life. Strongly self-reliant, he lived with-in sight of his birthplace, building and remodeling mountain homes for city folks, while his siblings pursued degrees and careers far from their roots. In some ways he was the best of the bunch.

With a look of profound concern on his weathered face, Uncle Leonard jabbed a work-scarred finger into my chest and demanded, “Kenneth, don’t you know that it’s impossible for a lawyer to go to heaven?” In retrospect, I realize his challenge was based upon a combination of tough love and his flawed interpretation of a few verses in the King James Version of the Bible.² In his dealings down at the county seat, including service as a part-time constable and a competitive Republican bid for sheriff when the Democratic nomination was still tantamount to

election, he apparently had seen no reason to doubt his opinion.

With the cockiness of youth, I laughed off my uncle’s warning. What could this good man who I had looked up to all my life, but who left school at 16 and earned his living through hard work with a hammer and saw, possibly know about the moral and spiritual health of the profession to which I aspired? Nonetheless, I silently vowed to prove him wrong. In the four decades since, I have often recalled his words, especially on those occasions when I strayed across some line, either hazy or clear, that I should not have crossed. Moral compromises are by no means unique to the legal profession, but deeply flawed human nature being what it is, none of us are immune from temptation.

Uncle Leonard’s admonition, while delivered in the most literal, fundamentalist terms, may allegorically reveal concerns about the soul of our profession. But it also contains a hidden kernel of hope when we reflect upon our lives and motivations. Even before the economic slump of recent years, many lawyers were disenchanted with their work, unhappy with their workaholic lifestyle, and questioning the wisdom of their career choices. As Justice Sandra Day

O’Connor observed in a speech a few years ago:

[L]awyers, as a group, [are] a profoundly unhappy lot. . . . Attorneys are more than three times as likely as non-lawyers to suffer from depression, and they are significantly more apt to develop a drug dependence, to get divorced, or to contemplate suicide. Lawyers suffer from stress-related diseases, such as ulcers, coronary artery disease, and hypertension, at rates well above average.³

The stress lawyers experience may, in part, come from pressure to live two separate lives as a human being and a lawyer, and to prevent their overlap.⁴ In Dante’s *Inferno*, just inside the gates of hell were the morally indifferent, those “passionless people who lived without praise or blame, and thus never truly lived.”⁵ Dante’s “passionless people” may remind us of the compartmentalization that is all too tempting in the legal profession.⁶ Contemporary law practice can induce some lawyers to hide behind a veneer of cynicism or sarcasm, evading the complications of humanity in order to live in the comfortable zone between profit maximization and the avoidance of sanctions.⁷ This overly rational-

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In our brief time, we must do our part to restore the traditional leadership role of the legal profession as a pillar of our communities, our state and country, and in so doing, help to reverse national decline and usher in what Lincoln called “a new birth of freedom.”

ized zone has been described as an “ethical winter,” or a “hibernation of the soul,” which can result in cynicism and even self-contempt.⁸

A novelist wrote that “[a] profession is like a great snake that wraps itself around you. Once you are wrapped up, you are in a slow fight for the rest of your life, and the lightness of youth leaves you.” Of a lawyer he wrote, “I saw how greatly he suffered the requirement of being clever. It separated him from his soul, and it didn’t get him anything other than a living.”⁹ I recently witnessed this while dealing with a cold, humorless junior shareholder at a distant office of a huge national law firm who clearly conveyed the impression that he was a heartless automaton, devoid of humanity or compassion. Lawyers seeking to retain their souls and some remnant of the “lightness of youth” after decades of practice must seek not only to avoid punishment by following the disciplinary rules of conduct, but also to escape such cold indifference by reuniting our sense of humanity with our profession and, ultimately, recognizing the law as a passionate vocation.¹⁰

For too many of us, the law has become a mere instrument for attaining economic or social objectives; we have forgotten that “law is rooted in something bigger than the people who hand it down, that law is rooted in history and in the moral order of the universe.”¹¹ I have been guilty of that too. In more prosperous days, high incomes often masked concerns about this. When investment banks and the most prestigious law firms could offer top law school graduates starting salaries in the nosebleed range, and their

rising tide lifted our smaller boats, we could more easily rationalize that at least we were well paid. However, as the latest recession led to layoffs and downsizing in great firms and the decimation of once thriving practice areas, middle class individuals and small businesses, unable to pay customary attorney fees, turned to self-help resources. As a result, most of us experienced falling revenue, an ebbing tide found many of us struggling to keep up appearances of our customary success.

Rediscovering passion for service in the legal profession is an essential element in enduring hard times and a necessary step in recognizing the potential for personal fulfillment that a legal career offers. Those of us who bear the scars of long legal careers, however, know all too well how easy it is to lose sight of the intrinsic values of our work when we are laboring in the muddy trenches of the law for long hours day by day, besieged with phone calls and e-mails, stressed out about deadlines and seemingly insoluble conflicts, struggling to meet billing requirements, cover overhead, make payroll, feed all the mouths we are expected to feed, and reserve some personal space in our lives.

Viewed with the right perspective, the law can offer some of the best opportunities to help people who are hurting and to temper and resolve human conflict.¹² If we view our professional role as a high calling, as a place where our deep gladness meets the world’s deep hunger, then we may find in the act of helping people solve their problems a value that transcends our fluctuating material rewards.¹³ Blooming where we are


planted, we may find that we are called to serve as instruments of justice and love—sometimes love as tough as Uncle Leonard’s—in whatever workday roles we hold. Prosecutors and defense lawyers are called not only to serve the positions of state and defendant, but to help assure that wrongdoers—and only wrongdoers—are punished, and that punishment justly fits the offense and the offender. Judges are called to firmly, fairly and impartially administer justice in their communities in a manner that respects the humanity of all who come before them. Personal injury lawyers can enforce responsibility and accountability of those who carelessly cause harm, while helping clients regain the dignity and independence that has been diminished by injury or the untimely death of a family member. Insurance defense lawyers may protect corporate resources from baseless claims, while encouraging their clients to fairly resolve cases that have merit. Estate planners assist and encourage their clients’ stewardship and love for their families and communities. Corporate lawyers may see themselves as called to structure entities and transactions that help create jobs and economic growth. Intellectual property lawyers safeguard the fruit of innovation that is essential to progress and prosperity. Real estate lawyers may be called to help families, businesses and communities secure a physical environment that promotes growth and productivity. Small town lawyers practicing “front door law”—whatever comes in the front door—may have the best opportunities to positively impact the lives of both their clients and

their communities.¹⁴ The potential examples are as varied as the legal profession itself.

Compared to the infinite scale and complexity of the universe, our lives seem trivial and limited. But in this snippet of time and space we occupy, we are called to interpret the moral order of creation into pragmatic, common sense legal solutions for the messy problems presented to us, and to use our skills to temper the chaos to which human nature gives rise.¹⁵ Being able to recognize this calling and our peace-making and problem-solving abilities may allow us to regain, and live with, a sense of passion and purpose.

Through it all, we should be thankful for the opportunity to work and serve in the law, rekindling a more mature and probably less self-important version of whatever first inspired us to pursue legal careers. Laying aside elitist pretensions of professional arrogance, we can pursue more conscientious and effective relationships with clients and colleagues.¹⁶ In the words of the prophet Micah, we should seek to “do justice, love kindness and walk humbly with our God.”¹⁷ In so doing, we should prudently seek practical and effective ways in which we can no longer conform to the flawed patterns of this world, and can instead be transformed by the renewal of our minds.¹⁸

Perhaps more in lean years than in fat years, we in the legal profession have the opportunity to serve justice, to renew our commitment to the Constitution’s promise of justice for all and to strengthen the best traditions of the justice system as the essential infrastructure of liberty and prosperity. In our brief time, we must do our part to restore the traditional leadership role of the legal profession as a pillar of our communities, our state and country, and in so doing, help to reverse national decline and usher in what Lincoln called “a new birth of freedom.”¹⁹

When I return to Mentone and walk among the graves of strong forbearers who followed their own callings—my great-grandfather the builder and farmer who helped found a church and a school, my grandfather the minister and builder, my father the educator, and Uncle Leonard who issued that stark warning—I pray that before the end I might prove worthy of them and of the calling I follow in the law. 

Kenneth L. Shigley is the president of the State Bar of Georgia and can be reached at ken@carllp.com.

Endnotes

1. Much later I learned of Lott Warren, a collateral ancestor who in antebellum Georgia was a lawyer, legislator, solicitor general, superior court judge and congressman, returned to law practice, and was struck dead by “apoplexy” while defending an enslaved person accused of murder at Albany in 1861.
2. See, e.g., Luke 11:45-54, Matthew 19:22-24 (King James).
3. Sandra Day O’Connor, *Professionalism*, Speech at the Dedication of the William W. Knight Law Center, 78 OR. L. REV. 385, 386 (1999).
4. Michael P. Schutt, REDEEMING LAW: CHRISTIAN CALLING AND THE LEGAL PROFESSION, 99-104 (2007); see also Mark E. Chopko, *Public Lives and Private Virtue*, in CAN A GOOD CHRISTIAN BE A GOOD LAWYER? 11, 12-13 (Thomas E. Baker & Timothy W. Floyd eds. 1998).
5. Joseph G. Allegretti, *In a Dark Wood: Dante as a Spiritual Guide for Lawyers*, 17 ST. THOMAS L. REV. 875, 881 (2005) (citing Joseph Gallagher, TO HELL AND BACK WITH DANTE: A MODERN READER’S GUIDE TO THE DIVINE COMEDY 3, 12 (1996)).
6. See *id.*
7. Joseph G. Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 FORDHAM L. REV. 1101, 1107 (1998).
8. Robert F. Blomquist, *The Pragmatically Virtuous Lawyer*, 15 WIDENER L. REV. 93, 107 (2009).

9. Mark Helprin, A SOLDIER OF THE GREAT WAR 110, 469 (1991).
10. John L. Cromartie, *Reflections on Vocation, Calling, Spirituality and Justice*, in CAN A GOOD CHRISTIAN BE A GOOD LAWYER? 139, 143 (Thomas E. Baker & Timothy W. Floyd eds. 1998); see also Schutt, *supra* note 5, at 93.
11. Harold J. Berman, *The Crisis of Legal Education in America*, in FAITH & ORDER: THE RECONCILIATION OF LAW & RELIGION 333-34 (1993).
12. Cromartie, *supra* note 11, at 143-44.
13. *Id.*, at 144-145.
14. Schutt, *supra* note 5, at 53.
15. Thomas A. Wiseman, *What Doth the Lord Require of Thee?* in CAN A GOOD CHRISTIAN BE A GOOD LAWYER? 35, 39 (Thomas E. Baker & Timothy W. Floyd eds. 1998).
16. Jacqueline Nolan-Haley, *Finding Interior Peace in the Ordinary Practice of Law: Wisdom from the Spiritual Tradition of St. Teresa of Avila*, 46 J. CATH. LEGAL STUD. 29, 39 (2007).
17. Micah 6:8 (NIV).
18. Romans 12:2 (NIV).
19. Abraham Lincoln. *The Gettysburg Address*. (Nov. 19, 1863.) THE COLLECTED WORKS OF ABRAHAM LINCOLN. Ed. Roy P. Basler (1955).

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by Cliff Brashier*

The State Bar's Journey from Macon to Atlanta

**With great appreciation to Frank C. Jones for contributing most of the information in this article and for representing our profession so well during his outstanding legal career.*

In the late 19th century, Macon was not only in the middle of the state geographically speaking; it was essentially the population center of Georgia and was easily accessible to the rest of the state.

All roads and rail lines seemingly led to Macon.

While neighboring Milledgeville had lost its status as state capital to Atlanta in the aftermath of a Civil War ransacking, Macon had been bypassed on Sherman's march to the sea, and the city by the Ocmulgee River prospered through the Reconstruction era.

When the state's legal community formed the Georgia Bar Association in 1883, Macon was chosen as its headquarters location, and it remained so for the next 90 years. L.N. Whittle was the first of 10 Macon lawyers to serve as president of the Georgia Bar Association during its eight decades of existence. He and Walter B. Hill, also of Macon, who served as the first secretary/treasurer, were among 11 petitioners from around the state listed on the association's corporate charter when it

was granted by the Superior Court of Bibb County on July 19, 1884.

Although membership remained strictly voluntary, the Georgia Bar Association gradually expanded its activities and organizational efforts throughout the state. In 1942, the association set up an office in downtown Macon, utilizing space in the Persons Building offered by the law firm of John B. Harris, who was then the secretary of the Georgia Bar and later served as its president. Beginning a practice in the same building in 1950, one floor above the Harris Firm, was a new lawyer named Frank C. Jones.

Jones himself would later become president of the State Bar of Georgia and serve the justice system in many other capacities, including terms as president of the American College of Trial Lawyers and as president of the U.S. Supreme Court Historical Society, which honored him in 2008 with the title of president emeritus. Jones also chaired the committee whose work resulted in the State Bar headquarters being moved from Macon to Atlanta. Now of counsel to Jones, Cork & Miller LLP, the Macon firm that has been in continuous operation since 1872 and the one he joined more than 60 years ago, Jones is also the best person to tell the

"Starting in the 1960s, there was an explosive growth in the number of lawyers practicing in the Atlanta metropolitan area, and many law firms greatly increased in size."

story of why and how that move took place.

"During those years, I had frequent contact with Mr. Harris and his firm's personnel, including Madrid Williams, a remarkably able and talented individual," Jones said in a recent interview. "I was president of the Younger Lawyers Section in 1956-57 and worked closely with Mrs. Williams in that respect. John D. Comer, who was then practicing with the Harris Firm, and I served for several years as associate editors of the *Georgia Bar Journal*. We would review proposed articles and meet on a regular basis with Mr. Harris and Madrid to discuss the acceptability of these articles and other matters."

Around that time, a push to unify the Georgia Bar was gaining momentum but did not become a reality until 1963, when the General Assembly approved and Gov. Carl Sanders signed legislation to that effect. Jones was among 22 lawyers appointed to a committee charged with taking the next steps, which included the preparation and filing of a petition with the Supreme Court of Georgia, asking for the Court's approval. Although some opposition was voiced at a hearing in October, the Court issued an order on Dec. 6, 1963, establishing the State Bar of Georgia.

The initial draft of the proposed rules for the new State Bar was discussed and agreed upon in an all-day meeting in the conference room of Jones' law firm in Macon, under the leadership of Newell Edenfield of Atlanta, who chaired the organizational committee, and Holcombe Perry of Albany, who was president of the Georgia Bar Association in 1962-63. Attributing the successful incorporation of the Bar in large part to Perry's leadership as president, Jones said, "Holcombe worked hundreds of hours on this undertaking, and few, if any, other lawyers in Georgia could have achieved the success that he did."

In 1968, Jones was elected as the unified Bar's sixth president and



Frank C. Jones, State Bar president 1968-69

the first of three from Macon. He says a highlight of his term was the Supreme Court of Georgia issuing resounding opinions in *Wallace v. Wallace* and *Sams v. Olah*, rejecting constitutional challenges to the State Bar of Georgia's existence. It was also during his time in office that the potential benefits of moving the Bar headquarters from Macon to Atlanta started to become obvious to him. In addition to quarterly meetings of the Board of Governors that were held around the state and the annual meeting that was almost always in Savannah, there were meetings of the Executive Committee and various general and special committees and other meetings that Jones sought to attend.

"The great majority of these meetings were held in Atlanta, with

virtually none in Macon, because Atlanta was more convenient to a majority of attendees and the facilities were limited in Macon," Jones said. "Madrid Williams or Judge Mallory C. Atkinson, our first general counsel, and sometimes both, usually accompanied me in traveling to Atlanta for such meetings and we would talk from time to time about the probable need someday to move the office to Atlanta."

Jones also noted that Atlanta was shedding its reputation as what he called "kind of a sleepy metropolis." Starting in the 1960s, there was an explosive growth in the number of lawyers practicing in the Atlanta metropolitan area, and many law firms greatly increased in size.

In 1971-72, Jones served on the Governor's Commission on

Judicial Processes, chaired by Hon. Bob Hall. The panel's recommendations resulted in the establishment of the Judicial Qualifications Commission (JQC) as a constitutional body and the Judicial Nominating Commission (JNC) by executive order of each of Georgia's governors.

"The meetings of the JQC were invariably held in the Judicial Building because we reported our findings and recommendations to the Supreme Court of Georgia, and the meetings of the JNC were normally held in Atlanta as well," Jones said. "This is another illustration of how Atlanta increasingly became the focus of the activities of the State Bar and related organizations."

A Special Committee on State Bar Headquarters had been appointed in 1970, with Jones as chairman and Ben L. Weinberg Jr. as vice chairman. Also serving were B.

Carl Buice, Wilton D. Harrington, G. Conley Ingram, H.H. Perry Jr., Hon. Paul W. Painter and Frank W. "Sonny" Seiler, with then-Bar President Irwin W. Stolz Jr., A.G. Cleveland Jr. and Thomas E. Dennard Jr. as ex-officio members.

In November 1971, the committee submitted its final report during a meeting of the Board of Governors, officially recommending that the State Bar headquarters be moved from Macon to downtown Atlanta because, in part, "Ideally, the headquarters should be reasonably close to the State Capitol area, as accessible as possible to those lawyers throughout the state who would enter Atlanta on the interstate and other highways, and at the same time not inconvenient to the large number of State Bar of Georgia members who have their offices in the business and financial district in Atlanta."

The fact that the State Bar had been authorized by the Supreme Court of Georgia, and its rules had to be approved by the Supreme Court, was another persuasive reason why the headquarters should be in downtown Atlanta and within reasonable proximity to the Supreme Court.

The report acknowledged that the anticipated doubling of office space, addition of at least one more staff member, higher rental rates and salary scales prevailing in Atlanta and various other factors would result in a substantial increase in operating expenses. A dues increase would undoubtedly be required.

One of the committee's recommendations specified: "The State Bar of Georgia should not give any further consideration at this time to building its own headquarters building (as some other state

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bars have done)." Jones said, "That was a wise decision at the time, I believe. We needed to walk before we could run."

But Jones, who has chaired the Bar Center Committee since 1995, said the Bar's 1997 purchase and eventual move into the former Federal Reserve building on Marietta Street "was also very wise and highly desirable. Of all the things I've done with the Bar, I'm most proud of our Bar Center." Past President Harold T. Daniel Jr. of Atlanta had strongly recommended that the State Bar acquire its own building. He had appointed the Bar Center Committee, and he has served as its vice chairman.

After the committee's recommendations were unanimously approved by the Board of Governors, the wheels were set in motion for the move from Macon to Atlanta. F. Jack Adams joined committee members Seiler and Cleveland in submitting a detailed report concerning costs and a proposed dues increase, which was approved by the board in July 1972. Increased expenditures were estimated at just over \$75,000, necessitating a dues increase of \$20 per year.

The target date for opening the new headquarters in the Fulton National Bank building was July 1, 1973. By Feb. 9, the contract had already been signed, construction of the offices was underway and moving vans were packed and ready to leave Macon for Atlanta. Seiler, who was the State Bar president that year, recounted, in his end-of-year report for the 1973 annual meeting, what happened next.

"I'll never forget that day," Seiler said of the planned moving day of Feb. 9. "Gus Cleveland, Jack Adams and I were in Cleveland, Ohio, attending the ABA National Conference of Bar Presidents. It was extremely cold in Cleveland, but the skies were clear. We knew that winter storms were harassing the South, and Gus and I had speculated as to whether or not the move could be accomplished.

On the day of the intended move, I picked up a Cleveland paper and the headlines read 'Heavy Snow Hits Macon, Georgia,' and I knew darn well they weren't talking about Cubbege Jr. or Sr.!" (Cubbege Snow was the name of a father-son legal duo in Macon, with a third generation having since joined the practice.)

The snow melted a few days later, and the new office was fully occupied on Law Day, May 1, 1973, two months ahead of schedule.

Performing an integral role in the move was Madrid Williams, who had originally informed the officers of her intention to retire as executive secretary on Jan. 1, 1973, rather than make the move to Atlanta. "But she got caught up in the excitement," Jones said, and instead of retiring, Williams wound up personally supervising the entire project, coordinating the moving and purchase of equipment, furniture and decorations, as well as interviewing and hiring new staff members.


"Her help was invaluable during those first years after the move," Jones said of Williams, who in 1970 became one of the first women to serve as president of the National Association of Bar Executives. She did retire in 1976, a full 34 years after opening the first Georgia Bar Association office.

According to Jones, opposition to the move was virtually non-existent, and the only backlash he received from below Georgia's fall line for having spearheaded the effort was some

good-natured ribbing from his hometown colleagues.

"When I accepted an invitation to become a partner in the firm of King & Spalding LLP in Atlanta as of July 1, 1977, several of my friends jokingly remarked that I was being run out of Macon because I had been instrumental in the move," Jones said. "But I had realized it would be an easier pill to swallow if a past president from Macon was the one making the recommendation."

Jones concluded, "In my judgment both then and now, it was essential that the State Bar have its headquarters conveniently located in downtown Atlanta in order to maximize its service to the lawyers of Georgia, the judiciary and the general public. Such a location provides ready access to the Supreme Court of Georgia, the Governor's Office, the General Assembly and other governmental agencies with which the State Bar has dealings from time to time. It is also consistent with the extraordinary growth in the number of practicing lawyers residing in the greater Atlanta area."

As always, your thoughts and suggestions are welcomed. My telephone numbers are 800-334-6865 (toll free), 404-527-8755 (direct dial), 404-527-8717 (fax) and 770-988-8080 (home). 

Cliff Brashier is the executive director of the State Bar of Georgia and can be reached at cliffb@gabar.org.

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Practice Limited to Civil Matters

by Stephanie Joy Kirijan



The YLD:

65 Years of Service to the Profession and the Public

I am honored to serve as the 65th Young Lawyers Division (YLD) president. Being sworn in by Supreme Court of Georgia Presiding Justice George

H. Carley at the State Bar Annual Meeting has become

a tradition and rite of passage for YLD officers. Justice Carley has provided a unique and entertaining oath for the past 19 years, which reminds us to work hard without taking ourselves too seriously.

Notwithstanding the humor infused into the swearing in, the ceremony made me reflect on why I became a lawyer. My grandfather, Sarkis A. Hazzouri Sr., is one of the most influential people in my life, and he instilled in me a passion for the law. When I was young, my grandfather would take me to visit our family friend, Hon. Edwin M. Kosik, at the U.S. District Court for the Middle District of Pennsylvania. Through

his friendship with Judge Kosik, I grew to learn that my grandfather valued the importance of the rule of law and admired the prestige of the profession—and that made me want to be a part of it. My grandfather has only a high school education and is a self-made businessman. No one was more proud than he when I became the first lawyer in our family. It's been said that you can see further by stand-

ing on the shoulders of giants, and he is my giant.

"I am proud to be a member of the State Bar and even more proud of the YLD's history of inclusive leadership and service to the profession and the public."

The YLD has also achieved its reputation for excellence because of some of the giants that have come before our current membership. As we celebrate the 65th anniversary, we will honor our past presidents throughout the year and pay tribute to their service. Originally the Younger Lawyers Section, the YLD was created in 1947 to further the goals of the State Bar, increase interest and participation of

young lawyers, and foster the principles of duty and service to the public. The YLD continues to get stronger each year. Part of that success comes from the support we receive from the State Bar and its leadership. The other part is from our dedicated members who provide service to the Bar and the public through our many valuable programs and projects.

The YLD has a history of providing public service in every corner of the state. In 1971, the YLD was the driving force behind the creation of the Georgia Legal Services Program (GLSP) which provides access to justice and opportunities out of poverty for Georgians with low incomes. Today, GLSP has 12 offices around the state.

The YLD also started the High School Mock Trial program in 1988 to create an educational litigation experience for hundreds of high school students through its annual statewide competition. Young lawyers throughout Georgia get involved in all levels of the competition as coaches, judges and committee members.

Two years ago, the YLD developed the Public Interest Internship Program (PIIP), which offers summer employment opportunities in public interest, government and nonprofit organizations across the state. PIIP provides invaluable legal training and experience for participants while serving the legal needs of the indigent and underprivileged throughout Georgia. The YLD's commitment to serving our state enhances collegiality between lawyers and the reputation of the profession.

The YLD also improves the public perception of lawyers through its demonstrated commitment to advancing inclusive leadership in the legal profession. Seeing diversity and inclusion through the eyes


of our members helps us sustain a professional association where all feel welcomed, valued and engaged—allowing us to better respond to the needs of young lawyers throughout the state. Lawyers of diverse backgrounds continue to have an increased impact on the social, business and legislative fabric of our society. The skills and leadership of these lawyers are helping remove barriers and influencing our profession.

The YLD has been at the forefront of inclusiveness in the State Bar, and I am proud that our leadership reflects our more than 10,000 members. I am serving as the 10th female president of the YLD. The organization elected its first female officer in 1978 when Gail Lione Massey became secretary. Ten years later, Donna Barwick became the first female president of the YLD. The organization has also had three African-American presidents, with Derek White serving as the first African-American YLD President in 2002. This year, the YLD has its most inclusive Board of Directors in the organization's history.

Our ability to weave diversity and inclusion into the fabric of everything we do makes a positive impact on the public perception of the profession. Inclusive leadership helps better prepare us to meet the expectations of our profession, clients and communities. The quality of life in any community depends

on the quality of its leadership and this is also true for the legal community. It is incumbent upon us as lawyers to provide leadership, not only in our Bar, but in our local communities as well.

For the past six years, the YLD has hosted a Leadership Academy for young lawyers who are interested in developing their leadership skills as well as learning more about their profession, their communities and their state. The Leadership Academy includes alumni who serve, not only as State Bar leaders, but as a state representative, the commissioner of juvenile justice, a school board member and local judges.

As a lawyer, I now understand why my grandfather so admired this profession. I am proud to be a member of the State Bar and even more proud of the YLD's history of inclusive leadership and service to the profession and the public. 

Stephanie Joy Kirijan is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at skirijan@southernco.com.

***Editor's Note:** After writing her article but prior to publication, Stephanie's grandfather, Sarkis A. Hazzouri Sr., passed away leaving behind many who loved and admired him. The editors offer sincere condolences to Stephanie and her family.*

2011-12 YLD MEETINGS

Summer 2011

Aug. 18-21
Atlanta, Ga.
Optional Trip to New York
Omni Berkshire Place, N.Y.

Fall 2011

Nov. 11-13
Foundry Park Inn, Athens

Midyear Meeting

January 5-7
Loews Hotel, Atlanta

Spring 2012

May 11-14
Sofitel, Washington, D.C.

Annual Meeting

May 31-June 3
Westin Harbor Resort & Spa
Savannah

**Specific information about each upcoming YLD meeting may be found at www.gabar.org. Scholarships are available to those who qualify. For more information, please contact YLD Director Mary McAfee at marym@gabar.org.*

In Defense of Voir Dire

Legal History and Social Science Demand Appropriate Voir Dire

by Michael L. Neff

A Brief History of Voir Dire

Voir Dire: Ancient Foundations and Early Developments

Our legal system requires that we review legal history and consistently apply legal principles. When we look back at the history of the jury, we find that the jury as a means of resolving disputes is as old as civilization itself.¹ Juries in some form were utilized in Ancient Egypt, Mycenae, Druid England, Greece, Rome, Viking Scandinavia, the Holy Roman Empire and even Saracen Jerusalem before the Crusades.² The “contemporary” notion of the jury dates back as early as 500 B.C.E.³ in Athens, Greece. The Athenian juries — called “dikasteria” — were extremely large, ranging from 200 to 1500 members.⁴

The American emphasis on voir dire relates back to 12th century England.⁵ In 1166, Henry II proclaimed the Assize of Clarendon, which forced civil litigants to present their evidence to laymen.⁶ In these early stages of common law, the king selected jurors based on their personal knowledge of the facts and issues in the case.⁷ In fact, jurors were required to serve not only as fact finders, but as investigators and researchers as well.⁸

As a result of an individual juror’s power, it became commonplace for jurors to be challenged for bias before being allowed to hear a case.⁹ Challenging jurors became vitally important as rules of evidence and procedure became a routine part of a civil trial.¹⁰



The paradigm shifted away from jurors needing personal knowledge to jurors solely being finders of fact.¹¹ Impartiality became paramount. By the end of

the 15th century, the notion that jurors had to be impartial was firmly entrenched in the English common law.¹² In determining which jurors were unbiased, the English common law wrestled with the issues of preemptory challenges and challenges for cause, recognizing that both may be necessary in order to ensure a fair trial.¹³ Thus, the need to remove jurors based on bias has been recognized and pursued for more than 600 years.

Voir Dire: A Distinctly American Tradition

As America was on the precipice of independence, England enacted the Massachusetts Jury Selection Law of 1760, which prohibited the questioning of jurors once the sheriff had chosen them for duty.¹⁴ The inability of parties to verify the impartiality of jurors enraged citizens and served as but one of many justifications for independence.

Thomas Jefferson is one of the founding fathers who recognized the importance of an impartial jury.¹⁵ In writing to his friend, Colonel William Stephen Smith, he proclaimed, "[I]t astonishes me to find . . . that [our countrymen] should be contented to live under a system which leaves to their governors the power of taking from them the trial by jury in civil cases. . . ." ¹⁶ He later opined, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."¹⁷

Thus, it is no surprise that the Declaration of Independence was justified by King George III "depriv[ing] us, in many Cases, of the Benefits of Trial by Jury." Further, the Sixth and Seventh Amendments to the U.S. Constitution specifically address the fairness of the jury trial.¹⁸ An impartial trier of fact, allowing for "free, fearless and disinterested" analysis of the evidence is the most important right in our system of justice.¹⁹

By the time the sun had set on the Revolution, voir dire had become a cornerstone of American jurisprudence. Legal historians recognize Chief Justice John Marshall's persuasive ruling while sitting as trial judge in the Aaron Burr treason trial that cemented the right of parties to question jurors about their preconceptions about a case.²⁰ Justice Marshall recognized that an impartial jury was "required by the common law and secured by the Constitution."²¹

Jefferson's and Justice Marshall's vision on voir dire are bedrocks of our judicial system. The U.S. Supreme Court has repeatedly recognized the importance of voir dire. Every party is entitled to "present his case with assurance that the arbiter is not predisposed to find against him."²² By "preserv[ing] both the appearance and reality of fairness," this "requirement of neutrality" by judges and juries fosters "the feeling, so important to a popular government, that justice has been done."²³

The U.S. Supreme Court has recognized that such fundamental fairness requires not just "an absence of actual bias" from judges and juries but also endeavors to "prevent even the probability of unfairness."²⁴ Of course, one of the most important "mechanism[s] for ensuring impartiality is voir dire, which enables the parties to probe potential jurors for prejudice."²⁵ Voir dire is the quintessential tool for protecting an individual's right to an impartial jury.²⁶

Voir Dire: A Strong Tradition in Georgia

Georgia courts recognize and emphasize the importance of voir dire. The Supreme Court of Georgia has held that "an impartial jury is the cornerstone of the fairness of trial by jury"²⁷ and that "a jury trial is a travesty unless the jurors are impartial."²⁸ Further, the Court has explained, "[j]ury selection is a vital and extremely important part of the trial process and should be treated as such by

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. . . when the objective facts amount to a reasonable apprehension regarding the ability of a prospective juror to be fair, the trial court should exercise its discretion and excuse that juror from the case.

all concerned.”²⁹ Thus, because the fate of the litigating parties rests in the hands of the jury, “the primary way to arrive at the selection of a fair and impartial jury is through voir dire questioning.”³⁰

The Court’s concern for the fundamental fairness of a trial has led it to limit practices such as juror rehabilitation, which threaten the integrity and fairness of the jury system. In *Kim v. Walls*, the Supreme Court of Georgia crafted a ruling that endorsed counsel having the “broadest of latitude” in questioning jurors who have any relationship with a party.³¹ The Court held that “rehabilitating” questions by the trial court that impermissibly curtailed the requisite inquiry by counsel into a juror’s bias were improper.³² Previously, in the same case, the Court of Appeals had articulated the same policy regarding voir dire, explaining:

A trial judge should err on the side of caution by dismissing, rather than trying to rehabilitate, biased jurors because, in reality, the judge is the only person in a courtroom whose primary concern, indeed primary duty, is to ensure the selection of a fair and impartial jury. While the parties to litigation operate under the guise of selecting an impartial jury, the truth is that having a jury which is truly fair and impartial is not their primary desire. Instead, their goal is to select a jury which, because of background or experience or whatever other reason, is inclined to favor their particular side of the case. The trial judge, in seeking to balance the parties’ competing interests, must be guided not only by the need for an impartial jury, but

also by the principle that no party to any case has a right to have any particular person on their jury.³³

In affirming the decision of the Court of Appeals, the Supreme Court stated:

Running through the entire fabric of our Georgia decisions is a thread which plainly indicates that the broad general principle intended to be applied in every case is that each juror shall be so free from either prejudice or bias as to guarantee the inviolability of an impartial trial [I]f error is to be committed, let it be in favor of the absolute impartiality and purity of the jurors.³⁴

Today, several basic principles govern the decision of a motion to strike a prospective juror for cause: (i) neither party has *any right to any juror*; (ii) jurors must be free from *even a suspicion* of prejudgment as to any issue, bias, partiality or outside inferences; (iii) the Court decides whether there is any basis to suspect possible prejudice; and (iv) trial courts are instructed to err on the side of caution and to strike a prospective juror if any doubt exists.

The Standard for Voir Dire in Georgia

Fundamentals of Jury Selection in Georgia

According to the plain meaning of the Georgia Code, “jury selection” only begins *after* voir dire reveals those prospective jurors which should be excused as a matter of law or as a matter of fact. Challenges based on *principal grounds* require the removal of a juror as a matter of law. Challenges

based upon *favor* are factually based challenges and are discretionary with the trial court.

Once biased jurors have been excused, a full panel of either 12 or 24 impartial jurors should be left for “jury selection.”³⁵ The regular panel of prospective jurors must ultimately consist of a “full panel of . . . *competent and impartial* jurors from which to select a jury.”³⁶

Under Georgia law, it is possible for so many prospective jurors from the original panel to be dismissed that the remaining panel is not full, requiring additional competent and impartial jurors to be added *before* requiring the parties or their counsel to strike a jury.³⁷ Thus, parties are not required to exhaust their precious peremptory strikes on unqualified jurors.³⁸

Challenges for Cause

Whenever a suspicion regarding a prospective juror’s ability to be impartial arises, a challenge for cause should be interposed. Unlike peremptory challenges, a challenge for cause must be based upon a specified reason. The stated reason will cause the challenge to fall into one of two categories: (1) those based upon principal grounds or (2) those based upon favor.

Challenges for *principal* cause are based on facts which, if proven, automatically disqualify the juror from serving.³⁹ Challenges for *favor* require a *reasonable suspicion* that the juror is biased, based either on 1) admissions of the juror or 2) the facts and circumstances at hand.⁴⁰ The key distinction between the two types of challenges involves judicial discretion. When the facts support a challenge based on principal grounds, the trial judge has no discretion to refuse to grant the challenge and must excuse the prospective juror as a matter of

law. The trial judge retains discretion to grant or deny a favor-based challenge by considering the facts and will not be reversed on appeal absent abuse.⁴¹

Principal-based Challenges

Principal challenges are based upon alleged facts from which, if proved to be true, the juror is conclusively presumed incapacitated to serve.⁴² The grounds for principal challenges may arise in three distinct situations: when the facts show a prospective juror (1) is *incompetent* to serve; or (2) has a *relationship* to a person or entity with an interest in the result of the case;⁴³ or (3) entertains a *fixed opinion* that will not yield to the law or evidence.⁴⁴

Disqualification for Incompetence

Competency questions arise when the facts show that the prospective juror is (1) not a citizen or resident of the county; (2) under the age of 18; (3) mentally incapacitated; (4) a convicted felon; or (5) unable to communicate in the English language.⁴⁵

Disqualifying Relationships

A relationship question arises when the facts show that he or she is related within the sixth degree by consanguinity or affinity to any person interested in the result of the case.⁴⁶ Besides kinship, some examples of disqualifying relationships include: i) employees of a corporation when the corporation is a party;⁴⁷ ii) employees of, stockholders in, or person related to stockholders in a defendant's insurance carrier;⁴⁸ iii) policyholders in, employees of, or persons related to policyholders in a mutual insurance company having an interest in the outcome of the case;⁴⁹ or iv) any relationship when one of the parties is the person "on whom the prospective juror's continued employment" depends.⁵⁰

Disqualification for Fixed Opinion

"Fixed opinions" can be of two types: those that yield to the law and evidence and those that do

not.⁵¹ A juror that admits to a fixed opinion on any party, counsel or issue respecting the subject matter of the suit that will not yield to the law or evidence must be excused since the juror's bias has been conclusively established.⁵² If a juror must be excused when he or she admits to a "fixed opinion" that will not yield to the law or evidence, it necessarily follows that the trial court is without discretion to refuse to disqualify the juror. Since the hallmark of a principal challenge is the absence of judicial discretion, a challenge based on a fixed opinion which will not yield to the law or evidence is subject to a principal-based challenge.

A juror claiming that his or her fixed opinion can yield to the law or evidence indeed may not be subject to a principal challenge for cause, but on the other hand, the juror may still be disqualified for favor.⁵³ Therefore, the juror is not automatically qualified to serve on the jury. Rather, the trial court must exercise its discretion to determine whether this juror is disqualified for favor.

Fixed Opinions in General

In Georgia, it is well settled that the trial judge determines the law, while the jury determines the facts of the case and then applies those facts to the law as instructed by the judge.⁵⁴ Generally, as explained above, a juror will not be disqualified if he can lay aside whatever opinions or impressions he may have and decide the case based on the law and the evi-

dence presented in court.⁵⁵ However, a person's fixed opinion may take many forms, all worthy of a challenge for cause. He may, for example, have a *firm belief* that bringing a lawsuit is morally wrong, thereby preventing the prospective juror from following the trial judge's instructions concerning the law.⁵⁶ The prospective juror may also have a bias against the type of injury sustained in the case, warranting a strike for cause.⁵⁷

Fixed Opinions and the Inability to Follow the Law

A trial court is required to excuse a juror for cause based on partiality when he or she cannot decide the case based on the evidence and the court's charge on the evidence.⁵⁸ A potential juror who refuses to budge from an incorrect belief concerning the standard of law to be applied to the case should be excused.⁵⁹ This excusal is particularly important when a prospective juror would hold a party to a higher standard of proof than the law requires.⁶⁰

Where a prospective juror never gives an affirmative response that he would be able to follow instructions from the trial court regarding the applicable law in the case, that juror should be removed.⁶¹ This includes when a juror states he cannot apply the proper presumptions under the law.⁶² A trial court should be concerned with a prospective juror's "apparent reluctance to follow the rules of the court" with respect to the burden of proof and such a juror should be removed for

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- Howard Cannon
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cause.⁶³ Thus, a prospective juror who states that he would probably pay attention to inadmissible evidence, even in the face of instructions from the court, should be dismissed.⁶⁴

Favor-based Challenges

O.C.G.A. § 15-12-133 guarantees the parties the right to an individual examination of each juror as well as the portion defining the subject matter which may be inquired into for favor-based challenges:

In the examination, the counsel for either party shall have the right to inquire of the individual jurors examined touching any matter or thing which would illustrate any interest of the juror in the case, including any opinion as to which party ought to prevail, the relationship or acquaintance of the juror with the parties or counsel therefor, any fact or circumstance indicating any inclination, leaning, or bias which the juror might have respecting the subject matter of the action or the counsel or parties thereto, and the religious, social, and fraternal connections of the juror.

O.C.G.A. § 15-12-134 vests the trial court with discretion to determine whether good cause for favor has been established only in the limited circumstances where a juror has a desire or has expressed an opinion as to which party should prevail. The common law, however, fills the gap left by the Code and vests the trial court with discretion for the consideration of all other grounds for a favor-based challenge:

A challenge to favor is based on circumstances raising a suspicion of the existence of actual bias in the mind of the juror for or against the party, as for undue influence, or prejudice, which essentially raises a question of fact . . . [to be decided by the trial court].⁶⁵

The standard governing a favor-based challenge is an objective

one, based on whether a “reasonable apprehension” exists regarding the partiality of the prospective juror. Numerous Georgia cases hold that when the trial court considers a favor-based challenge, it abuses its discretion in failing to remove a prospective juror when the facts cause a *reasonable apprehension* to exist regarding the ability of the prospective juror to decide the case impartially.⁶⁶

Unlike principal-based challenges, the law does not require a conclusive showing of partiality. Rather than a conclusive showing, the only showing required is that which amounts to a reasonable apprehension of partiality. Therefore, where a prospective juror admits to facts giving rise to a favor-based challenge for cause, “in the interest of fair trial, if error is to be committed, let it be in favor of the absolute impartiality and purity of the jurors.”⁶⁷ Guided by the quest for absolute impartiality, when the objective facts amount to a reasonable apprehension regarding the ability of a prospective juror to be fair, the trial court should exercise its discretion and excuse that juror from the case.

The Role of Counsel in Voir Dire

Although the judge determines whether a particular juror should be stricken for cause, counsel play a critical statutory role in the decision-making process through voir dire:

[C]ounsel for either party *shall have* the right to inquire of the individual jurors examined touching any matter or thing which would illustrate any interest of the juror in the case, including any opinion as to which party ought to prevail, the relationship or acquaintance of the juror with the parties or counsel therefor, *any fact or circumstance indicating any inclination, leaning, or bias* which the juror might have *respecting the subject matter* of the action or the counsel or parties thereto, and

the religious, social, and fraternal connections of the juror.⁶⁸

Counsel are entitled to have the jurors placed “in the jury box in panels of 12 at a time, so as to facilitate their examination *by counsel*.”⁶⁹

The Parties’ Right to Truthful Answers

Like the court and counsel for the parties, the jurors themselves have a role in the process of striking jurors for cause. Jurors are expected to give truthful answers to voir dire questions, and when they fail to do so with respect to a matter which bears upon their interest, bias or partiality, a motion for new trial on the ground of such untruthfulness should be granted. As the Court of Appeals of Georgia has noted:

Whether he would have used such peremptory strike or would have permitted such juror to serve rather than some other person who he felt would not give him a fair trial presents no issue here, for under the Act of 1951, the defendant had the right to the information and the right to make a choice with it.⁷⁰

“The primary way to arrive at the selection of a fair and impartial jury is through voir dire questioning. Therefore, when a litigant asks a potential member of his trial jury a question he has a right to get a truthful answer.”⁷¹

A Psychological Study of the Need for Appropriate Voir Dire

Scientific studies have shown the need for appropriate, attorney-driven voir dire.

The courtroom is an intimidating place for many potential jurors. Researchers noted that the conditions during voir dire are not conducive to speaking out, so many of the venire do not speak out to admit biases.⁷² The study outlined



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why many jurors are disinclined to speak out:

- People in the venire are surrounded by strangers.
- Most individuals in the venire do not have experience speaking in front of groups.
- The venire is not familiar with the voir dire process and is often confused by the process. Bush noted that jurors in Detroit's criminal court stated that their confusion prevented them from speaking up during the voir dire process. Johnson and Haney (1994) noted that some jurors they evaluated were confused by the terms "fair" and "impartial" even after the jury selection process.
- Jurors are not good at determining whether they are biased. Bush reported that jurors are not good at accurately answering questions that ask "out-right" whether or not they are biased. He noted, "The U.S. Supreme Court has found that such personal assessments [of bias], even when accompanied by judicial admonitions, are insufficient to comply with the due process requirements of voir dire in highly publicized trials."
- Jurors reduce the number of biases they admit as voir dire continues when conducted en masse.

The unfamiliar and evaluative nature of the oral voir dire process suppresses honest responses, especially when the process is conducted in the presence of others.

The scientific literature states that voir dire induces "evaluation anxiety"⁷³ and "demand characteristics"⁷⁴ that can suppress the venire from admitting to biases.

Evaluation anxiety is the nervousness, anxiety, embarrassment and desire to be believed by judges and attorneys that results from being evaluated, especially when that evaluation is oral and in the presence of others.

Demand characteristics in the courtroom are the formal "cues" such as the presence of the judge and others (e.g., attorneys, venire and court officials) that suggest how someone should behave (formally and without bias).

The authors interviewed ex-jurors and concluded that evaluation anxiety and demand characteristics strongly influenced a juror's honesty during the process. The more nervous or anxious jurors become during the process, the more dishonest they were in their voir dire responses. Likewise, the more jurors feel the need to be believed by the judge or the attorneys or the more they feel they need to show that they are unbiased, the more dishonest they are during voir dire. This was especially true for individuals who had not previously served on a jury. Inexperienced jurors most wanted to produce the "right" answers, or the answers they thought the judge and attorneys wanted to hear. The Marshall study in 2001 concluded that these findings were consistent with past experimental findings that interviewees who are concerned with self-presentation tend to produce responses that they think other people want to hear.

Many jurors do not admit to biases due to demand characteristics or evaluation anxiety because they do not wish to stand out or have to speak about their opinion. This is especially the case with directive voir dire (voir dire that is conducted by answering closed-ended, yes or no questions). A directive or closed-ended style of questioning suggests a "right answer" and does not do a good job of identifying biased jurors.⁷⁵ Some of the venire will acquiesce and produce the answer they think the judge and attorneys want to hear when the question is closed-ended.

Bush quoted a typical example of a juror who did not disclose information during the voir dire process. This example is from an affidavit filed in *United States v. McNeal*⁷⁶ by Susan Lowenstein, who had been a juror in another case:

During the selection of the jury, Judge Weigel asked all the jurors as a group five or six questions regarding race prejudices. One question he asked was, "Have you had any unfortunate experiences with black people?" This question was not asked directly to me but rather, asked to the whole panel. I have had some bad experiences with black people, but did not volunteer this information. The whole court proceeding is very intimidating and not conducive to speaking out at all. Individual questioning, of which the Judge did some, makes a juror feel more comfortable and involved. However, the Judge did not question us individually on race prejudice and consequently, I offered no information. I also concluded that I was not prejudiced.

Judge Gregory Mize noted that many jurors completed the voir dire process *without saying anything*.⁷⁷ These jurors often had strong opinions and/or biases that might have been cause to strike them. Mize referred to these jurors as "UFOs," and he indicated that 28 percent of the venire typically remains silent during oral voir dire. Mize reported that in 90 percent of his cases, between one and four of the silent jurors revealed opinions or biases that were grounds for cause when questioned individually.

*United States v. Barnes*⁷⁸ acknowledged that there must be sufficient information elicited on voir dire to permit a defendant to intelligently exercise not only his challenges for cause, but also his peremptory challenges. Yet research demonstrates that oral voir dire conducted en masse does not appear to always provide sufficient information to adequately identify biased jurors. Another study remarked that voir dire often elicits no verbal response from the venire, and the litigant cannot realize his right to "select" the jury by challenges for cause and by preemptory strikes without a reasonable amount of information from prospective jurors.⁷⁹

Oral voir dire is comparable to an interview. Psychological research shows that characteristics of interviewers can influence the kind of information disclosed and the quantity of information disclosed by the person being interviewed.

The role of the interviewer and the perception of the interviewer are so powerful that it can affect the amount of disclosure (and honesty) of the venire.⁸⁰ A 1987 study discovered that the venire is twice as likely to be dishonest (not admit an attitude or change their attitude to a desirable one) when the judge is conducting the voir dire process as opposed to when the attorneys are conducting the process.

Alternative strategies to better locate biased jurors are available.

Studies have overwhelmingly emphasized the importance of thorough and individual voir dire,

and this is especially the case in publicized trials. Individual voir dire gets the juror to speak, reduces evaluation anxiety and makes it more difficult for a juror to produce the "right answer" due to demand characteristics.⁸¹

Voir dire has also been found to be more effective at identifying biased jurors when:

- Voir dire is conducted by attorneys representing each side (because the venire is less honest with a judge);⁸²
- Voir dire is comprehensive and non-directive (e.g., questions are open ended and aimed at getting each juror to speak, not allowing the juror to just acquiesce to a closed-ended question).⁸³


The Bennett study⁸⁴ explains that the differences between how a judge and an attorney elicit information is due to demand characteristics. The judge is likely to be

intimidating to some in the venire. Bennett explains:

Venire persons will frequently hide their true feelings and conceal their biases when asked about them publicly, particularly by the Judge, who robed and physically elevated, deferred to and addressed as 'Your Honor' is the most powerful figure in the Courtroom. Jurors will thus tend to conceal prejudice in order to avoid embarrassment and disapproval of the Judge.

The great social distance between venire persons and the Judge places an undue burden on them in communicating their true feelings. As a result, venire persons will tend to agree with what they imagine the Judge wants them to say. Judges usually do not realize that they are seen by jurors as both powerful and fair, and that this attitude on the part of the jurors creates an expectation

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in their minds that they should say they can be fair and impartial, whether or not this is true. Jurors desire to be accepted and approved of by the Judge. They desire to say the right thing to the Judge.

Consequently, jurors who were selected through attorney-conducted voir dire were found to be less easily swayed, more resistant to group pressure, and more aware of legal proceedings.⁸⁵

Research shows that written juror questionnaires can overcome some of the shortcomings of oral voir dire in identifying juror bias.

Research shows that written questionnaires can measure bias that influences the verdict. Researchers have conducted studies showing that bias can be measured effectively by written questionnaires.⁸⁶ Through their work with the National Jury Project, Bonora et al. noted that the use of supplemental juror questionnaires has become more prevalent in the past 20 years and are now routine in commercial disputes in many federal courts, and in high-profile criminal cases.⁸⁷ The authors also report that the use of written voir dire questionnaires is recommended by the ABA.⁸⁸

Written questionnaires are recommended because they overcome the limitations of voir dire. Researchers who study the voir dire process often use questionnaires as the “gold standard” for eliciting the true feelings, attitudes, and beliefs of individuals for the following reasons:

- Questionnaires are more private, thereby encourage honesty;
- Questionnaires are not influenced by characteristics or qualities of the interviewer;
- Questionnaires do not prejudice other respondents;
- Questionnaires do not have the demand characteristics that inhibit disclosing personal information;

- Questionnaires reduce evaluation anxiety because they do not involve answering private questions in the presence of others who are evaluating the responses; and
- It is more difficult for someone to produce a desired response when the person is not in the presence of others.

Written questionnaires are particularly powerful at identifying biased jurors when they are used in conjunction with follow-up questions in individual voir dire. In his article on improving jury selection, Mize noted that many jurisdictions are “seriously and methodically” evaluating ways to improve the use of citizens as jurors. The goal is to make trials fairer and more efficient in their communities. Mize referenced a report based on a collaboration of judges, attorneys, former jurors and civic leaders.

The report, “Juries for the Year 2000 and Beyond—Proposals to Improve the Jury Systems in Washington D.C.,” made clear recommendations for improving the jury selection process. That report emphasized the need to gather information from the venire before beginning the oral voir dire process by administering a written questionnaire to each and giving that information to each attorney before voir dire. The report also recommended individual follow-up voir dire for each member of the venire.

Mize implemented the recommendations of the report and observed the effect that the recommendations had on his courtroom. He documented 24 examples of individuals in the venire who had not disclosed any biases or problems during oral voir dire in open court. However, during individual voir dire, people gave clear and dramatic reasons to be removed for cause. For instance, one prospective juror said:

I was frightened to raise my hand. I have taken high blood pressure medications for 20 years. I’m

afraid I will do what others tell me to do in the jury room.

Mize gave many more examples of individuals who disclosed information that provided a sound justification for them to be removed with a peremptory strike. He noted that these individuals would not have been identified through a group voir dire process.⁸⁹

Written questionnaires promote efficiency.


Mize’s information gathering process begins with a written questionnaire which helps to gather information quickly and efficiently. Questionnaires facilitate oral voir dire by providing attorneys and the judge with information that can easily be followed-up during voir dire. Mize carefully observed his courtroom after instating the recommendations of the “Juries for the Year 2000 and Beyond” report. He concluded:

I am convinced that even if individual questioning took up significant amounts of time (which it has not for me), it would be well worth expending the effort in order to avoid juror UFOs and the consequent danger of mistrials caused on impaneling biased or disabled citizens.

Therefore, through the use of a written questionnaire and relevant follow-up questions, Mize reported that biased jurors were screened out efficiently, and it did not cost the court additional time. Bonora et al. also reported that written questionnaires offer the advantage of promoting efficiency as well as honesty and privacy during jury selection.⁹⁰

Conclusion

Georgia law and justice demand each trial have appropriate and professional voir dire. The time invested should be case appropriate. Scientific research shows that jury questionnaires and attorney-driven oral questioning will pro-

vide more accurate information than judge-driven questioning. 



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Endnotes

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3. *Id.*; see also Christopher Carey, *Legal Space in Classical Athens*, 41 GREECE & ROME 2, 172-186 (Oct. 1994); Douglas M. MacDowell, *The Law In Classical Athens* 33-40 (Cornell 1978).
4. Moore, *supra* note 1, at 2.
5. Tracy L. Treger, *One Jury Indivisible: A Group Dynamics Approach to Voir Dire*, 68 CHI.-KENT L. REV. 549, 553 (1992).
6. Moore, *supra* note 1, at 7; Treger, *supra* note 5, at 552.
7. Treger *supra* note 5, at 552.
8. *Id.*
9. See generally *id.* at 553.
10. See generally Moore, *supra* note 1, at 15-19.
11. Treger, *supra* note 5, at 553.
12. *Id.* at 553.
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15. A Letter From Thomas Jefferson to Thomas Payne, 1789
16. Hans Zeisel, *The Debate over the Civil Jury in Historical Perspective*, 1990 U. CHI. LEGAL F. 25 (1990).
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22. Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) (discussing judicial bias when the judge acts as arbiter).
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24. In re Murchison, 349 U.S. 133, 136 (1955) (addressing judicial bias).
25. Dyer v. Calderon, 151 F.3d 970, 973 (9th Cir. 1998).
26. McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 554 (1984).
27. Melson v. Dickson, 63 Ga. 682, 686 (1879).
28. Atlantic Coast Line R. Co. v. Bunn, 2 Ga. App. 305, 306, 58 S.E. 538, 539 (1907).
29. Raven v. State, 256 Ga. 366, 368, 349 S.E.2d 383, 385 (1986) (quoting Lett v. State, 160 Ga. App. 476, 287 S.E.2d 384, 385 (1981)).
30. Thomas v. State, 249 Ga. 339, 340, 290 S.E. 2d 462, 463 (1982) (quoting Pierce v. Altman, 147 Ga. App. 22, 23, 248 S.E.2d 34, 35 (1978)).
31. Kim v. Walls, 275 Ga. 177, 179, 563 S.E.2d 847, 849 (2002).
32. *Id.*
33. Walls v. Kim, 250 Ga. App. 259, 260, 549 S.E.2d 797, 799 (2001), *aff'd* Kim v. Walls, 275 Ga. 177, 563 S.E.2d 847.
34. Kim, 275 Ga. at 178, 563 S.E.2d at 849 (quoting Cambron v. State, 164 Ga. 111, 113-14, 137 S.E. 780, 781 (1927)).
35. A full panel for a six-person jury is a panel of at least 12 competent and impartial jurors. A full panel for a 12-person jury is a panel of at least 24 competent and impartial jurors. O.C.G.A. §§ 15-12-122, 15-12-123 (2008).
36. *Id.* §§ 15-12-122, 15-12-123 (2008) (Emphasis added).
37. *Id.* §§ 15-12-122(b), 15-12-133(b) (2005).
38. See Melson v. Dickson, 63 Ga. 682, 685-86(1) (1879); Jones v. Cloud, 119 Ga. App. 697, 708, 168 S.E.2d 598, 606 (1969); see also Parisie v. State, 178 Ga. App. 857, 859, 344 S.E.2d 727, 729 (1986) ("[w] here a defendant uses all of his peremptory challenges before a jury is struck and is forced to use a peremptory challenge on a juror who should have been stricken for cause, the error is harmful and requires reversal").
39. Luke v. Suber, 217 Ga. App. 84, 87, 456 S.E.2d 598, 600 (1995).
40. *Id.*
41. For additional decisions describing the differences between principal and favor-based challenges, see Whelan v. Moone, 242 Ga. App. 795, 799, 531 S.E.2d 727, 731-32 (2000); Smith v. Folger, 237 Ga. App. 888, 889-90, 517 S.E.2d 360, 361 (1999); Sapp v. State, 222 Ga. App. 415, 418, 474 S.E.2d 233, 236 (1996).
42. See O.C.G.A. § 15-12-163(c); Mitchell v. State, 69 Ga. App. 771, 777, 26 S.E.2d 663, 668 (1943).
43. O.C.G.A. §§ 15-12-135, 15-12-163 (2008).
44. Gragg v. Neurological Associates, 176 Ga. App. 516, 517, 336 S.E.2d 608, 610 (1985); Ellison v. National By-Products, Inc., 153 Ga. App. 475, 265 S.E.2d 829, 830 (1980).
45. O.C.G.A. § 15-12-163 (2008) (applicable to felony criminal trials).
46. *Id.* § 15-12-135 (2008).
47. Ferguson v. Bank of Dawson, 53 Ga. App. 309, 313, 185 S.E. 602, 605 (1936).
48. Rogers v. McKinley, 52 Ga. App. 161, 164, 182 S.E. 895, 806 (1935).
49. Weatherbee v. Hutcheson, 114 Ga. App. 761, 765, 52 S.E.2d 715, 718-19 (1966).
50. Carr v. Carr, 240 Ga. 161, 162, 240 S.E.2d 50, 51 (1977) (error not to disqualify prospective juror where sole stockholder of company for which juror worked was party to case).
51. Bowns v. State, 116 Ga. App. 577, 580, 158 S.E.2d 420, 422 (1967).
52. Gragg, 176 Ga. App. at 518, 336 S.E.2d at 610.
53. For a thorough historical analysis of this issue, see Robinson v. State, 1 Ga. 563 (1846) explaining "[i] t has been ruled in accordance with the common law right of challenge, that it is not necessary for the juror to have a fixed and definite opinion upon the matter in issue: it may be hypothetical; and this will constitute a ground



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- of challenge, either principal or to the favor, according to the circumstances." Among the circumstances are whether the fixed opinion is one which will yield to the law or evidence.
54. GEORGIA SUGGESTED PATTERN JURY INSTRUCTIONS: VOL I: CIVIL CASES (5TH ED.), "Preliminary General Instructions: Civil Before Introduction of Evidence," 00.010 (2010) ("Under our legal system, it is my duty as the trial judge to determine the law applicable to this case, and it is your duty, as the jury, to determine the facts of the case. It is also your duty to apply the law to those facts in reaching your verdict.").
 55. *Hardy v. Tanner Medical Center, Inc.*, 231 Ga. App. 254, 256, 499 S.E.2d 121, 124 (1998); *Spivey v. State*, 253 Ga. 187, 196, 319 S.E.2d 420, 421 (1984).
 56. *Meintzer v. Weinberg*, 212 Ga. App. 307, 441 S.E.2d 774, 775 (1994); *Robinson v. State*, 258 Ga. 279, 280, 368 S.E.2d 513 (1988).
 57. *Ellison*, 153 Ga. App. at 476, 265 S.E.2d at 830 (holding that a juror should have been disqualified for cause when he stated in a case involving a "whiplash" injury that he could not be fair and impartial because he believed that most people who complained of "whiplash" were "out to rip somebody off.").
 58. *Elliott v. Home Depot U.S.A., Inc.*, 275 Ga. App. 865, 867, 622 S.E.2d 77, 79 (2005); *Humphreys v. State*, 287 Ga. 63, 72, 694 S.E.2d 316, 328 (2010) (holding a trial court did not abuse its discretion in a capital case by disqualifying three prospective jurors who gave equivocal and contradictory responses regarding their ability to impose a death sentence, authorizing the trial court to find from the totality of their responses that those prospective jurors could not meaningfully consider all three sentencing options); *Robles v. State*, 277 Ga. 415, 419-20, 589 S.E.2d 566, 571-72 (2003) (holding that a prospective juror should have been excluded where he stated he would not be able to determine the relevant facts in the case from the evidence); *King v. Moore*, 196 F.3d 1327, 1335 (11th Cir. 1999) (applying Florida law and holding that an inability to follow the law, such as that engendered by disagreement with the death penalty, disqualifies a juror).
 59. *Sellers v. Burrows*, 283 Ga. App. 505, 506, 642 S.E.2d 145, 146-47 (2007) (holding that a trial court abused its discretion when refusing to dismiss a juror for cause due to her unwavering belief that she would find in favor of the defendant doctor, absent clear and convincing proof and that she would resolve any doubts in the evidence in favor of the doctor).
 60. *Arevalo v. State*, 275 Ga. 392, 393, 567 S.E.2d 303, 306 (2002) (holding a trial court did not abuse its discretion in striking jurors who "expressed a very high degree of reluctance to ever vote for the death penalty" and "would hold the State to a higher standard of proof than the law requires").
 61. *McGuire v. State*, 287 Ga. App. 764, 765, 653 S.E.2d 101, 102 (2007).
 62. *Ham v. State*, 303 Ga. App. 232, 239-40, 692 S.E.2d 828, 836 (2010) (holding a trial court abused its discretion in failing to remove a prospective juror who stated that a person charged with a crime must be guilty of something and stated that he could not presume the defendant was innocent).
 63. *Thorpe v. State*, 285 Ga. 604, 608, 678 S.E.2d 913, 919 (2009).
 64. *Reese v. State*, 270 Ga. App. 522, 524, 607 S.E.2d 165, 167 (2004).
 65. *Bowens v. State*, 116 Ga. App. 577, 578, 158 S.E.2d 420, 421 (1967) (citations and punctuation omitted).
 66. *Temples v. Central of Ga. R.R. Co.*, 15 Ga. App. 115, 124-25, 82 S.E. 777, 781 (1914); *Mitchell v. State*, 69 Ga. App. 771, 780-81, 26 S.E.2d 663, 670 (1943).
 67. *Temples*, 15 Ga. App. at 119-20, 82 S.E. 777 at 779 (emphasis added).
 68. O.C.G.A. § 15-12-133 (2008) (emphasis added).
 69. *Id.* § 15-12-131 (2008) (emphasis added).
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The Changing Landscape for Securities:

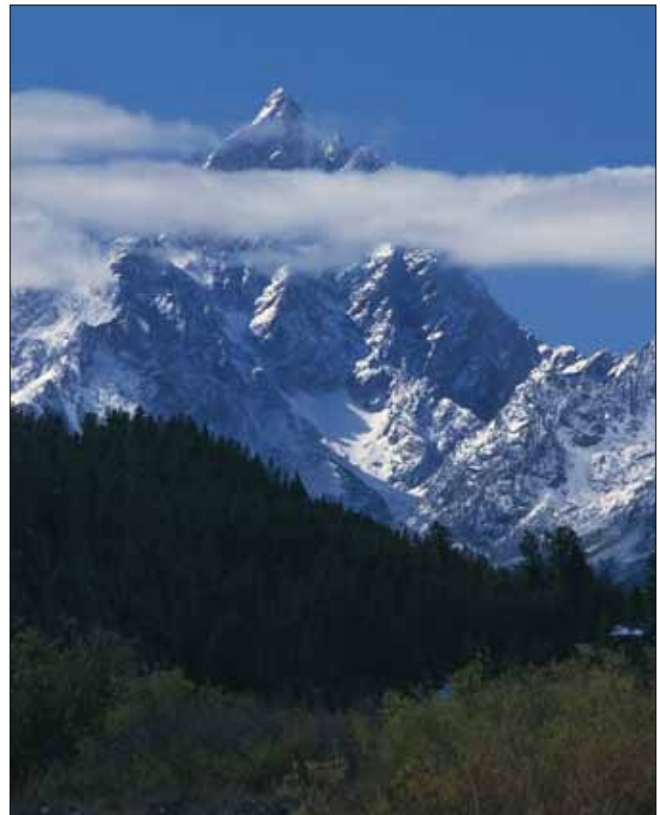
Fraud Claims Under Georgia Law

by Brett "Ben" Rogers and Leah A. Epstein

When making decisions about purchasing or selling securities, few investors are in a position to "kick the tires" of the relevant company. Instead, they receive information provided by the issuers of the securities or by other market participants. Multiple federal and state laws regulate the accuracy of that information. Thus, when an issuer of securities provides false or misleading information to investors and the market, or when the issuer fails to disclose pertinent information despite an obligation to do so, investors have multiple bases for bringing suit.

For example, investors may sue under the federal securities laws, including an implied right of action under Federal Rule 10b-5 (Rule 10b-5),¹ and an express right of action under Section 12 of the Securities Act of 1933 (Section 12).² In addition, investors may pursue state-law tort claims sounding in fraud or negligent misrepresentation. Finally, investors have the option of suing under the antifraud provisions of state "blue sky laws," which regulate securities offerings at the state level.

Over the past couple of years, Georgia's securities laws have undergone a number of changes



that will impact litigants bringing securities claims, either under the Georgia securities statute or the common law. Among these are changes engendered by the General Assembly's enactment of the Georgia Uniform Securities Act of 2008 (the 2008 Act),³ which replaced Georgia's prior securities statute, the Georgia Securities Act of 1973 (the 1973 Act). The new and relatively untested provision of the 2008 Act governing

private claims for misrepresentations or omissions in connection with the sale of securities includes several departures from prior law. Some of these departures may ease a plaintiff's burdens of pleading and proof, while others may substantially narrow the scope of the private right of action to enforce the 2008 Act's anti-fraud provisions. In addition, on Feb. 8, 2010, the Supreme Court of Georgia issued its unanimous opinion in *Holmes v. Grubman*,⁴ which included a discussion of loss causation that could have far-reaching implications for litigants bringing securities cases in Georgia.

The Georgia Uniform Securities Act of 2008

On July 1, 2009, the 2008 Act went into effect, replacing the 1973 Act.⁵ The 2008 Act brought with it several substantive changes affecting civil claims for misrepresentations or omissions in connection with the sale of a security. Most significantly, the new statute altered the landscape for private rights of action from that which existed under the prior statute. Although the 1973 Act created a private right of action to enforce a claim based on Federal Rule 10b-5, the 2008 Act contains instead a private right of action to enforce a claim that is based on Section 12 of the Securities Act of 1933. The 2008 Act also includes a provision modeled on Rule 10b-5, but it does not appear to provide a right for private litigants to enforce that provision. This shift away from the Rule 10b-5 model has important implications for the Georgia securities bar.

Switch from Rule 10b-5 Model to Section 12 Model

The 1973 Act was based on the Uniform Securities Act of 1956. The 1956 Uniform Act included both a provision modeled on Rule 10b-5⁶ and a provision modeled on Section 12(2) of the Securities Act of 1933.⁷ The 1956 Uniform Act only included a private right of action to enforce the latter provision.⁸ In adopting its version of the Uniform Securities Act of 1956 in the 1973 Act, however, the Georgia General Assembly included an altogether different private right of action. Specifically, the 1973 Act included a provision creating an express private right of action to enforce its Rule 10b-5 analog in place of the 1956 Uniform Act's private right of action modeled on Section 12(2).⁹

Thirty-five years later, the General Assembly changed course, enacting in the 2008 Act a statute that hews more closely to the current version of the uniform securities statute, the Uniform Securities Act of 2002.¹⁰ That is, in adopting the 2008 Act, the General Assembly included a private right of action that is more akin to Section 12 of the 1933 Act than to Rule 10b-5.¹¹ That private right of action is provided for in O.C.G.A. § 10-5-58. Unlike its predecessor in the 1973 Act, the Rule 10b-5 analog in the 2008 Act—O.C.G.A. § 10-5-50—does not include



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a private right of action.¹² This lack of a private right of action is confirmed by the official comments to the uniform act provision on which O.C.G.A. § 10-5-50 is based, Section 501 of the Uniform Securities Act of 2002,¹³ which state that “[t]here is no private cause of action, express or implied, under Section 501.”¹⁴ The official comments go on to state that Section 509 of the 2002 Uniform Act—which is the section of the 2002 Uniform Act that creates the private right of action on which O.C.G.A. § 10-5-58 is based—“expressly provides that only Section 509 provides a private cause of action for conduct that could violate Section 501.”¹⁵ Because Section 509 of the 2002 Uniform Act is modeled on Federal Section 12, it appears that the General Assembly has eliminated the right of civil litigants to directly enforce the anti-fraud provisions of the 2008 Act that are derived from Federal Rule 10b-5.

Implications of Change to the Section 12 Model

The significance of the differences between the 1973 Act’s private right of action for securities fraud and the private right of action contemplated in the 2008 Act can be appreciated, in part, by examining the differences between Federal Rule 10b-5 and Section 12. Although Rule 10b-5 and Section 12 both create civil liability for misrepresentations and omissions in connection with sales of securities, the two provisions require different elements of proof, have different standing requirements and include different defenses.

Elements of a Claim

To bring an implied right of action under Federal Rule 10b-5, plaintiffs must establish the following elements: (1) a “material misrepresentation (or omission)” made in “connection with the purchase or sale of a security”; (2) scienter; (3) materiality; (4) reliance; and (5) loss causation.¹⁶ The requirement that the alleged misrepresentation

	Scienter	Reliance	Causation	Limitation on Actions
Rule 10b-5	Required	Required	Loss causation required	Both primary- and secondary-market transactions covered
Section 12	Not required; scienter defense available	Not required; plaintiff must lack <i>actual</i> knowledge of misrepresentation or omission	Loss-causation defense available	Only public offerings covered
1973 Georgia Securities Act	Required	Required	Loss causation arguable required per <i>Holmes v. Grubman</i>	Both primary- and secondary-market transactions covered
2008 Georgia Securities Act	Not required; scienter defense available	Not required; plaintiff must lack <i>actual</i> knowledge of misrepresentation or omission	Causation element arguable implied in “by means of” language; loss causation arguable required per <i>Holmes v. Grubman</i>	Arguable applies only to public offerings

or omission be made “in connection with the purchase or sale of a security” has been interpreted to be a standing requirement such that a private litigant cannot bring suit under Rule 10b-5 unless he has purchased or sold the relevant security.¹⁷ Under the 1973 Act, the Georgia courts largely followed the federal courts in identifying the elements of a securities-fraud claim.¹⁸

In contrast, a securities-fraud claim brought under the version of Section 12 on which the private right of action in the Uniform Securities Act of 1956 was based required proof of neither scienter, reliance nor loss causation.¹⁹ Likewise, the Official Comments to Section 509 of the Uniform Securities Act of 2002, on which the private right of action in the 2008 Act is based, acknowledge that the private right of action for securities fraud in the Uniform Securities Act of 1956 did not require proof of either causation or reliance.²⁰

The original Section 12 did provide a defense to sellers who were able to establish that they did not know, and in the exercise of reasonable care could not have known, of the alleged untruth or omission.²¹

As discussed *infra*, the 2008 Act also creates this defense. Thus, the defendant’s scienter is relevant under these statutes, even if not part of a plaintiff’s *prima facie* case.

Accordingly, some may argue that, as under the Uniform Securities Act of 1956, a plaintiff bringing suit under the O.C.G.A. § 10-5-58 of the 2008 Act need not plead either the defendant’s scienter or causation. O.C.G.A. § 10-5-58 expressly requires proof that: (1) the defendant sold a security, (2) “by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading,” and (3) the purchaser did not know of the untruth or omission.²² Thus, some will no doubt argue that the only scienter a plaintiff must establish as part of his *prima facie* case is his own lack of knowledge. Moreover, a plaintiff suing under O.C.G.A. § 10-5-58 may argue that he is entitled to bring suit even if his lack of knowledge resulted from his own negligence.

On the other hand, it is possible to read a causation element into the 2008 Act’s requirement

that the security has been sold “by means of” a material misstatement or omission. That is, a court could determine that a security was sold “by means of” a misstatement or omission only where the misstatement or omission caused the transaction to be consummated. Georgia courts are not obliged to follow federal law or the official comments to the uniform statute in this regard. Interpreting the “by means of” language in the 2008 Act to require proof of causation would make the statute more consistent with current federal law, as Congress has added a loss-causation defense to claims brought under Section 12.²³ Thus, although neither Section 509 of the 2002 Uniform Securities Act nor O.C.G.A. § 10-5-58(b) of the 2008 Act includes an explicit loss-causation defense, the 2008 Act’s drafters may have omitted such a defense from O.C.G.A. § 10-5-58 in the belief that the statute’s “by means of” language implicitly imposes the burden of pleading and proving loss causation on the plaintiff. Notably, the Supreme Court of Georgia gave some indication in *Holmes*—after the 2008 Act had been enacted—that loss causation may be required to bring a statutory securities-fraud claim in Georgia.²⁴

Applicable Defenses

Like the federal statute, O.C.G.A. § 10-5-58 contains an affirmative defense permitting a defendant to escape liability by proving “that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.”²⁵ In other words, a defendant may prevail on this affirmative defense by proving that he exercised reasonable care and yet lacked knowledge of the alleged misrepresentation or omission. Thus, the private right of action does include a scienter element of a kind, but, in a significant departure from the 1973 Act, the responsibility for pleading and proving the defendant’s scienter has been shifted to the defendant. In addition, liability under the 2008

Act may be established based on the defendant’s mere negligence.

Application to Secondary-Market Transactions

Section 12 also contains significant limitations not applicable to Rule 10b-5 claims, though some of these limitations are inapplicable to actions under the state statutes. One limitation to Section 12 claims is the statute’s requirement that the subject sale was made “by means of a prospectus or oral communication” in order to give rise to liability.²⁶ In *Gustafson v. Alloyd Co.*, the U.S. Supreme Court interpreted “prospectus” for such purposes as “a document that describes a public offering of securities.”²⁷ Several courts have concluded on that basis that “a Section 12(a)(2) action cannot be maintained by a plaintiff who acquires securities through a private transaction, whether primary or secondary.”²⁸

Unlike the Federal Section 12, O.C.G.A. § 10-5-58 omits the “by means of a prospectus or oral communication” language. Rather, the Georgia statute merely provides for liability where the defendant has sold a security “by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading . . .”²⁹ Some may argue on that basis that *Gustafson’s* reasoning is inapplicable to O.C.G.A. § 10-5-58, and that the 2008 Act’s private right of action applies to both primary and secondary transactions. Other courts interpreting provisions similar to O.C.G.A. § 10-5-58 have held that the omission of any reference to sales by means of a prospectus means that both primary- and secondary-market sales can subject the seller to liability.³⁰

Others may argue, instead, that the significance of this omission is ambiguous. The official commentary to Section 509 of the Uniform

Securities Act of 2002 (the provision creating the private right of action on which O.C.G.A. § 10-5-58 is based), citing *Gustafson*, provides in pertinent part that “Section 509(b) is broader than Section 12(a)(2) in that it will reach all sales in violation of Section 301, not just sales ‘by means of a prospectus’ as is the law under Section 12(a)(2).”³¹ Sales in violation of Section 301 of the 2002 Uniform Act are those that are made in violation of the registration requirement.³² Thus, the 2002 Uniform Act’s drafters may simply have intended this omission to expand the scope of the private right of action to cover sales in connection with unregistered securities without intending to affect the provision’s application to secondary-market transactions. Furthermore, the General Assembly is presumed to have acted with an understanding of the various limitations that apply to Section 12 claims in federal courts.³³ The General Assembly may have intended to expand the private right of action under the 2008 Act in some respects while adopting the corresponding limitations existing under federal law.

Scope of Secondary Liability

Under Section 12, a defendant must be a statutory seller in order to be subject to liability.³⁴ Prior to 1988, the federal courts disagreed about how to define a seller for purposes of the statute. Some courts applied relatively expansive definitions encompassing, for example, all those whose efforts were a substantial factor in bringing about a sale.³⁵ In *Pinter v. Dahl*, the U.S. Supreme Court rejected those expansive definitions, instead identifying as a seller “the person who successfully solicits the purchase, motivated at least in part by desire to serve his own financial interests or those of the securities owner.”³⁶ Thus, under the federal statute, “[a]n individual is a ‘statutory seller’—and therefore a potential

section 12(a)(2) defendant—if he: (1) ‘passed title, or other interest in the security, to the buyer for value, or (2) successfully solicit[ed] the purchase [of a security], motivated at least in part by a desire to serve his own financial interests or those of the securities['] owner.’”³⁷

The Georgia courts will have to determine the proper scope of primary liability under the private right of action in the 2008 Act. Because the official comments to Section 509 of the Uniform Securities Act of 2002 suggest that the private right of action contains a similar privity requirement to the Section 12 requirement,³⁸ Georgia courts may well look to federal law to determine who qualifies as a statutory seller.³⁹ And, indeed, most courts applying state statutes based on a version of the 2002 Uniform Securities Act have adopted *Pinter’s* definition.⁴⁰

Although the Georgia courts are likely to apply *Pinter* to limit the scope of primary liability under O.C.G.A. § 10-5-58, secondary actors might be captured under the provision of the statute imposing joint and several liability on certain categories of persons associated with the seller.⁴¹ The 2008 Act expands the secondary liability provision to cover, for example, those associated with the primary violator and agents and investment advisors who materially aid in the conduct giving rise to liability.⁴²

Statute of Limitations

The enactment of the 2008 Act also modifies the statute of limitations applicable to private securities-fraud actions brought under the statute. Specifically, although the 1973 Act provided for a statutory limitations period of two years from the sale of the relevant security,⁴³ the 2008 Act provides that the plaintiff cannot recover unless his claim is brought “within the earlier of two years after discovery of the facts constituting the violation and five years after the violation occurred.”⁴⁴

According to the Official Comments to the uniform statu-

tory provision on which O.C.G.A. § 10-5-58 is based, the drafters of the statute-of-limitations provision modeled the provision on federal securities law to discourage forum shopping.⁴⁵ Thus, the comments state that,

As with federal courts construing the statute of limitations under Rule 10b-5, it is intended that the plaintiff’s right to proceed is limited to two years after actual discovery ‘or after such discovery should have been made by the exercise of reasonable diligence’ (inquiry notice), see, e.g., *Law v. Medco Research, Inc.*, 113 F.3d 781 (7th Cir. 1997), or five years after the violation.⁴⁶

Because the uniform statute follows federal law in order to discourage forum shopping, the comments suggest that “[i]f the statute of limitations applicable to Rule 10b-5 were to be changed in the future, identical changes should be made in Section 509(j)(2).”⁴⁷ Any such changes would be within the General Assembly’s discretion, of course.

Holmes v. Grubman and Loss Causation

Holmes v. Grubman arose out of the plaintiff’s substantial investment in WorldCom, Inc. (WorldCom).⁴⁸ The plaintiff alleged that his broker persuaded him not to sell his WorldCom shares and that, in doing so, the broker failed to disclose material nonpublic information that the plaintiff alleged would have affected his decision to continue holding the shares.⁴⁹ The federal district court dismissed the complaint for failure to state a claim upon which relief can be granted.⁵⁰ On appeal, the U.S. Court of Appeals for the 2nd Circuit certified three questions to the Supreme Court of Georgia.⁵¹ The second certified question focused on loss causation:

With respect to a tort claim based on misrepresentations or omis-

sions concerning publicly traded securities, is proximate cause adequately pleaded under Georgia law when a plaintiff alleges that his injury was a reasonably foreseeable result of defendant’s false or misleading statements but does not allege that the truth concealed by the defendant entered the market place, thereby precipitating a drop in the price of the security?⁵²

The Supreme Court of Georgia answered the above question in the negative, holding that “with respect to a tort claim based on misrepresentations or omissions concerning publicly traded securities, a plaintiff at trial has the burden of proving that the truth concealed by the defendant entered the marketplace, thereby precipitating a drop in the price of the security.”⁵³ This requirement is commonly referred to as “loss causation.”⁵⁴

Although *Holmes* involved a so-called “holder” claim,⁵⁵ and not a claim brought by a purchaser or seller of securities, the above certified question is phrased broadly, and the Court answered it in a way that reaches both holder and non holder securities claims. Specifically, the Court invoked *Dura Pharmaceuticals, Inc. v. Broudo*,⁵⁶ the leading case on loss causation, and held that “[t]he reasoning of *Dura* . . . is equally applicable to any securities claim, be it statutory or based in the common law, because any such claim for damages requires a showing of proximate cause.”⁵⁷ Thus, plaintiffs asserting securities-fraud claims under Georgia common law will need to establish loss causation regardless of whether they bring claims as purchasers, sellers or holders of the relevant security.

Furthermore, the Court’s sweeping language suggests that the loss-causation requirement would also apply to claims brought under the securities-fraud provisions of the 1973 Act, as proximate causation is an element of a Rule 10b-5 claim. And to the extent that causation is deemed to be an element of a claim

under O.C.G.A. § 10-5-58, proof of loss causation will be required under the new 2008 Act's private right of action, too. As noted *supra*, the Supreme Court of Georgia issued its decision in *Holmes* well after the 2008 Act went into effect, and the Court would certainly have been aware of that Act.


The *Holmes* Court also gave guidance on the type of showing plaintiffs will need to make in order to satisfy the loss-causation requirement. Specifically, the court noted that the plaintiff would have to establish a causal link between the materialization of the risk or disclosure of the truth that had been concealed:

Having reviewed the already-extensive precedent regarding the parameters of the loss causation standard in *Dura*, we note that, while some courts have held that "the truth could be revealed by the actual materialization of the concealed risk rather than by a public disclosure that the risk exists, [cit.], any theory of loss causation would still have to identify when the materialization occurred and link it to a corresponding loss."⁵⁸

In other words, a plaintiff must show that it was "this revelation that caused the loss and not one of the 'tangle of factors' that affect price."⁵⁹

Conclusion

The many changes affecting Georgia securities practitioners over the last couple of years offer something for both plaintiffs and defendants. The 2008 Georgia Securities Act's private right of action appears to be broader than the private right of action under the 1973 Georgia Securities Act in that plaintiffs are not required to prove reliance or the defendant's scienter (though the defendant has a defense if he can establish his lack of knowledge and negligence) and may not be required to prove causation. On the other hand, plaintiffs bringing suit under

the 2008 Act are limited by the privacy requirement and, possibly, by the limitation to primary market sales. Likewise, the *Holmes* decision recognized that holder claims may properly be asserted under Georgia law, but the Court also recognized that plaintiffs asserting claims of misrepresentation or omission involving publicly traded securities, whether under Georgia common or statutory law, must plead and prove loss causation. Of course, the impact of these changes will not be felt, and the uncertainties will not be settled, until litigants test the new 2008 Georgia Securities Act and the holdings in *Holmes*. 



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Endnotes

- 17 C.F.R. § 240.10b-5 (2010). The Securities and Exchange Commission promulgated Rule 10b-5 pursuant to authority granted it by Section 10(b) of the Securities Exchange Act of 1934. Rule 10b-5 prohibits fraud or misrepresentations, made by act or omission, in connection with the purchase or sale of a security. *See id.*
- 15 U.S.C. § 771(a)(2) (2006). Section 12(a)(2) (formerly Section 12(2)) provides a rescission remedy to purchasers of securities that were offered or sold by a prospectus or oral communication containing a material misstatement or omission, provided that the purchaser was unaware of the misstatement or omission at the time of purchase. *See id.*
- O.C.G.A. § 10-5-1, *et seq.* (2009 & Supp. 2010).
- Holmes v. Grubman*, 286 Ga. 636, 691 S.E.2d 196 (2010).
- "The predecessor [1973] Act exclusively governs all actions or proceedings that are pending on July 1, 2009, or may be instituted on the basis of conduct occurring before July 1, 2009" O.C.G.A. § 10-5-90 (2009).
- See* Unif. Sec. Act § 101 (1956); *see also id.* cmt. 01 ("This section [§ 101] is substantially the Securities and Exchange Commission's Rule X-10B-5, 17 Code Fed. Regs. § 240.10b-5, which in turn was modeled upon § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), except that the rule was expanded to cover the purchase as well as the sale of any security.").
- See* Unif. Sec. Act § 410 (1956) ("(a) Any person who . . . (2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him"); *see also id.* cmt. 01 ("Clause (2): This clause is almost identical with § 12(2) of

- the Securities Act of 1933, 15 U.S.C. § 771(2), which was also borrowed almost verbatim in § 451.116 of the Michigan statute and § 13.1-522(a) (2) of the new Virginia act.”).
8. See Unif. Sec. Act § 410 cmt. 01 (1956) (comment to § 410(h)) (“The mere presence of certain specific liability provisions in a statute is no assurance that other liabilities will not be implied by the courts under the doctrine which creates a common-law tort action for violation of certain criminal statutes. Restatement of Torts §§ 286-88. Notwithstanding the presence of several specific liability provisions in each of the several SEC statutes, the federal courts have implied a civil cause of action by a defrauded seller against the buyer under SEC Rule X-10B-5. See Loss, Securities Regulation (1951 with 1955 Supp.), pp. 1052-66. *The ‘but’ clause in Section 410(h) is designed to assure that no comparable development is based on violation of § 101 of this Act.*”) (emphasis added).
 9. See O.C.G.A. § 10-5-12(a) (2000 & Supp. 2008) (modeled on Rule 10b-5); O.C.G.A. § 10-5-14(a) (2000 & Supp. 2008) (“Any person who violates subsection (a) of Code Section 10-5-12 shall be liable to the person buying such security; and such buyer may sue in any court of competent jurisdiction to recover the consideration paid in cash . . .”).
 10. Unif. Sec. Act (2002).
 11. See O.C.G.A. § 10-5-58 (2009).
 12. See *Id.* 10-5-58(m) (“The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this Code section or subsection (e) of Code Section 10-5-40.”).
 13. See Unif. Sec. Act § 501 cmt. 1 (2002) (“Section 501, which was Section 101 in the 1956 Act, was modeled on Rule 10b-5 adopted under the Securities Exchange Act of 1934 and on Section 17(a) of the Securities Act of 1933. There has been significant later case development interpreting Rule 10b-5, Section 17(a), and Section 101 of the 1956 Act. Section 501 is not identical to either Rule 10b-5 or Section 17(a).”).
 14. *Id.* cmt. 7.
 15. *Id.*
 16. See, e.g., *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005).
 17. See *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 753-55 (1975).
 18. See, e.g., *GCA Strategic Inv. Fund v. Joseph Charles & Assocs., Inc.*, 245 Ga. App. 460, 464 537 S.E.2d 677, 682 (2000) (“To evaluate a claim of securities fraud under OCGA § 10-5-12(a), we look to the similar elements a plaintiff must allege under section 10(b) of the Securities Act of 1934: ‘1) a misstatement or omission, 2) of a material fact, 3) made with scienter, 4) on which plaintiff relied, 5) that proximately caused his injury.’”) (quoting *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1281 (11th Cir. 1999)); see also *Keogler v. Krasnoff*, 268 Ga. App. 250, 253, 601 S.E.2d 788, 791 (2004).
 19. See, e.g., *Gustafson v. Alloyd Co.*, 513 U.S. 561, 582 (1995) (noting that section 12(2) imposes liability without “proof of either fraud or reliance”); *Finkel v. Stratton Corp.*, 754 F. Supp. 318, 326 (S.D.N.Y. 1991) (stating that section 12(2) plaintiff need not show scienter or loss causation), *aff’d in part, rev’d in part on other grounds*, 962 F.2d 169 (2d Cir. 1992).
 20. Unif. Sec. Act § 509 cmt. 4 (2002) (“Unlike the current standards on implied rights of action under Rule 10b-5, neither causation nor reliance has been held to be an element of a private cause of action under the precursor to Section 509(b).”).
 21. See Sec. Act of 1933 § 12(a)(2), 15 U.S.C. § 771(a)(2) (2006).
 22. O.C.G.A. § 10-5-58(b) (2009) (“A person is liable to the purchaser if the person sells a security in violation of Code Section 10-5-20, or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.”). Unlike its federal analog, O.C.G.A. § 10-5-58 contains a virtually identical provision that applies to sellers suing purchasers. See *id.* § 10-5-58(c). For the sake of simplicity, in discussing O.C.G.A. § 10-5-58, this article will refer only to the provision applicable to claims brought by purchasers.
 23. In late 1995, the Private Securities Litigation Reform Act amended Section 12 to add an additional defense relating to loss causation. Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.). The new Section 12(b) of the Securities Act provides that, if it is proved that the loss or any portion thereof was caused by something other than the untrue statement or omission, then that portion of the loss is not recoverable by the plaintiff. See 15 U.S.C. § 771(b) (2006) (“In an action described in subsection (a)(2) of this section, if the person who offered or sold such security proves that any portion or all of the amount recoverable under subsection (a) (2) of this section represents other than the depreciation in value of the subject security resulting from such part of the prospectus or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.”).
 24. See *infra* text accompanying notes 48-59.
 25. O.C.G.A. § 10-5-58(b) (2009). The private right of action under the 1973 Act contained a similar defense. See O.C.G.A. § 10-5-14(a) (2000 & Supp. 2008) (“A person who offers or sells a security in violation of paragraph (2) of subsection (a) of Code Section 10-5-12 is not liable under this subsection if: (1) The purchaser knew of the untrue statement of a material fact or omission of a statement of a material fact; or (2) The seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.”).
 26. 15 U.S.C. § 771(a)(2).
 27. *Gustafson v. Alloyd Co.*, 513 U.S. 561, 582, 584 (1995).
 28. See, e.g., *Yung v. Lee*, 432 F.3d 142, 149 (2nd Cir. 2005) (citing *Gustafson*, 513 U.S. at 584 (1995)).

29. O.C.G.A. § 10-5-58(b) (2009).
30. *See, e.g.,* Knapp v. Patel, No. 1:91-CV-957, 1992 WL 415384, at *6 (W.D. Mich. Sept. 2, 1992) (“The Court’s review of Michigan cases arising under Section 410(a) (2), however, indicates that no distinction is made between initial and secondary offerings in analyzing these causes of action.”); Feldman v. Aspen Tech., Inc., No. SUCV2006-3021BLS2, 2007 WL 1089220, at *5 (Mass. Super. Ct. Mar. 3, 2007) (holding that given lack of prospectus language, “it would be inappropriate to imply a prospectus requirement into the [Massachusetts Securities] Act and then to dismiss Count 1 on the basis that liability under § 410(a) (2) is limited to public offerings of securities in which a prospectus is required”); Anheuser-Busch Co. v. Summit Coffee, 934 S.W.2d 705, 708 (Tex. Ct. App. 1996) (“Because of this difference between the Texas Securities Act and the Securities Act of 1933, we conclude *Gustafson* does not control our interpretation of article 581-33(A) (2) of the Texas Securities Act.”); *see also* Olczyk v. Cerion Techs., Inc., 721 N.E.2d 732, 744 (Ill. App. Ct. 1999) (“[T]he court extended the provisions of the [Illinois Securities] Act to subsequent purchasers, but not to ‘assignees or transferees of the purchaser.’”).
31. Unif. Sec. Act § 509 cmt. 3 (2002).
32. Unif. Sec. Act § 301 (2002).
33. *See, e.g.,* Fair v. State, 288 Ga. 244, 252, 702 S.E.2d 420, 428 (2010) (“[W]e must presume that the General Assembly had full knowledge of the existing state of the law and enacted the statute with reference to it.”) (quoting *Chase v. State*, 285 Ga. 693, 695-96, 681 S.E.2d 116, 118 (2009)).
34. *E.g.,* In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d 347, 359 (2d Cir. 2010).
35. *See, e.g.,* Davis v. Avco Fin. Servs., Inc., 739 F.2d 1057, 1067 (6th Cir. 1984); Croy v. Campbell, 624 F.2d 709, 713-14 (5th Cir. 1980).
36. Pinter v. Dahl, 486 U.S. 622, 646 (1988). Although *Pinter* decided the scope of the term “seller” for purposes of Section 12(1), federal courts have applied *Pinter*’s definition to Section 12(2) and 12(a)(2) claims as well. *See, e.g.,* Ryder Int’l Corp. v. First Am. Nat’l Bank, 943 F.2d 1521, 1526-27 (11th Cir. 1991); Craftmatic Sec. Litig. v. Kraftsow, 890 F.2d 628, 635-36 (3d Cir. 1990); Wilson v. Saintine Exploration & Drilling Corp., 872 F.2d 1124, 1126 (2d Cir. 1989).
37. In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d at 359 (alterations in original; internal quotation marks omitted).
38. Unif. Sec. Act § 509 cmt. 3 (2002) (“As with Section 12(a)(2) of the Securities Act of 1933, Section 509(b) contains a type of privity requirement in that the purchaser is required to bring an action against the seller.”).
39. Perhaps notably, O.C.G.A. § 10-5-58(b) (2009) speaks in terms of selling a security; it does not mention *offers* to sell a security. This is in contrast to both Section 12(a) (2) (providing that “[a]ny person who . . . offers or sells a security” in violation of the statute may be liable, 15 U.S.C. § 77l(a)(2) (2006)) and the relevant provision of the 1956 Uniform Securities Act (same, Unif. Sec. Act § 410(a) (1956)).
40. *See, e.g.,* Mercer v. Jaffe, Snider, Raitt & Heuer, P.C., 713 F. Supp. 1019, 1024 (W.D. Mich. 1989); Meyers v. Lott, 993 P.2d 609, 612-13 (Idaho 2000); Klein v. Oppenheimer & Co., Inc., 130 P.3d 569, 582 (Kan. 2006); Wilson v. Misko, 508 N.W.2d 238, 247-48 (Neb. 1993); Zendell v. Newport Oil Corp., 544 A.2d 878, 882-83 (N.J. Super. Ct. App. Div. 1988); State v. Williams, 390 S.E.2d 746, 749 (N.C. Ct. App. 1990); Biales v. Young, 432 S.E.2d 482, 484-85 (S.C. 1993); Shavin v. Commonwealth, 437 S.E.2d 411, 415 (Va. Ct. App. 1993). *But see, e.g.,* Hoffer v. State, 776 P.2d 963, 964-65 (Wash. 1989) (retaining the “substantial contributive factor” test in spite of *Pinter*) (en banc).
41. *See* O.C.G.A. § 10-5-58(g) (2009).
42. *Id.*
43. *Id.* §10-5-14(d) (2000 & Supp. 2008).
44. *Id.* § 10-5-58(j) (2009) (emphasis added).
45. Unif. Sec. Act § 509 cmt. 14 (2002) (stating, in pertinent part, that “Section 509(j)(2) . . . generally follows the federal securities law model”).
46. *Id.*
47. *Id.*
48. Holmes v. Grubman, 286 Ga. 636, 691 S.E.2d 196, 197 (2010).
49. *See id.* (noting allegation that the plaintiff’s broker operated under a conflict of interest when he persuaded the plaintiff not to sell more than \$100 million worth of WorldCom stock based on research reports and the research analyst’s reputation).
50. 286 Ga. at 637, 691 S.E. 2d at 197.
51. The Second Circuit certified three questions:
 - I. Does Georgia common law recognize fraud claims based on forbearance in the sale of publicly traded securities?
 - II. With respect to a tort claim based on misrepresentations or omissions concerning publicly traded securities, is proximate cause adequately pleaded under Georgia law when a plaintiff alleges that his injury was a reasonably foreseeable result of defendant’s false or misleading statements but does not allege that the truth concealed by the defendant entered the market place, thereby precipitating a drop in the price of the security?
 - III. Under Georgia law, does a brokerage firm owe a fiduciary duty to the holder of a non-discretionary account?
- 286 Ga. at 637, 691 S.E. 2d at 197-98.
52. *Id.*
53. 286 Ga. at 642, 691 S.E. 2d at 201.
54. Based on the Supreme Court of Georgia’s holding that plaintiffs asserting common-law securities claims must establish loss causation, the Second Circuit affirmed dismissal of all of Holmes’s claims. *See* Holmes v. Grubman, 383 Fed. App’x 18, 20 (2d Cir. 2010).
55. Holder claims are claims where investors complain not that they were defrauded into purchasing a security, but that they were induced into holding onto (as opposed to selling) the security when they otherwise would have sold it. *E.g.,* In re WorldCom, Inc. Sec. Litig., 336 F. Supp. 2d 310, 318-19 (S.D.N.Y. 2004).
56. Dura Pharm., Inc. v. Broudo, 544 U.S. 336 (2005).
57. 286 Ga. at 642, 691 S.E.2d at 201 (quoting *Grand v. Nacchio*, 147 P.3d 763, 782 (Ariz. Ct. App. 2006)).
58. *Id.* (quoting In re Williams Sec. Litig.-WCG Subclass, 558 F.3d 1130, 1138 (10th Cir. 2009)).
59. *Id.*

2011 Annual Meeting:

Sun, Sand, Surf and Board Business at Myrtle Beach

by Jennifer R. Mason

Members of the State Bar of Georgia got an early start on their summer at the 2011 Annual Meeting, held at Kingston Shores in Myrtle Beach, S.C. Four days of beautiful weather provided a lovely setting for those who made the trip to the South Carolina coast. While the main focus of the weekend was on varying degrees of Bar business, a considerable amount of time was spent on more pleasurable pursuits, including lunches, dinners and receptions, exploring Myrtle Beach and the ever-popular pastime of just relaxing by the pool or on the beach.

Relaxing at Opening Night

The opening night event set the tone for the weekend. A1A, the official and original Jimmy Buffett tribute band, provided a casual vibe as attendees,



A1A, the official Jimmy Buffett cover band, entertains the crowd during the Opening Night Festivities.

Photos by Sarah I. Coole, Jennifer R. Mason, Mary McAfee, Derrick W. Stanley and Stephanie J. Wilson

their families and guests wound their way around the two pool decks sampling food and drink. Children, and more adventurous adults, tested their athletic abilities on games such as the Lagoon of Doom, a log-rolling contest, the bungee run, foosball and pop-a-shot basketball games. A photo booth provided the opportunity to make more than one special memory of the night and the more creative folks were able to share their whimsical side by donning one of the many hats offered at the hat hut. As always, opening night casually eased attendees into the weekend of business and celebration.

Business of the Weekend

Attorneys were able to conduct a wide array of business throughout the weekend utilizing the Kingston Shores conference facilities. From CLE offerings on topics such as *vior dire*, malpractice avoidance and Fastcase training to section-specific breakfasts and lunches, there was always an opportunity to reconnect with colleagues while getting up-to-date on trends and topics in the law. Law school receptions provided members with a relaxing prelude to various dinner functions. The weekend also featured the annual YLD 5K Fun Run, now cosponsored with the Pro Bono project, in addition to the golf and tennis tournaments, YLD pool party and various kid and teen programs.

Board Meeting Highlights

Following the presentation of awards at the June 3 plenary session, the Board received a report by Bob McCormack and by unanimous voice vote, approved the proposed changes to Bylaw Article 1, Section 4. The Board then received a report on Memorials by President Lester Tate, followed by reports on the Investigative Panel by Joe Dent, the Review Panel by Greg Fullerton, the Formal Advisory Opinion Board by President Tate, the Supreme Court



Justice Robert Benham and his wife Nell enjoy the breeze during the Opening Night Festival.

of Georgia by Chief Justice Carol Hunstein, the Court of Appeals of Georgia by Chief Judge John J. Ellington, the State of the Senate by Sen. Bill Hamrick (chair of the Senate Judiciary Committee) and the House of Representative by Rep. Wendall Willard (chair of the House Judiciary Committee.)

During the plenary session, President Lester Tate delivered his outgoing remarks as required by the bylaws of the State Bar. A copy of these remarks can be found on page 44 of the *Bar Journal*.

Kenneth L. Shigley presided over the 237th Board of Governors meeting on Saturday, June 4.

Highlights of the meeting included:

- The Board approved the following presidential appointments to the State Disciplinary Board:
Investigative Panel
 District 5: Hubert J. Bell (2014)
 District 6: Delia T. Crouch (2014)
 District 7: Christopher A. Townley (2014)
Review Panel
 Northern District: J. Robert Persons (2014)
 Middle District: Jeffery Monroe (2014)

Southern District: Sharri Edenfield (2014)

Formal Advisory Opinion Board

At-Large: James Brian Ellington (2012)

At-Large: Edward B. Krugman (2012)

Georgia Assoc. of Criminal Defense Lawyers: Theodore Freeman (2013)

Georgia Trial Lawyers: Jack J. Helms Jr. (2013)
 John Marshall Law School: Jeffrey Alan Van Detta (2013)

Mercer University School of Law: Patrick E. Longan (2013)

Review Panel: Ralph F. Simpson (2012)

University of Georgia School of Law: Lonnie T. Brown (2013)

YLD: Christopher R. Abrego (2013)

- The Board approved the appointments of A. James Elliott and Joseph H. Fowler to the Chief Justice's Commission on Professionalism for three-year terms.
- The Board approved President Shigley's 2011-12 appointments to Standing, Special, Program and Board Committees.
- The Board elected Cliff Brashier



2010-11 President Lester Tate presents the 2011 Dan Bradley Award to James Phillip "Phil" Bond during the plenary session of the Annual Meeting.



YLD President-Elect Jonathan B. Pannell and his wife Kimberly enjoy one of the many Gala events.

as executive director for the 2011-12 Bar year.

- The Board approved the reappointments of Damon E. Elmore and Elena Kaplan to the Georgia Legal Services Board of Trustees for two-year terms.
- The Board approved the proposed 2011-12 Elections Schedule.
- As required by Article V, Section 8 of the Bylaws, the Board:
 - authorized the president to secure blanket fidelity bonds for the Bar's officers and staff handling State Bar funds.
- Pursuant to Article V, Section 6 of the Bylaws, the Board:
 - Directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, Ga., but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the

State Bar of Georgia, said depository currently being Merrill Lynch, and that the persons whose titles are listed below are authorized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: treasurer, secretary, president, immediate past president, president-elect, executive director, general counsel, and officer manager provided either the president, secretary, or treasurer shall sign all checks or vouchers, and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so as said banks are concerned until they are notified

in writing, acknowledge receipt thereof.

- Designated the employment of an independent auditing firm, to be selected by the Executive Committee after recommendation of the Audit Committee, to audit the financial records of the State Bar for the fiscal year 2010-11.
- The Board received a copy of the future meetings schedule.
- The Board received copies of the Executive Committee Meeting minutes of March 11 and April 2.
- President Shigley addressed the Board of Governors and presented an overview of his proposed program of activities for the 2011-12 Bar year (see page 48.)
- Treasurer Buck Ruffin provided a report on the Bar's finances and investments, and the Board received the income statement by department for the 9 months ending March 31.
- Kirsten L. Widner provided a report on the Child Protection and Public Safety Act, a significant rewrite of Georgia's 40-year old Juvenile Code. With support

from both Georgia's governors and Speaker of the House, a vote is expected to be taken during the 2012 legislative session as HB 641. The product, which was a five-year undertaking, is the work of JUSTGeorgia, a statewide coalition of children's advocacy organizations and individuals, and reflects the ideas and opinions of stakeholders from across Georgia. This will be a legislative action item for the Board of Governors at its October meeting. The bill and a summary of changes from the existing law can be found at justgeorgia.org. President Shigley indicated that a copy also will be placed on the Bar's website for review and comment.

- Executive Committee elections were held with the following results: Rita A. Sheffey, Robert J. Kauffman, Brian D. Rogers and David S. Lipscomb.
- Hon. Diane Bessen presented a report on a proposed uniform rules on electronic court filing. The rules establish a uniform statewide electronic system accessible by the bench, members of the bar and the public for filing, maintenance and inspection of court records, and proposes statewide policies and procedures governing electronic filing in all actions in the courts of Georgia. This will be an action item for the Board at its August meeting, and will be placed on the Bar's website for review and comment.
- David Lipscomb provided a report on proposed changes to the rules for the Fee Arbitration program. This will be an action item for the Board at its August meeting.
- YLD President Stephanie Kirijan presented a report on the activities of the Young Lawyers Division. As part of the YLD's 65th anniversary celebration this year, a room at the State Bar will be dedicated as the YLD Presidents Boardroom to pay tribute to the achieve-

ments of the organization, and a gala will be held in conjunction with the 2012 Annual Meeting in Savannah. The YLD will continue to focus on diversity through inclusive leadership and remains committed to sustaining a professional association where all members feel welcomed, valued and engaged. She announced that the Summer Meeting will be held in conjunction with the August Board of Governors meeting; the Fall Meeting will be held in Athens for the UGA/Auburn game; the Signature Fundraiser will be held in January during the Midyear Meeting, and the Spring Meeting in May will take place in Washington D.C. and feature a U.S. Supreme Court swearing-in. She thanked Immediate Past President Michael Geoffroy for his success in expanding the reach and participation of the YLD across the state, and for helping her with her transition to the office of YLD president.

- Immediate Past President Tate provided an update on the 2011 legislative session. Successful bills included the evidence code rewrite, the reduction in appel-

late filing fees, changes to jury composition statutes and indigent defense. He recognized and thanked Charles Tanksley for his assistance, as well as Tom Boller, Rusty Sewell and Matthew Wilson. He also urged Board members to provide support to the Bar's friends in the Legislature. He also reported that he and others had met with federal members of the Georgia delegation and officials from the Department of Defense and Department of the Army to discuss the closure of Forts Gillem and McPherson, which will negatively impact access to legal assistance to veterans and service members in the greater Atlanta area.

- The Board received a written report on potential agenda items for the 2011 Annual Meeting of the ABA House of Delegates.
- President Shigley announced that as directed by the Boards of Trustees of the Georgia Bar Foundation and the Lawyers Foundation of Georgia, the Lawyers Foundation of Georgia will now be administered by the staff of the Georgia Bar Foundation. This is due in large part to the economic downturn



(Left to right) Nancy and Jeff Bramlett (Bar President 2008-09) join Cheryl and Bryan Cavan (Bar President 2009-10) at the Inaugural Gala.



(Left to right) YLD Newsletter Co-Editor Jennifer Blackburn and YLD President Stephanie Joy Kirijan enjoy themselves at the Inaugural Gala.



Platinum Soul once again provided the music in the Dance Room as brave attendees showcased their moves to the Electric Slide.



(Left to right) Cicely Barber and Nicole Marchand network during the Supreme Court Reception prior to the Swearing-In Ceremony.



2010-11 YLD President Michael G. Geoffroy and his wife Tara at the Opening Night Festival with their sons, *(left to right)* Mac and Hudson.



The 2011 Tradition of Excellence Award recipients (left to right) Mathew H. Patton, (defense), Cathy Cox, (general practice), Nicholas C. Moraitakis, (plaintiff), Hon. M. Yvette Miller, (judicial) and Section Chair Joseph Roseborough, who presented the awards at the at the General Practice and Trial Section breakfast.



(Left to right) Brian Basinger receives the Best New Entry Award for the Stonewall Bar Association from 2010-11 President Lester Tate.



(Left to right) Winners of the 2011 Tennis Tournament Caroline Brashier (Women's Winner), Hon. R. Rucker Smith (Men's Winner) and Jeanne Eidex (Women's Runner-up).



(Left to right) 2011-12 Secretary Patrise Perkins-Hooker, Treasurer Charles L. "Buck" Ruffin, President-Elect Robin Frazer Clark are sworn-in by Chief Justice Carol Hunstein during the Inaugural Gala.



2010-11 President Lester Tate presents the Employee of the Year Award to Donna Davis, senior administrator in the Consumer Assistant Program.

and will allow the entities to operate more efficiently.

- Following a presentation by Treasurer Ruffin, the Board of Governors, by majority voice vote, approved the 2011-12 State Bar (3rd draft) budget as submitted.
- Following a report by Paula J. Frederick, the Board of Governors took the following actions on proposed disciplinary rules changes:
 - Rule 4-109 (Refusal or Failure to Appear for Reprimand, Suspension)- Approved by unanimous voice vote
 - Rule 4-402 (Formal Advisory Opinion Board) - Approved by unanimous voice vote
 - Rule 5.5 (UPL, Multi-jurisdictional Practice of Law):
 - Amendment to Rule 5.5(f)-Approved by unanimous voice vote
 - Comment[14]- Approved by majority voice vote
- Following a report by Paula Frederick, Immediate Past President Tate discussed

the need for the creation of a Special Master position, the Board of Governors, by unanimous voice vote, approved proposed Rule 4-209, and related changes to other rules, to create a Coordinating Special Master.

- The Board received written reports from the Consumer Assistance Program, the Fee Arbitration Program, the Law Practice Management Program, the Law-Related Education Program, the Unlicensed Practice of Law Program and the Transition into Law Practice Program.
- The Board received a written report from the Chief Justice's Commission on Professionalism.
- The Board received a copy of the 2011 State Bar of Georgia Election results.
- The Board received a copy of the Georgia Lawyers HealthPlan Advantage Participation Report through May 2, from BPC.
- The Board received a copy of an *Atlanta Journal Constitution*

article regarding federal budget cuts for the Legal Services Corporation.

- The Board received a list of Georgia Bar Association and State Bar of Georgia presidents.
- The Board of Governors received information on EZLaw, a new legal service provided by LexisNexis that brings estate planning clients to lawyers through its website. Consumers self-prepare a draft legal form on EZLaw.com and send it for an attorney to review, and EZLaw collects payment on behalf of the lawyer. EZLaw is currently available in Pennsylvania. The Office of the General Counsel is gathering more information about this new service.
- The Board received a written report on the status of the Military Legal Assistance Program dated May 9, 2011.
- The Board of Governors received written annual reports from the following Sections: Appellate Practice, Business Law, Corporate Counsel Law, Creditors Rights, Employee Benefits, Family Law, Fiduciary Law, Franchise and Distribution Law, General Practice and Trial, Judicial, Labor and Employment Law, Nonprofit Law, Real Property Law, Technology Law, Tort and Insurance, and Workers' Compensation.
- David Cannon Jr. provided an update on Fastcase offering county law libraries a discounted subscription rate. The more counties that sign on to use Fastcase, the individual rate for each county will reduce even more. He indicated that he plans to notify the other law libraries around the state about the offer.

Annual Awards

During the plenary session, President Lester Tate recognized specific Bar members and organizations for the work they have done over the past year.

Chief Justice Thomas O. Marshall Professionalism Award

The 10th annual Chief Justice Thomas O. Marshall Professionalism Awards, presented by the Bench and Bar Committee of the State Bar of Georgia, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the **Hon. H. Arthur McLane**, Senior Superior Court Judge, Southern Circuit, Valdosta, and **Linda A. Klein**, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Atlanta.

Georgia Association of Criminal Defense Lawyers Awards

The Georgia Association of Criminal Defense Lawyers (GACDL) announced that the 2010 GACDL award was presented to **Sarah Geraghty**.

The 2010 COTY Award was presented by GACDL to **Gerard Kleinrock**, **Sarah L. Gerwig** and **Leigh S. Schroepe**.

GACDL presented 2010 President's Awards to **Jill Anderson Travis**, **Don Samuel**, **Laura Hogue**, **Scott Key**, **Jennifer Carter** and **Terry Everett**.

Local and Voluntary Bar Activities Awards

The **Thomas R. Burnside Jr. Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient was **Bob Reinhardt**, nominated by the Tifton Judicial Circuit Bar Association.

The **Award of Merit** is given to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serv-

ing their communities. The bar associations are judged according to size.

- 101 to 250 members: **Dougherty Circuit Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Atlanta Bar Association**

The **Best New Entry Award** is presented to recognize the excellent efforts of those voluntary bar associations that have entered the Law Day or Award of Merit categories for the first time in four years. This year's recipient was the **Stonewall Bar Association**.

The **Best Newsletter Award** is presented to voluntary bars that provide the best informational source to their membership, according to their size.

- 101 to 250 members: **Dougherty Circuit Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Georgia Defense Lawyers Association**

In 1961, Congress declared May 1 as Law Day USA. It is a special time for Americans to cel-

ebate their liberties and rededicate themselves to the ideals of equality and justice under the law. Every year, voluntary bar associations plan Law Day activities in their respective communities to commemorate this occasion. The **Law Day Awards of Achievement** are also judged in size categories.

- 101 to 250 members: **Blue Ridge Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Cobb County Bar Association, Inc.**

The **Best Website Award** is given to bar associations with websites that exemplify excellence in usefulness, ease of use, content and design in meeting the needs of the website's targeted audience.

- 101 to 250 members: **Blue Ridge Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 or more members: **Atlanta Bar Association**

The **President's Cup Award** is a traveling award that is presented annually to the voluntary bar asso-



(Left to right) Will, Jennifer and Tommy Duck relaxed at the Opening Night Festival.



Chief Justice Carol Hunstein administers the oath of office to 2011-12 President Kenneth L. Shigley in the presence of his family. (Left to right) Chief Justice Carol Hunstein, Sally, Anne, Ken and Ken Shigley Jr.

ciation with the best overall program. This year's recipient was the **Blue Ridge Bar Association**.

Pro Bono Awards

The **Dan Bradley Award** honors the commitment to the delivery of high quality legal services of a lawyer of Atlanta Legal Aid or Georgia Legal Services Program. It honors the memory of Georgia native and Mercer Law graduate Dan J. Bradley, who was president of the federal Legal Services Corporation.

The 2011 Dan Bradley Award was presented to **James Phillip "Phil" Bond** in recognition of his dedication to access to justice for low-income Georgians, for his leadership in advocacy and for a career that reflects commitment to professionalism and quality legal services.

The **H. Sol Clark Award** is named for former Court of Appeals of Georgia Judge Clark of Savannah, who is known as the "father of legal aid in Georgia." The prestigious Clark Award honors an individual lawyer who has excelled in one or more of a variety of activities

that extend civil legal services to the poor.

The State Bar of Georgia Access to Justice Committee selected two recipients for the 2011 H. Sol Clark Award, **Thomas F. Richardson**, for his deep commitment to pro bono services in the Macon area; his role as mentor to legal services attorneys; his willingness to share his time and talents in important and complex pro bono litigation; and his devotion to professionalism and service; and **Jeffrey J. Nix**, for his dedication to, and passion for, justice; his assistance in building and nurturing pro bono programs for the poor; and his personal commitment to many individual pro bono clients.

The **William B. Spann Jr. Award** is given each year to a local bar association, law firm or community organization in Georgia that has developed a civil pro bono program that has satisfied previously unmet legal needs or extended services to underserved segments of the population. The award is named for a former president of the American Bar Association and

former executive director of the State Bar of Georgia.

The State Bar of Georgia Access to Justice Committee presented the 2011 William B. Spann Jr. Award to the **Georgia Asylum & Immigration Network**, also known as GAIN. The committee recognizes GAIN, a nonprofit legal advocacy program, for providing critical legal assistance to immigrant victims of human trafficking and violence in obtaining lawful permanent residence; for providing attorneys with pro bono training and opportunities to assist marginalized clients; and for commitment to equal access to justice under the law.

The **A Business Commitment Award** is presented by the State Bar of Georgia Pro Bono Project to honor the business law pro bono contributions of an individual lawyer, corporate legal department or law firm to the nonprofit community and community economic development sector in Georgia.

The 2011 A Business Commitment Award was presented to **Valerie P. King** for her deep commitment to pro bono business legal services for the nonprofit sector as evidenced by the many pro bono business law matters she has handled, and by her generous board service and guidance to legal advocacy programs that create pro bono business law opportunities for business lawyers who would otherwise find it difficult to identify pro bono opportunities for service.

Section Awards

Section awards are presented to outstanding sections for their dedication and service to their areas of practice, and for devoting endless hours of volunteer effort to the profession:

- **Section of the Year:**
Labor & Employment Law Section, Jay Rollins, chair
- **Awards of Achievement:**
Corporate Counsel Law Section, Janet E. Taylor, chair
Creditors' Rights Section,

Harriet C. Isenberg, co-chair,
Janis L. Rosser, co-chair.

Following the Section awards, Tate presented the Employee of the Year Award to **Donna Davis**, Senior Administrator in the Consumer Assistance Program.

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members in recognition for their commitment of service to the public, to Bar activities and to civic organizations. The 2011 recipients were: **Matthew H. Patton**, Atlanta (defense), **Cathy Cox**, Young Harris (general practice), **Hon. M. Yvette Miller**, Atlanta (judicial) and **Nicholas C. Moraitakis**, Atlanta (plaintiff).

Young Lawyers Division Awards

Award of Achievement for Outstanding Service to the Profession: **Shatorree Bates**, **Monica Dean** and **Orlando Pearson**.

Award of Achievement for Outstanding Service to the Bar: **Jennifer Blackburn**, **Jennifer Campbell**, **Jack Long** and **Sarah Madden**.

Award of Outstanding Service to the Public:

Marquetta Bryan, **Shiriki Cavitt**, **Tamera Woodard** and **Rachael Zichella**.

Award of Outstanding Service to the YLD: **Josh Bosin**.

Joe Dent Hospitality Award: **Tommy Duck**.

Dedication to the YLD Award: **Doug Ashworth**, **Avarita Hanson** and **Derrick Stanley**.

The Distinguished Judicial Service Award was presented to **Hon. Anne E. Barnes**.

The Ross Adams Award was presented to **Tina Shadix Roddenbery**.

The recipient of the YLD Ethics and Professionalism Award was **Tyronia M. Smith**.


Passing of the Gavel

Prior to the swearing-in ceremony, 2010-11 President Lester Tate presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of Georgia, to James B. Franklin Jr. (see page 58.) Franklin was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal progression in the state of Georgia."

Following the awards presentation, Chief Justice Carol Hunstein swore in Kenneth L.

Shigley as the 49th president of the State Bar. Shigley placed his left hand on the Bible and repeated the following:

I, Ken Shigley, do solemnly swear that I will execute the office of president of the State Bar of Georgia, and perform all the duties incumbent upon me, faithfully, to the best of my ability and understanding, and agreeable to the policies, bylaws and rules and regulations of the State Bar of Georgia; the laws and Constitution of the United States. So help me God.

Upon the conclusion of the business portion of the evening, attendees and their guests made their way to the dinner and entertainment rooms to celebrate the end of another successful annual meeting. A lavish buffet provided many dining options before guests ventured into the rooms featuring a martini bar, scotch and cigar bar and the dance club headlined by Platinum Soul. 



Jennifer R. Mason is the assistant director of communications for the State Bar of Georgia and can be reached at jenniferm@gabar.org.



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End of Year Report

by S. Lester Tate III

“Everywhere in life, the true question is not what we gain, but what we do.” – Thomas Carlyle

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term in office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from 2010-11 President S. Lester Tate III on his year, delivered June 3 at the State Bar’s Annual Meeting.

Thank you, Bryan Cavan, it’s been great working with you this year. I told Ken Shigley if I could do half as good a job for him as past president as you have done for me, I would be proud of myself. I really appreciate all that you’ve done for me this year.

Although it says in the program that I am going to give an address, I really don’t have an address. I just have a little talk, and it’s mainly just some words of thank you that I want to say. Every place I’ve gone this year, I’ve started out by thanking the folks for the opportunity I’ve been given to serve as your Bar president. I truly don’t believe that I have ever had anything that honored me as much as being able to represent 42,000 lawyers.

The other thing that I usually did in these talks to local bars was to tell the Smythe Gambrell story. Cliff Brashier asked me a moment ago, “How many of these

folks have heard the Smythe Gambrell story?” I said, “I don’t know, but I’m going to tell it again.” And I’m going to tell it because there’s nothing wrong with enjoying things again and again. After all, what if you could only sing a song one time? What if you could only read a book or watch a movie one time?

Cliff kind of baited me into doing that and one of the reasons that I came to like the Smythe Gambrell story so much was because Cliff laughed harder and harder every single time I told the story. I am also mindful that we pay Cliff a lot of money to laugh at the president’s jokes. So when he’s laughing really hard, Ken, he’s earning his money, just remember that.

But the Smythe Gambrell story became sort of a metaphor for my presidency. Some of you may remember Smythe Gambrell. He was known for having mandatory partners’ meetings at 7 a.m. on Saturday. He was president of the American Bar Association and was known to tool about Atlanta in his 1955 Cadillac with fins on the back.

One day in the mid-1950s, Smythe Gambrell was driving through Five Points one day with an associate sitting in the front seat. They came up to a red light, and he pulled a little bit too far up into the crosswalk. So he had to put the car in reverse and back up, then put his foot on the brake and wait for the light to change. Meanwhile, a car pulled up behind him. The light turned green and, always in a hurry, Mr. Gambrell floored the car, which was still in reverse, and “wham!” it hit the car behind him. Because he was ever the diplomat and expected a lot out of his associates, he reached in his pocket and took out a \$100 bill and told the asso-

ciate, "Go back there and see if you can settle this case," he said. "They might be mad at me."

So the associate hopped out and went to the other car, which was an old jalopy driven by a student from Georgia Tech. The student got out and saw that there wasn't a whole lot of damage to his jalopy and that there was a guy looking to give him a \$100 bill. Needless to say, the associate was able to settle the case pretty quickly. Meanwhile, Mr. Gambrell had sat there with his foot on the brake, looking in the rearview mirror at the ongoing negotiations. The associate came back to the car and said, "Mr. Gambrell, I've taken care of that." By this time, though, the light had turned red again, forcing them to sit through another cycle of the red light.

Perhaps because he was distracted by the negotiations, Mr. Gambrell had again neglected to put the car in drive, and when the light turned green, he floored the car again and "bam!" For a second time, he had struck the same car. He again took out another \$100 bill and handed it over to the associate and said, "See if you can take care of this one, too."

If you think about Mr. Gambrell holding his 7 a.m. partners' meetings, you know he was not the kind of guy that an associate would ask, "You dummy, have you put the car in drive this time?" So the associate decided he would try to help Mr. Gambrell out in such a way that wouldn't offend him. The associate went back to the other car, where the college kid was happy to see another \$100 bill coming his way. And after the second case was settled, the associate said, "Friend, we seem to be having a little trouble with our automobile here. Do you think you could back up just a little bit until we can get away from the red light?" The student looked at the \$200 in his hand and he said, "Hell no, buddy, I'm sitting here all day long. This is the best deal in town."



Photo by Sarah I. Coole

2010-11 President S. Lester Tate III addresses members and guests during the business portion of the Presidential Gala.

Now, I told that story at a bunch of local bar meetings as sort of a metaphor for what I thought Bar presidents were supposed to be doing, and that's keeping everything moving in the right direction. But it's something, like Mr. Gambrell, we all need help with from time to time. This year, I feel like we have accomplished a lot of great things. We have paid off the debt on the Bar Center five years early. That was a project that I first became involved in when I was 34 years old and got elected to the Board of Governors. The first vote I ever cast was to buy the building, and it was far from clear at that time that we could afford it. As we have moved forward over the years, we had to keep everything moving in the right direction. It wasn't anything I did. It was things that Bar presidents and other Bar leaders before me had done. I just happened to be the one that was privileged to carry the ball across the goal line.

Take the Evidence Code legislation that we passed during this year's session of the General Assembly; we had worked on that for about 20 years. In fact, it first passed the Georgia Senate when Gov. Nathan Deal was president *pro tem*, so we've been working on

that project for a long time. And in fact, last year we got down to the two-yard line and we couldn't get it across the goal line. But I was privileged this year by virtue of all the support and all the things that other people had done to be one of the ones to help carry the ball into the end zone.

We have done that, not just with our Evidence Code, but also with the statewide jury bill that you heard Chief Justice Carol Hunstein talk about. We had to reboot our public defender system. That had kind of gone awry and was not what anyone really envisioned. I was very grateful to be able to work with Rep. Rich Golick, who is not here today, and Bryan Cavan, who was a huge part of that project. Some people within the Bar said, "Why is the Bar supporting this bill?" It's because it's a first step toward trying to get adequate funding for the public defender system. And before the Legislature adjourned, Rep. Golick and Rep. Edward Lindsey introduced a proposed Constitutional amendment, although I don't yet know if that's the direction the Bar wants to go in, for dedicated funding. So the folks that we've been able to work with down there are good to their word. They're trying to help us,

and we're trying to help them. We've been moving in the right direction thanks to a lot of help from a lot of people.

We have also been able to continue to serve Georgia's students, over 10,000 this year, who come through our Journey Through Justice program at the Bar Center. The students go to a mock law school in the morning followed by a tour of the Law Museum. They sometimes get up at 4 o'clock in the morning to come to the State Bar to learn about the third branch of government and judicial independence. After participating in the program, a student wrote the Bar and said he had an epiphany about what he wanted to do with his life. He said after going through the Journey Through Justice program, he had decided he wanted to be a bailiff. But he had a backup plan, too. He said if that didn't work out, then he wanted to be a lawyer.

The Journey Through Justice program is made possible because we have what I consider to be a state capitol-quality building. It is a building that people feel has a lot of gravitas; it has a lot of meaning. When kids come there, they feel like they have gone someplace special. And because we had so many kids coming through the Bar Center, we were getting to the point where we weren't able to service lawyers on the third floor. Fortunately, we received a grant from the Commission on Continuing Lawyer Competency for half a million dollars, and we have now built out the sub-basement so we can continue to service the kids as well as the attorneys. So again, we've been able to keep things running in the right direction, but not because of anything I've done, but because of things other people have done.

I think it's probably customary when you're on the way out the door to give some words of advice, or criticisms, and I'm certainly going to take advantage of that opportunity. What I want to tell you is that I firmly believe, having gone to Southern Conference of Bar

Presidents meetings and National Conference of Bar Presidents meetings that your State Bar is a leader in the United States. For example, a report compiled by the Washington Economics Group this year showed the economic cost to Georgia when the courts were not fully funded. We were able to roll that report out at an American Bar Association meeting in February in Atlanta. Bill Rankin of the *Atlanta Journal-Constitution* wrote an article about it, and I wrote an op-ed piece. Rep. Wendall Willard and I went on "Primetime Politics" on public television and spoke about the report. This report and the attention it attracted were key in building public support for the judiciary this legislative session. Because of our success, I received a call from the National Conference of Bar Presidents. They wanted me to come to talk to their task force on judicial funding about what other states can do in order to advocate legislatively for better judicial funding.

We are a leader. We have a great Bar. Sometimes there's a tendency to look at the Bar and take the attitude that we're going to fix something whether it's broken or not. It reminds me of what Sen. Richard Russell once said about Hubert Humphrey. "Hubert's a nice guy. I've served in the Senate with him, but he's the only man I know who's got more solutions than America's got problems."

There are plenty of things that we can do to improve our Bar, but at its core level it functions well. We have some of the lowest dues of any Bar in the country. We have some of the most effective programs of any Bar in the country. And we have programs that other Bars are striving to emulate. So my advice to you is work hard, be progressive, try to do new things, but don't ever change the essential character of what we have as a State Bar, because by and large we're getting it right. And we're getting it right because of the leadership we have; we're getting it right because of folks like Cliff Brashier. You

know virtually anybody could look good as president listening to Cliff Brashier, and that's a fact that I think all past presidents will agree on with me.

That's what I have to say about the Bar, but I think maybe at this point what I'd like to do is take a moment for what might be considered just a point of personal privilege to say a word of thanks. As I've said to you before, and I shared with you last year when I took office, nobody in my family had ever gone to college, much less been a lawyer. So at the ripe old age of 23, I found myself working on Capitol Hill for Congressman George "Buddy" Darden, and I think I probably had the highest paying job that anybody in my family ever had. I certainly had the only job in Washington that anybody in my family had ever had. And yet somehow, somewhere within me was the idea that I really, really wanted to be a lawyer.

So, if you were about 150 miles west of here, in Columbia, 26 years ago, you would have seen a guy, a skinny 20-something who had quit the best job he ever had and packed everything he owned in a U-Haul trailer to go to law school. My hope was just that I'd get through and I'd be able to be a member of the Bar one day. I made it through, and in 1996 I was privileged, after practicing law in Atlanta for about three years and hanging out a shingle and being a sole practitioner for about five years in Cartersville, to get elected to this Board of Governors to represent the Cherokee Judicial Circuit.

When I came to the Board, I was 34 years old; I had a 4-year-old daughter and a 7-year-old son. That 4-year-old daughter graduated from high school two Friday nights ago; my son is already in college. But to you, members of this Board and members of this Bar, I think that I owe everything, because you have helped me raise my kids. You have referred cases to me; you have given me opportunities that I would never, ever have had, had I not

Thank you for all you've done to me, for me and for my family over these years, I can never thank you enough. Thank you very much.

been elected to this board; had I not packed that U-Haul up and gone to law school all those years before. And there simply are no words that I can say to you to thank you for the opportunities you have given me.

I think when you look at what we all have in common, because we all come from different walks of life, we all come from different practices, but there is one thing that I think is very important to every lawyer. When you see a lawyer like Wendall Willard, and I'm going to do the math, Wendall, I was 4-years-old when you were admitted to the Bar, and when I look at somebody like Wendall and the passion that he still has for practicing law, I know that passion is really a passion for justice; that you want people to be treated right, that you want to have a government and a court system that makes sure that people get treated right.

Martin Luther King said that "the moral arc of the universe is long, but it bends toward justice." And yet Martin Luther King's own life shows us that rarely does it completely bend toward justice in one person's lifetime. As lawyers what we try to do each and every day is to reach up and bend that arc of justice just a little bit closer for each individual that's out there, for each one of our clients. But if I could commit the sacrilege of quoting Toby Keith at the same time I quote Martin Luther King, I can tell you what a difficult job that can be. Toby Keith said, "Justice is the one thing you should always find, but you gotta saddle up your horses and draw a hard line." So the work of trying to get justice is sometimes very, very difficult, and you do have to work very hard for it. And as for me, and I think for most lawyers, we realize you're not always going to get justice, but that it's part

of the fight for justice that gives you that feeling, that passion to go on.

I think sometimes about the great scene in the movie "To Kill a Mockingbird," when Atticus Finch had lost his case. He didn't get justice, and as he walked out of the courtroom and all of the African-Americans were gathered up in the balcony because they weren't allowed to have access to the courtroom floor. Atticus' children were also there, and the reverend looked down and he said to Atticus' daughter, "Ms. Scout, stand up, your father is passing." So even though he had failed in the cause of justice, people knew what a fight that he had made and they respected him for it.


I don't know if any of you have ever read the "Spoon River Anthology;" it's a set of poems written by a guy named Edgar Lee Masters, who's probably not very well known for being a lawyer, although at one point he was Clarence Darrow's law partner. It tells the story of people speaking from the grave in the small fictional town of Spoon River, Ill. Not surprisingly, a lot of those folks are lawyers. They tell how they died; they tell what life meant to them and they tell things about other folks in town. One of my favorite characters, but yet sort of one of the scarier characters to me, is a small-town lawyer by the name of Jefferson Howard. Howard is one of the lions of the bar at Spoon River, and he talks about his life there. The poem starts out:

My valiant fight! For I call it valiant,
With my father's beliefs from old Virginia:
Hating slavery, but no less war.
I, full of spirit, audacity, courage
Thrown into life here in Spoon River,

And he goes on and talks about all the fights he's had as a lawyer. Fights with bankers and merchants and how they hated him but feared him because he was a lawyer. He talks about raising his children in Spoon River and at the end of the poem he talks about how he died:

Then just as I felt my giant strength
Short of breath, behold my children
Had wound their lives in stranger gardens—
And I stood alone, as I started alone
My valiant life! I died on my feet,
Facing the silence—facing the prospect
That no one would know of the fight I made.

That, I am afraid, is the fear of every small-town lawyer, that you've made the fight but that nobody knows the fight you made—that you don't have your Atticus Finch moment. I am proud to say today that I know the fate of Jefferson Howard is not my fate because the people gathered in this room know the fight I've made because you've stood there toe-to-toe with me; you made that fight with me, you have done it every day since I was admitted to the Bar in 1987; since I came on this Board of Governors in 1996.

Thank you so very much for standing toe-to-toe with me to make this fight. Thank you for all that you've done to give me this opportunity. Thank you for all you've done to me, for me and for my family over these years, I can never thank you enough. Thank you very much. 



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Stewardship, Calling and Love

by Kenneth L. Shigley

The following is excerpted from Kenneth L. Shigley's presidential speech during the 2011 Annual Meeting at Myrtle Beach, S.C.

Madame Chief Justice, Chief Judge Ellington, members of the judiciary and the Legislature and Board of Governors, fellow Georgia lawyers and friends, you have given me an honor far beyond anything I possibly could have deserved.

When I hung a shingle at a former blacksmith's shop in Douglasville 32 years ago, with no windows, no insulation, a borrowed desk, a borrowed typewriter and just enough buckets to put under all the leaks in the roof, nobody would have foreseen this. Neither did I. I didn't foresee it until just a very short time ago. I thank you from the bottom of my heart.

I really want to thank the presidents who have come before me: Lester Tate, Bryan Cavan, Jeff Bramlett, Gerald Edenfield and the last 15 or so before them, with whom I worked less directly. They have been terrific mentors and friends, and I will keep them all on speed dial in the coming year. Anything that we do right—any success that we have in the coming year—is largely due to the groundwork they have laid. We begin this year with a terrific situation in terms of the financial stability of the Bar and in terms of relationships with the Capitol and with the judiciary. So I'm



Photo by Sarah I. Coole

2011-12 President Kenneth L. Shigley speaks to members and guests at the 2011 Annual Meeting.

starting out ahead of the game due to their work.

As we look to the coming year, there are three things that I want to focus on: stewardship, calling and love.

About 235 years ago, a bunch of guys—and they were all guys at that time—in knee britches and little funny ponytails, gathered in a cramped, hot, probably smelly room in Philadelphia. They issued a declaration that referred to the inalienable rights endowed by our Creator. Those rights have since been secured by the blood of patriots and ground out and refined by the conflict and labor of generations of Americans striving for a better life for their children and for themselves. Now we are the stewards of that.

I spent years working with my son's Scout troop. Every time we broke camp we lined up the boys, fingertip to fingertip, and swept the campsite area looking for trash. Inevitably, they would find little bits of debris that had been there probably for years and years, and removed it. We tried to impress upon them the importance of leaving the campsite a little cleaner than they found it. As lawyers and judges, as stewards of this system of law and justice, we need to leave our campsite—the legal system, the legal profession—a little cleaner than we found it, and pass it on to our children and our grandchildren a little better.

There are a number of ways we can approach that. In our brief period of time over the next year, some of the things I want us to focus on in the area of stewardship of the system start with the court system. What do we want the court system to look like in 20 years when most of us—at least I—will hopefully no longer be practicing law, and how do we get from here to there?

We are appointing a Next Generation Courts Commission chaired by Lawton Stephens, a member of this Board who is a Superior Court judge in Athens

and a former legislator, to look at those broad questions about the court system. We're not quite ready to release the list of members of that commission yet because we want to take our time, get it right, and touch all the appropriate bases in the judiciary and elsewhere as we do it. Among other things it will consider: how do we get a statewide e-filing system in the state trial courts comparable in function to what we see in the federal courts? We've had a committee chaired by Judge Diane Bessen that's been working the last couple of years, coming up with a proposed uniform rule that you will hear about today. But next we have to figure out how we are going to build it. How do we fund it? How do we run it? How do we actually do it? That's one of the things this commission will look at.

Other items will include dealing with case flow management and, frankly, virtually all questions about public policy and the running of the judiciary will be in the scope of this. We'll be touching base with all the appropriate people in the judicial branch.

Alabama, where I was born, has had for several years an e-filing system in its trial courts. Some of the counties in Alabama now do more extensively what a few of our judges in Georgia are doing, controlling case flow management with early status conferences and scheduling orders. One thing we want to do in the next year is catch up with Alabama. It's a shameful thing to say in Georgia—that we have to catch up with Alabama—but let's work on it.

Another thing that we will be working on this year really starts at the Capitol. Gov. Deal, Chief Justice Hunstein, Lt. Gov. Cagle and Speaker Ralston got together at the beginning of the last legislative session to propose a Criminal Justice Reform Council to look at Georgia's sentencing laws. Lester Tate and I met with the governor, and I said, "Well, Governor, I thought about appointing a Bar

committee on that, but you beat me to it. Now I guess I don't have to." He turned to us and he said, "No. You go ahead anyway." And then he put me on the council.

We have a Committee on Criminal Justice Reform chaired by Pat Head, a member of this Board who is also the district attorney of Cobb County and outgoing president of the Prosecuting Attorneys Council. Pat convened the first meeting of that committee this past Tuesday. We had a packed house with prosecutors, judges and defense attorneys beginning to look at the questions dealing with sentencing laws, these mandatory minimum sentences that tie judges' hands, community-based corrections alternatives and so forth. Seasoned district attorneys made the point that judges need to be able to have the discretion to distinguish between a 17-year-old with two beers and a squirt gun and a 35-year-old with an AK-47, as one example.

Our committee will work very closely in conjunction with the state Council on Criminal Justice Reform and the Pew Center on the States, which is working with state governments around the country on these questions. The focus in criminal justice always has to be on public safety, but we can be both tough on crime and smart on crime, seeking cost effectiveness in this as in every other government program.

That is very closely related to indigent defense, which the Bar has been working on for years and years. Past President Bryan Cavan has graciously agreed to chair the Indigent Defense Committee as we move forward this next year. During the last session of the Legislature, with Rep. Rich Golick taking the leadership, progress was made on the governance aspect of that. It may not be perfect, but perfect is the enemy of the good and it's better than it could be. And this next year I expect that our effort will go forward with trying to secure

a reliable income stream for funding indigent defense, and Bryan is the person that needs to be there for that continuity.

Another issue that is closely related to that is the Juvenile Code. You will hear a report on that today and the endorsement of that legislation will be on your agenda in August. That has been a labor of love for a number of years, starting with a project of the Young Lawyers Division, and going forward with Georgia Applesseed and JUSTGeorgia to come up with that legislation. It will be out for a comment period this summer and I encourage you to look at it closely, to ask anyone in your circuit who works closely with the juvenile justice system to examine it, flyspeck it, let us know if there is anything that needs to be fixed before we vote on whether to endorse it in August.

Another part of stewardship is judicial evaluation. We've seen in the last couple of years some problems with a very small percentage of judges, and our Statewide Judicial Evaluation Committee will continue to work closely with Gov. Deal's Judicial Nominating Commission to screen applicants for judgeships.

Legislation is an area in which we are very active. Lester was down at the Capitol practically full time during the last session, dealing with the House and Senate Judiciary Committees and leadership. He was really in the trenches and finally got the Evidence Code passed after more than 20 years of effort by the Bar. Working closely with Rep. Wendell Willard, Sen. Bill Hamrick and others, Lester carried the ball over the goal line. Our Advisory Committee on Legislation this year will be chaired by Chuck Clay, a former Republican state senator from Marietta. The vice chair will be Nick Moraitakis, my classmate and a former Democratic state representative from DeKalb County. We've got an awful lot of good people engaged in that work.

Sandy Bair, a member of this Board and a former teacher, will chair the Law-Related Education Committee, a descendant of the program that she was involved with as a teacher that got her interested in law. Hank Fellows will chair the Committee on Judicial Procedure that will look at some of the nitty-gritty details of how we actually get stuff done in court. Tony DelCampo will chair a committee on court interpreters to try to expand and improve upon the availability of interpreters in the less common languages. It's fairly easy to get a Spanish interpreter, but when you start looking for one in Mende or Bangla or Urdu—which are in our population in the metro-Atlanta area and in other places—it gets a lot harder, so we'll have a very diverse committee working on that.

Chris Phelps will continue with the Finance Committee. Frank Strickland will chair the Programs Committee to look at the cost-effectiveness of some of the things we have in our budget and try to bend that cost curve down going forward. Bob Persons, a member of this Board—in another aspect of stewardship—will chair a committee on risk management and disaster preparedness. Pat O'Connor, one of the most experienced and wise members of this Board, will chair the Long Range Planning Committee to look at some of the long-term trends in the legal profession that face us all and how that affects both the profession in Georgia and the way the organized bar reacts to it. We have issues in our profession of outsourcing internationally, of commoditization of legal services, and increasing pro se legal work, and Pat's committee will look at those issues in depth.

The second theme is "calling." When we're working in the muddy trenches of the law, it's kind of hard to envision what we're doing as a high calling for service, but it is and it should be. Not all of us can find an aspect of calling in the law as pure

as Ben Mitcham of Gray, a member of this Board who is about to leave for a year in Haiti working with reconstruction down there; or Tom Rawlings from Sandersville, who is now working with the International Justice Mission on combating sex slavery in Guatemala. Not many of us find a calling that pure, but we can bloom where we are planted and find our calling—our high calling—in our own workplace, in our own environment, our own community.

A lot of lawyers find their calling in a small town. That's where I thought I would be, but somehow I wound up in Atlanta. Patrick Millsaps of Camilla will chair a new Main Street Lawyers Committee to provide guidance and mentoring for lawyers who want to go build their lives and careers in smaller communities around Georgia. Thomas Herman of Macon will chair the Local and Voluntary Bar Committee; one of the things that they will work on is developing a Bar Leadership Institute to help equip new officers of local bars.

The Law Practice Management Program Committee, chaired by Sally Akins from Savannah, will work on some new tools and new training materials, a lot of which we hope will be online. Our website will include resources to help lawyers who aren't going to take a day off from work to go to a law practice management seminar but can watch the program online and get that training. The Member Benefits Committee will be chaired by John Kennedy of Macon, and they're going to do a great job in expanding our menu of member benefits.

None of us know how long we have. We all know lawyers who drop dead in their 70s or 80s while still working, but I've known people in their 20s and 30s to whom that's happened. They hadn't planned on it. A guy with whom I shared a desk in the district attorney's office back in the 1970s hydroplaned into a tree when he was 29 on the way to court one morning. Now, when lawyers die or become disabled in the middle of their practice, as

solos particularly or in small firms, and they haven't made arrangements for what happens to their clients and to their practice, it is a problem for their estates and it is a problem for the Bar. Our General Counsel's Office has to go out and recruit people to be receivers, and it's a mess. We've had an Aging Lawyers Committee for a while that hasn't really gotten this done. We're going to call this the Continuity of Practice Committee, and it will be chaired by Craig Stafford from Hinesville, who has already hit the ground running. He has taken planning guides developed in the New York and North Carolina bars with which lawyers can simply take the forms, fill in the blanks, do a buddy system—you drop dead, I'll take care of your clients, I drop dead, you take care of my clients—so that we can have some planning for continuity of taking care of clients and practices.

A lot of lawyers these days are pursuing callings other than the

traditional practice of law. Damon Elmore, who is a member of this Board, will chair a Committee on Nontraditional Legal Careers that will include lawyers who work in business, consulting, academia, as a riverkeeper and so forth. They will look at ways the Bar can remain relevant to those lawyers who are in something other than traditional law practice, and their experiences in those fields can in turn benefit our profession.

Part of our calling and part of our stewardship is to protect the public from the predators in our midst. There's not much we can do about legal advertising in the large sense. We can't prohibit very much at all under the constitutional issues explained in a number of federal court decisions, but we can have disclosure and disclaimers requirements that are relevant to consumer choice. We will have a Fair Market Practices Committee that will look at those issues in conjunction with the Disciplinary Rules Committee to

try to develop some reasonable, rational disclosure and disclaimer requirements that would be bulletproof in court.

The third theme is "love." There are very few occupations that offer as much varied opportunity for service to people who are hurting as the law. People in main street practices don't lack for opportunities to help people on a pro bono or "low bono" basis. They come in off the street, you help them, and don't get paid or don't get paid much. People in a corporate environment or a big firm in a skyscraper may have to look a little harder for those opportunities. Our Access to Justice Committee will continue to be chaired by Tim Floyd at Mercer Law School, who will work closely with Mike Monahan on staff at the Bar office. One thing that they will do is very shortly develop a one-stop shop for pro bono opportunities in Georgia so somebody can just go straight from the home page of the Bar's website and find an array of pro bono opportunities



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The Lawyer Assistance Program (LAP) provides free, confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems, and mental or emotional impairment. Through the LAP's 24-hour, 7-day-a-week confidential hotline number, Bar members are offered up to three clinical assessment and support sessions, per year, with a counselor during a 12-month period. All professionals are certified and licensed mental health providers and are able to respond to a wide range of issues. Clinical assessment and support sessions include the following:

- Thorough in-person interview with the attorney, family member(s) or other qualified person;
- Complete assessment of problems areas;
- Collection of supporting information from family members, friends and the LAP Committee, when necessary; and
- Verbal and written recommendations regarding counseling/treatment to the person receiving treatment.

2011-12 Lawyer Assistance Committee

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**denotes non-attorney*

around the state. It's a small step and one we can do fairly easily.

The Georgia Legal Services Program was originally a creature of this Bar some 40 years ago. Georgia Legal Services works at the bleeding edge, dealing with Georgians who are at the bottom of the economic ladder. In this economy, as the needs have grown to deal with issues that most lawyers aren't going to take willingly because they don't get paid for it, the funding has gone down and it continues to go down. You have, at your tables, forms to fill out to start an automatic monthly donation to Georgia Legal Services. I ask you to join me in donating to Georgia Legal Services, on a painless monthly basis, to urge others in your communities and in your circuits to join in that, and to give until it feels good—not until it hurts, but until it feels good.

We have a Lawyer Assistance Program that deals in substance abuse and mental health issues in the profession. Some of the scariest statistics I've run across include a study at Johns Hopkins that studied 104 occupations for rates of clinical depression. Guess who's No. 1? We are. There's a study from the ABA that studied alcohol abuse in the legal profession. They found that 13 percent of all lawyers were consuming an average of six or more alcoholic drinks per day. We're not talking about a party every now and then, folks; we're talking about every day. That's a lot. I've had friends who I wish I had gotten into a program instead of being an enabler, before it was too late to save them and their careers. So I urge you that if you see lawyers who are on that slippery slope, contact the program and try to get them into it.


Finally, there is a new program that we'll be starting this year that will be chaired by Judge Bill Rumer from Columbus that we're borrowing from the Louisiana Bar, called SOLACE (Support of Lawyers/Legal Personnel—All Concern Encouraged). It was started

by U.S. District Judge Jay Zainey in New Orleans. Basically, what the SOLACE program does in Louisiana is when a member of the Bar or their law office staffs or the court staffs have a medical crisis in their family, this committee looks for something small and practical that can be done of meaningful assistance. I've been on their listserve for the past year. Most of the requests I see are where some family in the legal community needs a place to stay near a cancer treatment center or a transplant center on the other side of the country for a month, or something of that nature. One was for help in adapting a garage apartment for a law student who had become a quadriplegic.

One time they had a request that went out at 11 a.m. on e-mail from Judge Zainey, where a member of the Louisiana Bar had a catastrophic injury or illness in South Africa and did not have MedEvac coverage. By 1 p.m. that afternoon, they had a response from a doctor who had received it, forwarded from his brother-in-law who was a lawyer. This doctor was also a pilot and he said, two hours after the request had gone out, "I'll take my plane to Africa and I'll bring him home." I hope that this experiment will enable us to begin to cultivate more of a caring and loving community within the legal profession and the legal community in Georgia.

So: stewardship, calling, love. I hope that working together in these areas—most of which I'm delegating and saying, "Y'all go do it"—will help us to begin to work toward a more transcendent view of our lives and our professions as lawyers.

And remember that our worst mistakes are mathematical in that we miscalculate the brevity of life and the length of eternity.

God bless you all. 



Kenneth L. Shigley is president of the State Bar of Georgia and can be reached at ken@carllp.com.

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A Truck Wreck Lawyer Faces the 'Truck Wreck' of the Judicial System After Years of Court Budget Cuts

by Linton Johnson

As the newly installed 49th president of the State Bar of Georgia, Ken Shigley knows to expect the unexpected. Having served on the Executive Committee for the past four years, he had a front-row seat as his predecessors dealt with the almost-daily surprises that come with the job and require thoughtful but often swift decisions that will have an impact on the interests of more than 42,000 members.

Some of the issues will undoubtedly be more difficult than others. But if crisis management does become necessary, Shigley will benefit from formative experience gained long before he joined the Bar or even cracked open his first law school book.

In 1967, shortly after a federal judge ordered the combination of the formerly segregated high schools in Douglasville, the student council officers of Douglas County High School gathered around a ping-pong table in the Shigley family's basement. Younger generations might view that era through the movie "Mississippi Burning" and documentaries about the civil rights movement.

The group included two 16-year-old juniors, Shigley and current Douglasville attorney Joe Fowler. "We went through the school directory and identified the students most likely to have a disruptive reaction," Shigley said. "Then we divided that list according to which of us had a rapport with each one. Our plan was to call them and gauge their reactions. Most accepted it, though perhaps reluctantly. A few talked about what they were going to do with ax handles, switchblades and the like. Our script was to let them talk until they ran out of steam and then slowly respond with, 'You know, that's just what they want you to do.' Invariably those few responded, 'I never thought about that.'"

"Perhaps that helped let the steam off a few hotheads who reflected their parents' prejudices. In any event, we had no problems with the students during desegregation, even though the Klan was still active in the area," said Shigley. "But when I said that in 100 years race wouldn't matter and suggested integrating the 1968 prom—which wound up being held the weekend after Martin Luther King's funeral—there was a lot of pushback."

A few months later, the same group of student leaders approached the school board about proposing a bond issue to expand school facilities and organized a door-to-door student campaign to win passage. A year later, when Shigley was student council president and Fowler was senior class president, the process was repeated. "We got some schools built, and the facilities



Photo by John Mason

(Left to right) The Shigley family, Ken Jr., Sally, Ken and Anne, during the 2011 Annual Meeting at Myrtle Beach, S.C.

of our high school campus roughly doubled in the year after we graduated," he said.

Law was also in Shigley's blood by the time he graduated from high school and enrolled at Furman University in Greenville, S.C., but he is not certain how it got there. "In ninth grade registration, filling in a blank about our career plans, I wrote in 'law.' I don't know why; maybe it was from watching Perry Mason. I considered some different things—business school, teaching, the ministry—but I really didn't feel the call to do any of that. Law was always at the top of the list."

After graduating from Furman, he returned to Georgia to attend Emory Law School. "It wasn't as expensive then as it is now," he said. "I came out with \$8,500 in student debt, and thought it was a lot." At Emory, one of his closest friends was John C. Sammon, who preceded Shigley to the State Bar presidency in 1993-94.

His first job out of law school, in 1977, was with the district attorney of the Tallapoosa Judicial Circuit,

which then included Douglas, Haralson, Paulding and Polk counties. Almost immediately after graduation he was prosecuting felony cases across a four-county circuit. "It was a good experience, learning to stand up on my hind legs and try a case, and once toting an unloaded machine gun into the courtroom," Shigley said. "Back then, the bailiffs called lawyers 'colonel,' and some of the jury boxes still had spittoons."

When a new district attorney was elected, Shigley left and hung a general-practice shingle down the street in Douglasville. There he practiced "front-door law," whatever came in the front door. It included a lot of domestic relations and criminal defense, with smatterings of real estate, bankruptcy, small business organization, wills, probate, commercial collections, personal injury, workers compensation, etc. He even tried a dog custody case before a justice of the peace.

Three years later, "out of the blue," he got an offer from Van

Gerpens & Rice, an insurance defense firm in Atlanta at the time. He went to work there and for the better part of a decade, he defended garden-variety tort and insurance coverage cases throughout Georgia, including liability defense work for officials and employees of most agencies of state government, before going solo again with a personal injury practice in Buckhead, initially assisted by having plaintiffs' cases "referred to me from people I'd tried cases against." He maintained that practice for 16 years.

Since 2008, when he was elected as secretary of the State Bar "and saw what was coming at me," Shigley has been of counsel with Chambers, Aholt & Rickard LLP in Atlanta, joining longtime friends in a firm that provides some backup when he is pulled away by Bar duties.

A majority of the time, Shigley represents plaintiffs in serious injury and wrongful death cases arising from motor carrier accidents, "big truck wrecks." He is the author of *Georgia Law of Torts: Trial*

Preparation & Practice (Thomson Reuters West, 2010). A frequent lecturer at Georgia and national continuing legal education programs on interstate motor carrier litigation, he has published multiple articles in state and national legal journals. He is a national board member of the American Association for Justice Interstate Trucking Litigation Group, and past chair of the Southeastern Motor Carrier Liability Institute, Georgia Insurance Law Institute and faculty member of the Emory University School of Law Trial Techniques Program.

Since 1995, Shigley has been a certified civil trial advocate of the National Board of Trial Advocacy (one of 20 in Georgia) and listed in Martindale's Bar Register of Preeminent Lawyers. He has been included since 2004 as a "Super Lawyer" (*Atlanta* magazine) and among Georgia's "Legal Elite" (*Georgia Trend*).

The Bar presidency requires this truck-wreck trial lawyer to deal in depth with a broad range of issues facing the court system and legal profession. "It is invigorating to draw upon a lifetime of experiences in dealing with so many issues beyond the scope of my daily work as a lawyer," Shigley commented. "Some might suggest that a big truck wreck is a metaphor for the challenges facing the judicial system after several years of deep budget cuts."

Shigley's entry into State Bar leadership came about somewhat by accident when he and his wife Sally decided to attend the 1993 Annual Meeting in Savannah as a much-needed getaway while she was still recovering from recent surgery.

"If the trip was going to be deductible, I thought I had better go to some of the meetings," Shigley said. "I signed up for the breakfast meeting of what was then the Insurance Law Section, since Sally wanted to sleep late, not knowing anyone who was there. They had not picked a secretary/

treasurer, and I agreed to do that. The vice chair bailed, so a year later I became chairman."

Following his term as chair, Shigley continued to serve as the section's legislative chair, drafting and successfully advocating for new laws authorizing videotape depositions by notice rather than the former practice of requiring a detailed order or stipulation, venue over resident and non-resident defendants in a single court, and a "full compensation" rule governing reimbursement claims by health and disability insurers when an injured person recovers from a tortfeasor. "I enjoyed working with plaintiffs' lawyers and defense lawyers coming together on proposals that made sense," he said.

In the mid-1990s, the public, including most lawyers, was slowly being introduced to the Internet, with little or no idea what an impact it would have on our professions, our personal lives and our world. A fledgling online company asked Shigley to participate in a forum on a dialup service it was launching for lawyers.

A few months later, at the meeting where he turned over chairmanship of the newly renamed Tort & Insurance Practice Section, they were discussing topics to include in the Insurance Law Institute program that fall. "I volunteered to talk about 'practical uses of the Internet in your law practice. When I got home I realized that then, in 1995, there weren't many. I wound up explaining what the Internet was, what e-mail was, what a website was and that at that point there were about 40 law firms in the United States that had websites."

"That got me ahead of the curve on using the Internet," he said. "I soon had the first lawyer website in the Southeast. I started to get some business from it, although I didn't quite understand how. The next thing I knew, people were inviting me to speak at bar meetings and seminars about how to set up a website."

That experience raised Shigley's profile within the legal profession, and in 1999 he decided to run for an open seat on the Board of Governors. He lost with 49.9 percent of the vote but tried again the next year and won. In 2007, with both of his children out of high school, he was elected to the Executive Committee. An unexpected opportunity to run for secretary the following year led to another promotion.

"One thing led to another," Shigley said of his ascension. "In the space of a year, I went from the back row of the Board of Governors to a place on the ladder to move up to the presidency."

Shigley is a native of Mentone, Ala., which is 10 miles from Menlo, in northwest Georgia, where his parents were both educators, his father a principal and his mother a classroom teacher. "At the time, Menlo had a high school and a red light," he said. "It hasn't had either in a long time." He made the daily commute with his parents across the state line and attended elementary school in Menlo. The family moved to Chattanooga, Tenn., when Ken was in the seventh grade and to Tuscaloosa, Ala., when he was in the eighth grade, before settling the next year in Douglasville, where his dad was assistant school superintendent.

These days, Shigley and his wife Sally reside in Sandy Springs, where they have lived in the same neighborhood since 1984. They have two young adult children, Anne and Ken Jr. Over the years, Shigley has served as a Boy Scout leader, youth soccer coach, elder and Sunday School teacher at Peachtree Presbyterian Church, board chairman for a child development center and board member of a Christian counseling center.

He is on the national advisory board of the Children's Tumor Foundation NF Endurance Team, which raises funds for medical research on neurofibromatosis, the condition that made his daughter deaf. That, combined with his wife's brain tumor surgeries and his son's experiences with Crohn's

disease, contributed to Shigley's interest in replicating the Louisiana Bar's Support of Lawyers/Legal Personnel—All Concern Encouraged (SOLACE) program in Georgia as one of his main objectives for this year (see page 53).

Shigley has also run marathons in the past and would like to get back to doing that but at the moment has no spare time for training. "I'm going to be practicing law full time while serving nearly full time as Bar president," Shigley said. "So I know there will be no time off for the next year."

In that regard, Shigley knows the clock is already ticking on his time to get things accomplished that will, as he told the *Fulton County Daily Report* before taking office, "make a difference long-term." In communicating his themes of "stewardship, calling and love" to Bar members and staff, Shigley will rely on his previous leadership experiences, dating back to high school.


"Every lesson of leadership you pick up from adolescence on really

comes into play, but on a different scale and different level," he said, "such as the ability to inspire and lead without micromanaging people. The use of the bully pulpit to get our messages across is important, talking about the need for professional and personal virtue in our individual lives. That's the core reason I got into this.

"One thing I learned when I was a section chair is that when you've got a one-year term, you had better hit the ground running. You've got one year to do what you're going to do. This is a once in a lifetime opportunity, trying to get these things going."

And about those unexpected events that will pop up along the way, Shigley was greeted with his first one even before he was sworn in as president. In May, Gov. Nathan Deal appointed Shigley to the 2011 Criminal Justice Reform Council, which is charged with the monumental task of finding solutions that will reduce the costs, financial and otherwise, of

Georgia's corrections system without compromising public safety.

"Having been out of criminal law for almost 30 years," Shigley said, "I'm back in it." 



Linton Johnson is a communications consultant with the State Bar of Georgia.

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Past President of the State Bar Receives Distinguished Service Award

by Derrick W. Stanley

The Distinguished Service Award is the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia.

The 2011 recipient, James B. "Jimmy" Franklin of Franklin, Taulbee, Rushing, Snipes & Marsh LLC in Statesboro, who served as president of the State Bar of Georgia in 2001-02, was honored with the Distinguished Service Award, presented during the Annual Meeting of the State Bar on June 4 at Myrtle Beach, S.C.

Franklin received special praise for his leadership during the acquisition and completion of the Bar Center headquarters in downtown Atlanta, including "visionary financial decisions" that enabled the State Bar to retire the debt on the building last August, five years ahead of schedule.

"The positions and actions taken by Jimmy Franklin during his term as president have proven correct in subsequent years," said outgoing State Bar President S. Lester Tate III in making the presentation. "The Bar Center has become known as the nations finest such facility and is an outstand-

ing, permanent contribution to the justice system and source of pride for all present and future Bar members." Franklin made many trips to Atlanta to steer the State Bar of Georgia through the protest of a citizens' group, news media scrutiny and legal challenges with the Atlanta Tree Commission and in Fulton County Superior Court toward a successful conclusion, ultimately upheld by the Court of Appeals of Georgia. The Bar Center parking garage has blended beautifully with the motif of the original building, the trees have been replaced and the aesthetic quality of the area has been enhanced. Franklin was also instrumental in raising more than \$4 million in donations from multiple foundations and a cy pres award for the public education facilities in the Bar Center.

Franklin is a graduate of Georgia Tech and earned his law degree from the University of Georgia School of Law. He has practiced law in Statesboro for 48 years and has served as chairman of the Georgia Southern University Foundation, president of the Georgia Bar Foundation, a trustee of the Lawyers Foundation of Georgia and a member of the State Judicial Nomination Commission and Federal Judicial Nominating Commission.

Franklin has been the recipient of numerous honors during his career in the legal profession, including Amicus Curia for Outstanding Service to the Judicial System from the Supreme Court of Georgia in 2000,




Photo by Sarah I. Coole

(Left to right) 2010-11 President S. Lester Tate III presents James B. "Jimmy" Franklin with the 2011 Distinguished Service Award for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

the University of Georgia School of Law Distinguished Service Award in 2004, the State Bar of Georgia General Practice and Trial Section Tradition of Excellence Award in 2006 and the designation of Georgia "Super Lawyer" each year from 2005-10.

He served on the Board of Governors from 1985 to 1997, including two terms on the Executive Committee, as secretary from 1990-92, as president-elect in 2000-01 and as president in 2001-02. Under his steady leadership, the State Bar of Georgia persevered and experienced a year of remarkable achievements, including the first employment of e-mail communication for reaching members on important issues, as well as the implementation of a new legislative grassroots outreach initiative. These forward-thinking policies have become second nature for the lawyers in Georgia and have allowed programs to grow and become more successful.

The legal community and the citizens of Georgia owe a great deal of thanks to Franklin for his tireless and selfless service to the profession, the justice system and the State Bar of Georgia for almost 50 years.

The State Bar of Georgia expressed its gratitude and appreciation to Franklin for his many years of devotion to the legal profession, the justice system and the people of Georgia by presenting him with the Distinguished Service Award—the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia. 



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

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High School Students Participate in the Fourth Annual State Bar Diversity Pipeline

by Marian Cover Dockery

Sixteen local high school students convened at Atlanta's John Marshall Law School for nine days beginning May 31 to participate in the Pipeline Program. This program presents a unique opportunity for diverse students to prepare for college and ultimately law school.

Greater Atlanta Adventist Academy valedictorian Danielle Hayes is the first Pipeline student to attend four years of the program. When asked about the program, she said:

"When I think of all the Program has done for me, I am utterly speechless. I have been afforded opportunities that I would have never thought of in my wildest dreams."

Other students shared their impressions of the Pipeline Program:

- "Being a part of this program has been an amazing experience. I have been able to network with people who I never would have had the opportunity to meet. I am sure the writing classes that we had will allow me to do better on the SAT." —Henderson Johnson II
- "I must say, this program was so much more fun than I thought it would be, and I still learned so many new things. All of this exposure to law firms and different places and people was amazing." —Daryl G. Mitchell



Photos by Marian Cover Dockery

(Left to right) High School Pipeline writing and oratorical competition winners for 2011: Danielle Hayes, 1st place; Henderson Johnson II, 2nd place; and Daryl Mitchell, 3rd place.

- "When I first came here, I was shy and didn't talk that much. Now, I am more comfortable talking in front of people and I'm a better person because of it. I can now make friends easily and I have come out of my shell." —Terrence McKenzie

- “Besides the grammar skills, I was able to obtain lifelong skills in the areas of effective writing and public communication.” —Gabrielle Richie
- “Pipeline has always been the most memorable memories of the summer for me.” —Diana Xu

Three Atlanta teachers, Keelah Jackson of Hapeville Middle School, Nikki Seales, a former teacher at Skank and Lumumba Seegars, a member of the Teach for America Corps at Benjamin E. Mays High School, taught students an intense curriculum of grammar and writing.

Attorneys from Atlanta taught daily speech classes and critiqued students. Their presentations covered current events and topics of interest. Classes were taught by: Suzanne Alford, Troy Kubes and Robert “Trey” York, Equifax; Managing Attorney G. Wayne Hillis Jr., Trish Treadwell, Kathleen Curry and Melissa Burton, Parker Hudson Ranier & Dobbs; Andrea Mitchell and Cassandra Williams, Drew Eckl & Farnham; Jodie Taylor, Baker, Donelson, Bearman, Caldwell & Berkowitz; Clyde Mize, Morris Manning & Martin; and Martine Cumbermack, Swift, Currie, McGhee & Hiers; Lumumba Seegars and Pipeline Program founder Marian Cover Dockery, who designed the speech curriculum.

Following a placement test on day one, students boarded a charter bus and traveled to the Bar Center to participate in the Journey Through Justice program, presented by Deborah Craytor. Students participated in a mock trial playing the roles of defense attorney, witnesses, bailiff and jurors.

Troutman Sanders provided breakfast each day for the students. At noon, students traveled to the following GDP members’ law firms and corporations for lunch and mentoring sessions with attorneys who presented on the following topics: *Social Media Etiquette*, hosted by Swift Currie and organized by partner Anandhi Rajan;



Pipeline students pose after their mentoring session at Morris Manning & Martin. (Front row, left to right) Gabrielle Richie, Sharod McClendon, Rachele Jacques, Alina Xu and Amber Johnson; (second row, left to right) Daryl Mitchell, Maurice Davis, Marcus Davis and Diana Xu; (third row, left to right) Danielle Hayes, Brian Jackson, Eric Pinckney Jr. and Henderson Johnson II; and (back row, left to right) Anthony Brown, Terrence McKenzie and Devan Mikel.

presenting were partner Valerie Pinkett, Martine Cumbermack and Andrae Reneau; *Selecting the College of Your Choice and Beyond* hosted by Baker Donelson and led by partner Charles Huddleston with Erica Mason, Erin Reeves, Meagan Outzts and Jennifer Ervin; *Law Firm Specialties*, organized by partner Sidney Welch and presented by Frank White, Terrell Gilbert, Jennifer Blackeley, Anuj Desai, Brooke Dickerson, Teri Simmons, Ashley Kelly, Steven Pepper, Althea Broughton, Bill Kitchens and Michael Van Cise of Arnall Golden Gregory; *Dining Room Etiquette*, hosted by Jones Day and coordinated by part-

ner John Walker, with Jennifer Bunting-Gorden, Jennifer Thomas and Hasan Zulfiqar presenting with a special presentation on etiquette given by BellSouth manager Melba Hill; *One-on-One Mentoring* hosted by Alston & Bird and led and organized by partner Angela Payne James and diversity coordinator, Beth Cole, with Chris Lightner, Katherine Wallace, Nadine Evans, Gilly Lalkin Segal, Joann E. Johnston, Brenton Hund, Kyle Healy, Chris Tuten, Kevin Gooch, Liz Broadway, Natosha Reid Rice and summer associates Micah Moon, Erica Harrison, Jason Outlaw, Natosha Reid Rice, Julian Dempewolf and Trey

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Stephens providing mentoring to the students; *Building Good Study Skills*, led by Clyde Mize of Morris Manning & Martin; *Credit 101* organized by Rick Goerss, presented by Bob Zecher; Jennifer Burns and legal assistants Kennetha West-Pullins, Ann Allinson and Shannon Strachan discussed their career choices. Students also participated in an interview workshop organized by Turner Broadcasting System, Inc. (TBS) in-house counsel Ray Whitty. Students were welcomed by Executive Vice President and General Counsel Louise Sams. Additional participating attorneys were Senior Vice President and Associate General Counsels David Vigilante, Regine Zuber, John Cooper; Associate General Counsels Patty Butler, Jennifer Froneberger, Tina Shah; Senior Counsel Segeda Ranjeet; Counsel Mira Koplovsky and the late Philip Walden in addition to Lenee Braxton, Audrey McFarlin, Kendrah Mathews, Arlo Pittman, Jasmin Williams, Kimberley Barrett and Bob Wilder. Students selected a job position and prepared the night before for an interview. During their visit to TBS, students were given feedback on their performance by an attorney or staff member.

Afternoons provided students an opportunity for workshops, visits to other attractions and research time in John Marshall's law library. Claristine Pinckney, human resources professional at Alston &

Bird, conducted a workshop on interviewing skills and resume writing, and Charlotte Combre, partner at McKenna Long, gave a presentation on getting and staying organized.


As part of the program, field trips were taken to various courts. The students visited the Court of Appeals where they were greeted by Hon. Yvette Miller and her staff. Miller greeted each student and explained her responsibilities on the Court of Appeals. Her staff attorneys and the court clerk also presented their job duties to the students. At the Fulton County Superior Court, students met with Hon. Kimberly Esmond Adams following a visit to her courtroom where she sentenced several defendants. Hon. Ural Glanville met with the students in his court and asked each to announce his/her name, grade and career goal. He also shared with the students his diverse career, which included his service as an Army colonel, prior to sitting on the bench.

The nine-day program concluded with the students' annual written and oral competition on "The Americans with Disabilities Act," hosted by Sutherland in the firm's courtroom. James Johnson, Sutherland, and Susan Kolodkin, Tatum, Hillman, Hickerson & Powell, ranked the students' oral and written presentations. An awards ceremony followed lunch. Winners of this year's competition are:

- First Place: Danielle Hayes, rising freshman, Oakwood University
- Second Place: Henderson Johnson II, rising senior, Chamblee Charter High School
- Third Place: Daryl Mitchell, rising freshman, Chapel Hill High School

Each prize recipient received a monetary award and the program granted the only graduating senior and first place winner, Danielle Hayes, a \$500 scholarship for her college education.

The program ended with a party hosted by Kilpatrick Townsend and organized by Diversity Manager Lynda Murray-Blair. The students and their parents enjoyed barbeque, ice cream and cake. Managing partner for the firm's Atlanta office, Vaibhav "Wab" Kadaba, welcomed the teachers, students and their parents.

On behalf of the State Bar of Georgia Diversity Program, we wish Danielle Hayes the best of luck in her college career and continued success to our high school participants. 



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/programs.

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> **Hall, Bloch, Garland & Meyer, LLP**, announced that partner **Benjamin J. Garland** was the 2011 recipient of the **Judge William Augustus Bootle Professionalism Award** given by the Macon Bar Association. The award was presented at the association's Law Day meeting in May.

>  **Hunton & Williams LLP** announced that **Rita A. Sheffey**, a partner in the litigation and intellectual property practice, was elected **president** of the **Atlanta Bar Association**. In this role, Sheffey will lead the board and oversee

the Atlanta Bar's 21 sections; implement quarterly and annual programs; and help administer the CLE programs and lawyer referral service. Additionally, she will work to promote and grow pro bono and public service among the membership during her term, which extends through May 2012.

The firm was recognized for surpassing the **Pro Bono Institute's Law Firm Pro Bono Challenge** by **donating more than 60,000 hours to pro bono projects** during the firm's fiscal year and achieving 100 percent participation by all full-time attorneys for the second year in a row. The Pro Bono Institute was established in 1996 to explore and identify new approaches to and resources for the provision of legal services to the poor, disadvantaged and other individuals or groups unable to secure legal assistance to address critical problems.

The firm announced the recipients of the **2011 E. Randolph Williams Pro Bono Award**. The award is presented annually in recognition of lawyers and professionals, from across the firm's global offices, who devote 100 hours or more to pro bono service. This prestigious honor is named after firm co-founder E. Randolph Williams, who is remembered both for his notable legal accomplishments and his many philanthropic works. The Atlanta recipients include: **Shelly K. Anderson, Aisha Blanchard Collins, Ashley F. Cummings, David M. Fass, Bradley W. Grout, Sylvia King Kochler, Ian Labitue, Joshua Z. Mishoe, Bryan A. Powell, Charlotte Ritz, Rita A. Sheffey** and **Brandon A. Van Balen**.

>  **Aasia Mustakeem**, a partner in the Atlanta office of **Smith, Gambrell & Russell**, was presented with a **Women Looking Ahead News Magazine's Law and Justice Award** in April. The award is given annually to attorneys who have devoted their careers to serving the public interest and acting as catalysts for positive change within their communities.



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Kadaba

Lowe



Bigelis

Kilpatrick Townsend & Stockton LLP announced that the **U.S. National Park Service** honored long-time partner and former U.S. Congressman **Elliott Levitas** at a ceremony at the **Chattahoochee River National Recreation Area**. The event featured the unveiling of the first

permanent wayside plaque to an individual at the Chattahoochee River National Recreation Area. It is a tribute to Levitas' long-time support and the critical role he played in Congress with respect to sponsoring and steering the important legislation to preserve this priceless heritage for generations to come.

Associate **Wilson White** was recently elected to serve as **treasurer** of the **State Bar of Georgia Intellectual Property (IP) Section**. The IP Section boasts more than 1,000 members and is considered one of the most active sections of the State Bar.

Partner **Audra Dial** was honored by *Womenetics* as a **2011 POW! Award winner**. Award recipients were selected based on their purposeful paths and positive impacts they've each had within their given industry or organization. *Womenetics* is a business media platform providing substantive information for and about women.

Partner **Ben Barkley** was elected **chair** of the **Empty Stocking Fund** and partner **James Stevens** was elected as a new **board member**. The Empty Stocking Fund is a nonprofit organization that provides Christmas gifts each year for more than 50,000 metro area children living in poverty.

Associate **Alicia Grahn Jones** was recently sworn in as **vice president of programs** on the 2011-12 Board of the **Georgia Association for Women Lawyers (GAWL)**. It is the mission of GAWL "to enhance the welfare and development of women lawyers and to support their interests."

Partner **Wab Kadaba** was selected to participate in the 2012 class of **Leadership Atlanta**, a prestigious community organization whose members


are from Atlanta's top corporate, professional and public service companies.

Partner **Sarah Lowe** was selected to serve on the **Refugee Family Services (RFS) Legal Committee**. This committee is a new subcommittee of the RFS' Advisory Board which provides advice to the organization on operational and legal matters. RFS is dedicated to supporting the efforts of refugee women and children to achieve self-sufficiency in the United States by providing education and economic opportunity.


Associate **Frank Bigelis** was elected to the **Board of Directors** of the **Construction Law Section** of the **Atlanta Bar Association**. Formed in 1991, the section provides various programs and benefits for its members with a goal to promote the objectives of the Atlanta Bar Association within the field of construction law.

- > **Georgia Appleseed Center for Law and Justice** presented the **2011 A. Stephens Clay Good Apple Awards** to **Kilpatrick Townsend & Stockton LLP, King & Spalding, LLP, Sutherland, Asbill & Brennan, LLP**, and the **Southern Company**. The firms were honored in recognition of their visionary role in the founding of this innovative non-profit devoted to increasing justice for Georgians through law and policy reform. The award is named in honor of Georgia Appleseed's founding board chair and Kilpatrick Townsend partner, Steve Clay.

- > **Parker, Hudson, Rainer & Dobbs LLP** celebrated its 30th anniversary with clients at the Atlanta Botanical Gardens in April. Formed in 1981, the firm has grown from two attorneys to more than 75 attorneys and serves clients throughout the south-east and nationwide.


- >  Roswell-based tax attorney **John J. "Jeff" Scroggin** was appointed to the **Board of Trustees** of the **Law Center Association of the University of Florida Levin College of Law**. A graduate of the Levin College of Law, Scroggin will serve a five-year term on the Board.


- > **Brock Clay** founding member, **Chuck Clay**, was appointed **chair** of the **Advisory Committee on Legislation** of the **State Bar of Georgia**. The committee serves as the Bar's lead on monitoring legislation and preparing legislative actions regarding issues affecting members of the Bar and the practice of law in Georgia.

- >  **The Commercial Law League of America (CLLA)** announced that **James W. "Beau" Hays**, of the Atlanta-based commercial and construction law firm **Hays & Potter P.C.**, was chosen the **2011-12 president**. The CLLA is the nation's oldest organization of attorneys, collection agencies, judges, accountants, trustees, turn around managers and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and insolvency.


- >  **HunterMaclean** announced that partner **Wade Herring** was honored at the annual **Savannah Bar Association Law Day** ceremonies in May with the **Robbie Robinson Award**. The Savannah Bar Association presented the Robbie Robinson Award, named after the late Savannah civil rights attorney, to Herring in recognition of his dedication to the principles of service to individuals and to the advancement of the legal, political, social and civil rights of the citizens in the community.

- > **Ragsdale, Beals, Seigler, Patterson & Gray, LLP**, announced that **Herbert H. "Hal" Gray III** was elected a **fellow** of the **College of Commercial Arbitrators**. Established in 2001, the College of Commercial Arbitrators is a national organization of commercial arbitrators providing a meaningful contribution to the profession, the public and to the businesses and lawyers who depend on commercial arbitration as a primary means of dispute resolution.

- >  **Nelson Mullins Riley & Scarborough LLP** announced that partner **Stanley S. Jones Jr.** was presented the **Sandy Brandt Volunteer Service Award** by **Mental Health America** in June for his 40 years of dedicated service to Georgia affiliates and the national organization. The award is named in honor of Sandy Brandt, a longtime volunteer at the local, state and national levels who exemplifies the unselfish, dedicated mental health volunteer. The award is presented to a person who has exhibited extraordinary volunteer service and ongoing commitment to Mental Health America's mission.


- >  **David N. Soloway**, a principal in the Atlanta immigration law firm **Frazier, Soloway & Poorak, P.C.**, was elected **chair** of the **American Immigration Lawyers Association (AILA)** chapter covering Georgia and Alabama. AILA, with nearly 11,000 members, is the national asso-


ciation of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.

>  **Mike Conner** was appointed **city attorney of Jesup**. As managing partner of **The Conner Law Group**, Conner represents a diverse array of individuals in a wide variety of legal matters. In addition, he also provides corporate counsel to such esteemed organizations as Prime South Bank in Jesup and the Georgia Partnership for Telehealth in Waycross.

> **Gary E. English**, an associate at **Tecklenburg & Jenkins, LLC**, in Charleston, S.C., was elected to the Board of Directors of the **Maritime Association of South Carolina (MASC)**. MASC has been actively promoting the interests of the Port of Charleston since 1926. Today, it contributes to the growth and success of port-related businesses throughout the state.

> The alumni association of the **University of Georgia School of Law** recently honored longtime **U.S. District Court Judge Dudley H. Bowen Jr.** and Columbus attorney **James E. Butler Jr.** with its **Distinguished Service Scroll Award** for their dedication and service to the legal profession and the law school. Given annually, this award is the highest honor bestowed by the Law School Association.


>  **Constangy, Brooks & Smith, LLP**, announced that partner **W. Melvin Haas III** was elected **president** of the **Georgia Defense Lawyers Association**. Additionally, Haas was elected as a **fellow** in the **College of Labor and Employment Lawyers**. Haas is the head of Constangy, Brooks & Smith's Macon office and serves as the vice chairman of the U.S. Chamber of Commerce's Labor Relations Committee, one of the Chamber's largest and most active policy committees.

>  **William E. "Bill" Cannon Jr.** of Waynesville, N.C., was elected to a three-year term on the **Board of Governors** for the **North Carolina Bar Association** at the association's annual meeting. Cannon is a past president of the State Bar of Georgia and most recently served

as chair of the North Carolina Bar Foundation's Committee on Professionalism.

On the Move

In Atlanta

>  **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Howard S. Hirsch** was elected a **shareholder** in its Atlanta office. Hirsch focuses his practice in the areas of real estate investment trusts, securities law and commercial transactions. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.


>    
Carter Clarke Wright Greenberg


 
Courson Ausburn
Taylor English Duma LLP announced the addition of six new attorneys. **Mark B. Carter** specializes in construction litigation. **Ian C. Clarke** represents construction companies and real estate developers in construction litigation. **Stephen Wright** represents both large and small technology companies as well as engineering and construction companies in both transactional and litigation matters. He is also a certified arbitrator and mediator. **Steve Greenberg** practices in the areas of creditors' rights and bankruptcy law and commercial litigation. **Gardner Courson** practices in the areas of business and commercial contract disputes and litigation & dispute resolution. **Deborah A. Ausburn's** practice areas include litigation & dispute resolution and products liability and personal injury defense. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; taylorengh.com.



>  
Seigel Collins
Nelson Mullins Riley & Scarborough LLP announced that **Frank R. Seigel** joined the firm as a **partner** and **Noshay L. Collins** joined the firm as an **associate**. Seigel's practice areas include civil litigation, litigation and product liability. Collins focuses her practice in the areas of commercial litigation, litigation


tion and product liability. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.


- > **Robins, Kaplan, Miller & Ciresi L.L.P.** announced that the firm's Atlanta office has relocated to One Atlantic Center, 1201 W. Peachtree St., Suite 2200, Atlanta, GA 30309; 404-760-4300; Fax 404-233-1267; www.rkmc.com.

- >  **Scrudder, Bass, Quillian, Horlock, Taylor & Lazarus LLP** announced that **Wayne D. Toth** joined the firm as **of counsel**. Toth's primary areas of practice include medical malpractice defense and general liability defense. The firm is located at 900 Circle 75 Parkway, Suite 850, Atlanta, GA 30339; 770-612-9200; Fax 770-612-9201; www.scruddebass.com.

- >  **Hunton & Williams LLP** announced the promotion of **David R. Yates** to **counsel**. Yates' practice focuses on international and domestic public and private mergers and acquisitions, divestitures, investments and strategic transactions. The firm is located at 600 Peachtree St. NE, Suite 4100, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

- >   Intellectual property attorneys **Lawrence "Larry" Aaronson** and **Anthony B. "Tony" Askew** joined **McKeon, Meunier, Carlin & Curfman, LLC**, as **principals**. The firm is located at 817 W. Peachtree St., Suite 900, Atlanta, GA 30308; 404-645-7700; Fax 404-645-7707; www.m2iplaw.com.

- >  **James, Bates, Pope & Spivey, LLP**, announced that **Whalen J. Kuller** joined the firm as **of counsel**. Kuller's practice areas include corporate & transactional law, banking & financial institutions and tax-exempt organizations. The firm is located at 3399 Peachtree Road NE, Suite 810, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; jbpslaw.com.


- >  **Parker, Hudson, Rainer & Dobbs LLP** announced that **Elizabeth C. Arnett** was added as an **associate** to the firm's commercial finance practice group. 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.

- > **Tyde Law Group, LLC**, announced the addition of **Kristine Mitchem** and **Christine Cox** as **counsel**. Mitchem's practice focuses on business transactions and litigation. Cox focuses her practice on trademark prosecution as well as intellectual property, franchise and general commercial litigation. The firm is located at 931 Monroe Drive NE, Suite A-102-153, Atlanta, GA 30308; 866-621-3873; www.tydelaw.com.

- > **Freeman Mathis & Gary, LLP**, announced that the attorneys of **Flint & Adler, LLP**, merged with the firm. **Flint & Adler** founders **Mike Flint** and **Shira Adler Crittendon** joined **Freeman, Mathis & Gary, LLP**, as **partners**, **Scott Rees** as **of counsel** and **Laura Broome** as an **associate**. All bring numerous years of litigation experience with emphasis in business litigation and medical malpractice defense. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339; 770-818-0000; Fax 770-937-9960; www.fmglaw.com.

- > **Smith, Gambrell & Russell** welcomed **Perry J. McGuire** as **counsel** in its corporate practice. McGuire, previously with Taylor English Duma LLP, focuses his practice on corporate and franchise law. The firm is located at Promenade Two, Suite 3100, 1230 Peachtree St. NE, Atlanta, GA 30309; 404-815-3500; Fax 404-815-3509; www.sgrlaw.com.


- >  **Douglas B. Rohan** announced the creation of **Rohan Law, PC**. The firm specializes in workers' compensation claims and personal injury claims, as well as criminal defense. The firm is located at 51 Lenox Pointe, Atlanta, GA 30324; 404-923-7570; Fax 404-923-7580; www.rohanlawpc.com.

- >   **Johnson & Freedman, LLC**, announced that it has expanded its **Commercial Default Division** to concentrate on commercial foreclosures. Attorneys **January Taylor** and **John Rudd** will head up the expanded division. The firm is located at 1587 Northeast Expressway, Atlanta, GA 30329; 770-234-9181; Fax 770-234-9192; www.jflegal.com.


- > **Sidney R. Barrett Jr.** was appointed **general counsel** of the newly created **Georgia Department of Public Health**. Barrett was previously the senior

assistant attorney general of the Consumer Interests Section of the Office of the Attorney General of Georgia. The Department of Public Health is located at 2 Peachtree St., 40th Floor, Atlanta, GA 30303; 404-657-2700; Fax 404-656-0663; health.state.ga.us.

- > **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**, announced that **Tamika Nordstrom** joined the firm as a **shareholder**. Previously, Nordstrom was a partner with Miller & Martin PLLC. Her practice areas include litigation, labor and employment and employee benefits. The firm is located at 191 Peachtree St. NE, Suite 4800, Atlanta, GA 30303; 404-881-1300; Fax 404-870-1732; www.ogletreedekins.com.

- >  **Webb, Zschunke, Neary & Dikeman, LLP**, announced that **Shane Bartlett** was elected a **partner** in the firm. Bartlett's practice focuses on both plaintiff and defense cases in the areas of insurance disputes, transportation and trucking liability, contract disputes, subrogation, premises liability and general civil litigation. The firm is located at One Securities Centre, Suite 1210, 3490 Piedmont Road, Atlanta, GA 30305; 404-264-1080; Fax 404-264-4520; www.wznd.net.

- > **Casey Gilson P.C.** announced that **April Hoellman Goebeler** joined the firm as an **associate**. Goebeler concentrates her practice on defending individuals and businesses in cases involving acts of negligence and other tort claims. The firm is located at Six Concourse Parkway, Suite 2200, Atlanta, GA 30328; 770-512-0300; Fax 770-512-0070; www.caseygilson.com.

- >  **Ashe, Rafuse & Hill, LLP**, announced that **Lawanda N. Hodges** joined the firm as an **associate** in the litigation division. The firm is located at 1355 Peachtree St. NE, Suite 500, South Tower, Atlanta, GA 30309; 404-253-6000; Fax 404-253-6060; www.asherafuse.com.

In Alpharetta




Trumble

Cobb

Twombly

Dickenson Gilroy LLC announced that **Tania T. Trumble** was named a **partner** of the firm. Trumble,

a manager within the litigation group, focuses her practice on commercial and civil real estate litigation matters, including lender liability defense and title clearance litigation. Also, **Emily Hart Cobb** and **Bradford S. Twombly** joined the firm as **associates**. Cobb and Twombly both work in the litigation department. The firm is located at 3780 Mansell Road, Suite 140, Alpharetta, GA 30022; 678-280-1922; Fax 678-280-1923; www.dickensongilroy.com.

- >  **Kaveh Rashidi-Yazd**, formerly with Troutman Sanders LLP in Atlanta, joined the **Siemens Corporation** in Alpharetta. He will continue his broad intellectual property practice in his role as intellectual property counsel. Siemens Corporation is located at 3333 Old Milton Parkway, Alpharetta, GA 30005; 770-751-2000; www.siemens.com.

In Decatur

- > **R. Kyle Williams** and **Eric Teusink** announced the formation of **Williams Teusink, LLC**. The firm provides counsel in the areas of land use and zoning, real estate transactions and litigation, and complex business disputes and planning. Williams Teusink has also entered into collaboration with Gaddis & Lanier, LLC, to handle all non-collections litigation matters for Gaddis & Lanier, including covenant enforcement, complex construction issues, real estate disputes, land use and zoning and insurance defense work. The firm is located at 125 E. Trinity Place, Suite 300, Decatur GA 30030; 404-373-9590; Fax 404-378-6049; www.williamsteusink.com.
- > **Quinn Walls Weaver & Davies, LLP**, announced the addition of two new attorneys forming **Quinn Connor Weaver Davies & Rouco, LLP**. The firm will continue to represent labor organizations, union members, pension and benefit trust funds and individual employees across a wide spectrum of labor and employment law. The firm is located at 3516 Covington Highway, Decatur, GA 30032; 404-299-1211; Fax 404-299-1288; www.qcwdr.com.

In Lawrenceville

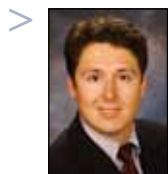
- > **William B. Wood** announced the opening of **William B. Wood, LLC**. Wood continues his general business law practice with a specialization in state and local tax. The firm is located at 295 S. Culver St., Suite D, Lawrenceville, GA 30046; 770-963-6910; www.wbwoodlaw.com.

In Birmingham, Ala.

- > Quinn Walls Weaver & Davies, LLP, announced the addition of two new attorneys forming **Quinn Connor Weaver Davies & Rouco, LLP**. The firm will continue to represent labor organizations, union members, pension and benefit trust funds and individual employees across a wide spectrum of labor and employment law. The firm is located at 2700 Highway 280, Suite 380, Birmingham, AL 35223; 205-870-9989; Fax 205-803-4143; www.qcwwdr.com.

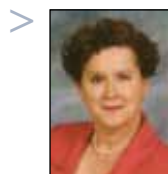
In Charleston, S.C.

- > **Smith Moore Leatherwood LLP** announced the opening of a new office in Charleston located at 171 Church St., Suite 210, Charleston, SC 29401; 843-577-9888; Fax 843-577-9666; www.smithmoorelaw.com.

In Chattanooga, Tenn.

> **Ian K. Leavy** recently became **in-house counsel** for human resources with **Volkswagen Group of America** in Chattanooga, Tenn. Leavy was previously a member with Miller & Martin

PLLC in the firm's labor and employment department. Volkswagen Group of America's Chattanooga Plant is located at 7351 Volkswagen Drive, Chattanooga, TN 37416; 423-582-3001; www.volkswagengroupamerica.com.

In Knoxville, Tenn.

> **E. Dale Nellums** joined **TEAMHealth** as **vice president of claims and legal risk management** in their corporate office in Knoxville, Tenn. TEAMHealth is one of the nation's largest providers of hospital-based clinical outsourcing. TEAMHealth is located at 265 Brookview Centre Way, Suite 400, Knoxville, TN 37919; 865-693-1000; www.teamhealth.com.

In Madison, Wis.

- > **Constangy, Brooks & Smith, LLP**, announced the addition of an office in Madison, Wis., located at 1 S. Pinckney St., Suite 8 Madison, WI 53703; 608-729-5598; Fax 608-260-0058; www.constangy.com.

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Help! I'm Scared of My Own Client

by Paula Frederick

"It's Mr. Robles on line 2," your secretary announces. "He's on his way here, but he is demanding to talk to you immediately. He's not making much sense."

"I'm scared of him," your receptionist announces. "I don't want to have to deal with him at all. If he starts yelling again I'm walking out."

"I think we should call the police," your paralegal says, peeking through the blinds into the parking lot. "He just got out of his car, and I can already tell he's agitated! I wonder what set him off this time?"

"I don't think he's dangerous, he's just upset," your secretary disagrees. "We don't have any reason to believe that he will get violent with us."

"You're forgetting about all those drunken phone calls," your paralegal reminds her. "We've taken our share of verbal abuse from this guy!"

"Calm down, everybody!" you insist. "Mr. Robles is our client; we can't call the police on him! I'll greet him myself and take him to my office. You'll never even know he's here."

"OK, but we've got to get a panic button for your office," your receptionist mutters as she heads for the break room.

What are the ethics implications of dealing with a client who is potentially violent?


Of course a lawyer is obliged to keep her client's secrets. Rule 1.6 of the Georgia Rules of Professional Conduct prohibits a lawyer from revealing information which would be embarrassing or detrimental to the client, except under certain circumstances.

The Rule does allow a lawyer to reveal confidential information to prevent harm to another from client criminal conduct. It also allows revelation to prevent serious injury or death. So, while it should be an option of last resort, a lawyer does not violate the Rules of



Professional Conduct by calling the police when it appears reasonably necessary to prevent the client from harming others.

Most lawyers are not qualified to provide counseling to a client with serious mental health issues. We can, however, recognize when a client becomes depressed or desperate about a legal matter that appears hopeless. Within the confines of Rule 1.6, a lawyer may speak with family members or doctors to get help for the client.

As a preventive measure it's also a good idea to train staff so that they are better able to recognize and deal with clients who may suffer from mental illness. If you and your staff are able to realistically assess a client's potential for violence, you will feel better equipped to handle the client's legal matter and to steer the client towards help. 



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

(April 16, 2011 through June 8, 2011)

by Connie P. Henry

Voluntary Surrender/Disbarments

Craig Dean Miller

Savannah, Ga.

Admitted to Bar in 1997

On April 18, 2011, the Supreme Court of Georgia disbarred attorney Craig Dean Miller (State Bar No. 506615). The following facts are admitted by default:

Miller was retained in October 2005 to represent a corporate client and its affiliates in litigation pending in the Superior Court of Chatham County. In approximately May 2007, the client's chief executive officer wired Miller funds to deliver to the lawyers and providers assisting with the litigation. Miller failed to account for the funds he received from the client; commingled the funds he received in a fiduciary capacity with his own funds; and converted the funds he received in a fiduciary capacity to his own use. Miller willfully failed to respond to discovery on behalf of the client and the trial court eventually dismissed the client's complaint with prejudice with regard to one of the defendants. Miller failed to communicate with the corporate client's representative regarding the status of the case and abandoned the legal matter entrusted to him and to his client's detriment. The CEO discharged Miller, but he failed to withdraw from representing the corporate client.

Rodney Frederick Tew

Powder Springs, Ga.

Admitted to Bar in 2005

On April 18, 2011, the Supreme Court of Georgia disbarred attorney Rodney Frederick Tew (State Bar No. 142009). The following facts are admitted by default:

In State Disciplinary Board Docket No. 5683 Tew represented a client in a personal injury matter but refused to respond to the client's numerous attempts to contact

him. Tew's staff told the client that the case would go to litigation, but shortly thereafter Tew told the client that he anticipated a settlement meeting and was seeking \$25,000. Tew did not communicate further with his client. The insurance company issued a check for \$7,000 payable to Tew and the client. Tew did not notify his client of the settlement or the receipt of funds. Tew forged his client's signature to the check and cashed it. When Tew did not communicate with the client or provide an operable phone number, the client contacted the insurer and learned that his case had been settled. Tew did not disburse any funds to his client.

In Docket No. 5748, Tew represented a client in a real estate dispute between business partners. Although Tew and the client dispute the terms of the representation agreement, which was not in writing, they agree that it was for a contingency fee. The litigation settled for \$200,000. Although Tew and the client discussed modification of the fee agreement, they dispute the terms and there is no written agreement on modification, but according to Tew the maximum fee would have been \$20,000. Tew and the client agreed that Tew would deposit the proceeds in his escrow account and make disbursements to the client or on his behalf as directed. Tew deposited the funds into an account designated "Real Estate Escrow Account" and made nine disbursements totaling \$129,912 to the client or third parties at the client's direction. The remaining proceeds would have been \$70,088 but Tew's escrow account had a closing balance of \$18,400.98 as of April 30, 2008. In May and June 2008 Tew made various payments to the client totaling about \$28,000, which included cash and a wire transfer from Tew's account titled as "Tew & Associates, LLC." Two checks issued in the amounts of \$3,000 and \$4,000 were not negotiable because of insufficient funds or a stop pay-

ment action taken by Tew. Tew used the account titled "Tew & Associates, LLC" to disburse other client funds in addition to those belonging to the client in this case. Tew also used funds in the account titled "Real Estate Escrow Account" for personal use.

In aggravation of discipline, the Court found that Tew failed to make restitution to either client, had a dishonest or selfish motive, exhibited a pattern of misconduct, and refused to acknowledge the wrongful nature of his conduct.

Craig Steven Mathis

Leesburg, Ga.

Admitted to Bar in 1991

On April 26, 2011, the Supreme Court of Georgia disbarred attorney Craig Steven Mathis (State Bar No. 477027). The following facts are admitted by default:

The Court suspended Mathis from the practice of law indefinitely on Nov. 22, 2010, for his failure to appear for a Review Panel reprimand that he had requested in a petition for voluntary discipline. The following facts are admitted by default:

A client hired Mathis to represent her in a personal injury action and Mathis filed a lawsuit which eventually settled for \$60,000. Mathis received the settlement funds and, despite his client's direction to pay \$29,785 to satisfy outstanding medical expenses, he never did so. Instead, he promised to pay the providers and noted the payment on a settlement statement he furnished to his client, but kept the money for his own personal use. The client attempted to contact Mathis about his failure to pay the bills, but he failed to return her calls or otherwise explain why he had not paid the medical providers or what had happened to the portion of settlement funds meant for those providers.

In aggravation of discipline, Mathis received a formal letter of admonition in June 2008 as well as the 2010 Review Panel reprimand that led to his indefinite suspension in 2010.

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John J. Lieb

Stone Mountain, Ga.

Admitted to Bar in 1983

On April 26, 2011, the Supreme Court of Georgia disbarred attorney John J. Lieb (State Bar No. 452039), with conditions for readmission. Lieb acknowledged service of three formal complaints, but failed to file timely answers, so the facts alleged and violations charged are deemed admitted.

Lieb was retained in 2007 by a client to represent an inmate before the State Board of Pardons and Paroles and to negotiate a position in a work-release program, as well as a transfer to a different prison. The client paid Lieb \$2,500 and provided documents to him, but Lieb took no action and did not contact the inmate. Lieb did not respond to the client's request for a refund of the fee and the return of documents. Lieb later stated that he would return the fee and documents and explained that he was suffering personal prob-

lems and financial difficulties as a result of his failed marriage. Lieb never returned the fee or documents and later claimed that the \$2,500 was earned.

The second matter involved a client who retained Lieb to represent him in a criminal prosecution in the federal district court for the Northern District of Georgia. The client and his family paid Lieb \$20,000. The client pled guilty, but Lieb abandoned the case after entry of the plea and did not appear at the sentencing hearing. The district court issued a show cause order and directed Lieb to appear on Oct. 2, 2009, to explain his conduct. On October 1 counsel for Lieb requested a continuance, which was denied. The district court convened the show cause hearing, but Lieb did not attend.

In a third matter, Lieb was retained to represent a client in a criminal case in superior court and was paid \$1,000 by the client's mother. Lieb failed to appear

at the arraignment or a scheduled status conference. Thereafter, the client attempted to contact Lieb to prepare for his trial, but Lieb would not return the client's calls. Lieb did appear at the trial, but did not bring any evidence in support of the client's defense. The trial court condemned Lieb for his failure to appear twice previously. Lieb promised to return the \$1,000, but failed to do so.

At an evidentiary hearing, Lieb testified that he was diagnosed with bipolar disorder in 1999 and during 2009 he had a flare-up that resulted in his being incapacitated and losing his car and his office. The previous year he had gone through a divorce and lost his home and was essentially homeless. The Special Master noted that Lieb could have withdrawn from the representation and that he could have sought help from Law Practice Management but he did nothing to protect his clients' interests.

Gregory C. Menefee

Louisville, Ky.

Admitted to Bar in 1986

On April 26, 2011, the Supreme Court of Georgia disbarred Gregory C. Menefee (State Bar No. 502020) following the order permanently disbaring him from practice in the State of Kentucky. The Supreme Court of Kentucky outlined 10 separate discipline charges against Menefee for abandonment and for misappropriating thousands of dollars from clients.

Chase Arthur Caro

White Plains, N.Y.

Admitted to Bar in 1986

On April 26, 2011, the Supreme Court of Georgia disbarred attorney Chase Arthur Caro (State Bar No. 111072) following the order disbaring him from practice in the State of New York. The Supreme Court of New York found that Caro converted client funds and pled guilty on June 21, 2007, to one count of grand larceny in the second degree, a class C felony, for stealing funds from clients.

Samuel J. Brantley

Fayetteville, Ga.

Admitted to Bar in 1966

On May 31, 2011, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Samuel J. Brantley (State Bar No. 078300). On July 18, 2007, Brantley pled guilty to conspiracy to commit wire fraud in the U.S. District Court for the Southern District of New York. Brantley's sentence was postponed due to his cooperation in the prosecution of several other individuals. Brantley's cooperation culminated with his testimony in the criminal trial of two other individuals. The assistant U.S. attorney acknowledged that Brantley's testimony was critical to the government's success in securing the convictions of those two defendants. On April 12, 2011, Brantley was sentenced to five years on probation.

Elliot Joseph Vogt

Phenix City, Ala.

Admitted to Bar in 2005

On May 31, 2011, the Supreme Court of Georgia disbarred Elliot Joseph Vogt (State Bar No. 159065). The following facts are deemed admitted by default:

A client retained Vogt to represent her in a legitimation case involving custody, support and visitation. Vogt invented hearing dates to make the client believe that hearings had been scheduled when no hearing had been set, and in 2009 he provided her with a forged order showing that the trial court had ruled in her favor. When the client learned that Vogt had invented the hearing dates and order, she contacted the State Bar and learned that Vogt had been suspended in connection with another matter. The client contacted Vogt to discharge him and retrieve her file, but Vogt never responded.

Suspensions

Melvin Ricks

Atlanta, Ga.

Admitted to Bar in 1993

On April 18, 2011, the Supreme Court accepted the petition for vol-

untary discipline of Melvin Ricks (State Bar No. 604677) for a suspension of no less than one year with conditions for reinstatement.

In three actions Ricks accepted money to represent a client in separate domestic relations matters. Ricks did not complete the work for which he was retained, did not communicate with his clients and did not refund their fee. Later Ricks was diagnosed as suffering from severe depression and bipolar illness. Ricks cooperated with the State Bar's Lawyer's Assistance Program, which referred him to a therapist who referred him to a county mental health facility. He has relocated to California and is being treated there by a doctor through a county mental health department and a wellness center. The Court accepted Ricks' petition for the imposition of not less than a one-year suspension, with reinstatement conditioned on him providing: a psychiatric evaluation performed by a psychiatrist in Georgia whose credentials are acceptable to the Office of the General Counsel; a certification of his fitness to practice law from the psychiatrist who performs the evaluation; and proof of payment of restitution to his three clients in the amounts of \$350, \$450 and \$700.

Robert Douglas Ortman

Atlanta, Ga.

Admitted to Bar in 1999

On April 18, 2011, the Supreme Court accepted the petition for voluntary discipline of Robert Douglas Ortman (State Bar No. 554911) and imposed a 12-month suspension.

On May 28, 2010, Ortman entered a guilty plea in the Superior Court of Cobb County, under *North Carolina v. Alford*, 400 U.S. 25 (91 SC 160, 27 LE2d 162) (1970) to one felony count of aggravated battery. He was sentenced under the First Offender Act to 12 months probation, along with various conditions including anger management evaluation and treatment, a fine of \$1,000 and restitution to the victim of \$450.

Although the maximum penalty for a violation of Rule 8.4 (a) (2) is disbarment, the Court recognized that disciplinary cases are largely governed by their own particular facts. Ortman, who had various physical conditions that led him to be particularly sensitive to his physical safety, presented evidence sufficient to show that his conduct arguably was not a premeditated effort to harm the victim, but rather a reflexive response to a perceived danger to his person. Despite his honest belief in his innocence, he took the first-offender, Alford plea because certain circumstances made him unsure of whether he would prevail at trial; the plea offer was a good deal with no jail time; and he wanted to avoid being separated from his wife and young child.

In aggravation of discipline the Court found that while not required to admit criminal culpability, given his Alford plea, Ortman refused to acknowledge the wrongful nature of his conduct. In mitigation, the Court noted that Ortman had no prior discipline; that he presented evidence of good character and reputation; and that this appears to be an isolated incident in which no harm came to any of his clients.

Gregory Bartko

Atlanta, Ga.

Admitted to Bar in 1995

On April 26, 2011, the Supreme Court accepted the petition for voluntary discipline of attorney Gregory Bartko (State Bar No. 040476) for a suspension from the practice of law pending the termination of the appeal of his criminal convictions entered in the U.S. District Court for the Eastern District of North Carolina.

Robbie M. Levin

Atlanta, Ga.

Admitted to Bar in 1996

On April 26, 2011, the Supreme Court suspended attorney Robbie M. Levin (State Bar No. 448280) following his criminal conviction for distributing obscene material and

criminal attempt to commit interference with custody. The Court found that Levin was convicted of misdemeanors involving moral turpitude where the underlying conduct related to his fitness to practice law. The Court ordered his suspension for a period of 24 months with conditions for reinstatement.

David Alan Friedman

Louisville, Ky.

Admitted to Bar in 1977

On May 16, 2011, the Supreme Court suspended attorney David Alan Friedman (State Bar No. 277550) indefinitely from the practice of law in Georgia following the indefinite suspension imposed on him by the Supreme Court of Kentucky for conversion of client funds and misrepresentations.

Patrick Anthony Powell

Dacula, Ga.

Admitted to Bar in 1998

On May 16, 2011, the Supreme Court accepted the petition for voluntary discipline of Patrick Anthony Powell (State Bar No. 596289) and imposed a three-month suspension. A client whose home had been damaged in 2007 by a windstorm and lightning strike retained Powell in April 2008 to handle issues regarding his homeowner's policy. Powell filed a complaint in superior court on the client's behalf and the case subsequently was transferred to federal court on the defendant's motion. Thereafter Powell did not promptly respond to defendant's discovery requests; promptly supply information needed for the joint preliminary report and discovery plan; promptly return his client's telephone calls; or file a response to defendant's motion to dismiss.

In mitigation of discipline, the Court found that Powell had no prior discipline; that he became ill during the representation of his client; that the client hired another attorney to take over the case in federal court while discovery was still open and before either the

notion to dismiss was filed or the deadline for the joint preliminary report and discovery plan had expired; and that the client told Powell the new attorney was handling the matter and not to do any more work on the case.

Nakata S. Smith Fitch

Atlanta, Ga.

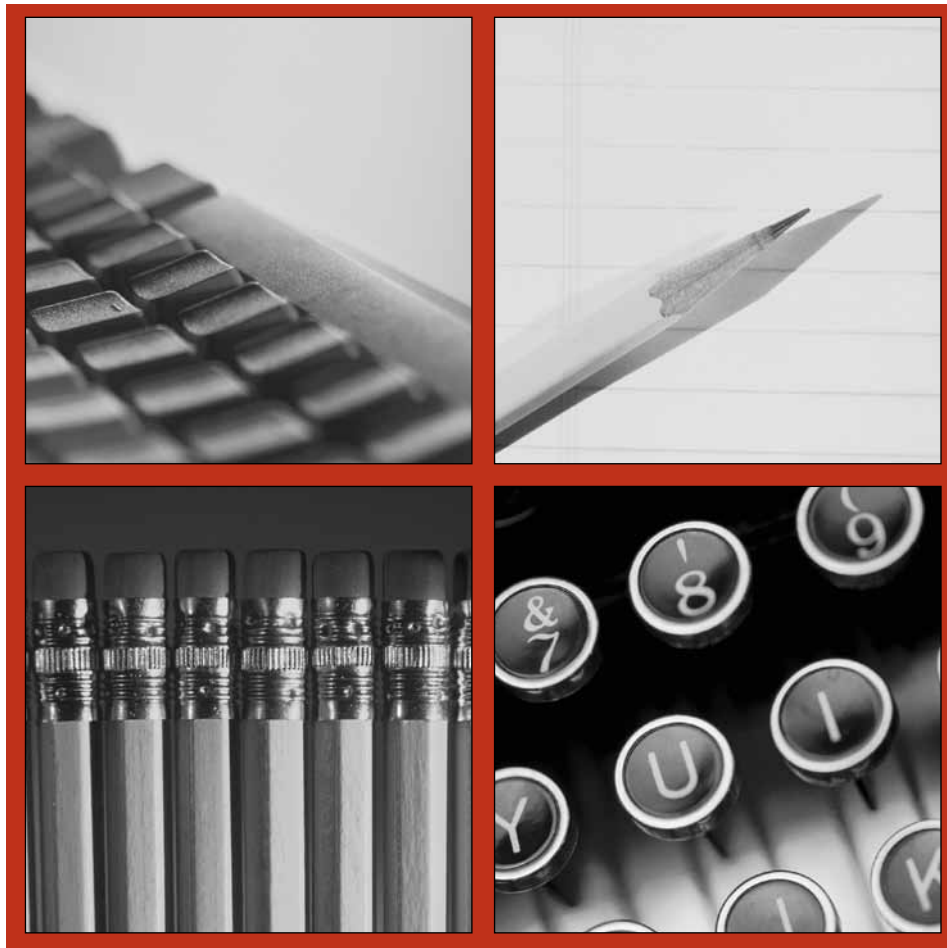
Admitted to Bar in 1998

On May 31, 2011, the Supreme Court of Georgia suspended attorney Nakata S. Smith Fitch (Bar No. 262068) for a period of one year with reinstatement conditioned on attending Ethics School and completion of an evaluation by the State Bar's Law Practice Management Program.

Fitch was retained by a client to attempt to set aside a default judgment obtained against her while she was represented by another attorney. The client paid Fitch \$1,500 and Fitch filed several unsuccessful motions to attempt to set aside the judgment. The client paid Fitch an additional fee of \$5,000 to appeal the denial, but the appeal was dismissed as untimely and for failure to follow the proper procedure for discretionary review. Fitch represented the client in a contempt action filed to enforce the order in the original action. The client was ordered to pay opposing counsel's fee in the amount of \$831.21. Fitch appealed that order, and the client gave Fitch the \$831.21 to hold in the event that the appeal was unsuccessful. Additionally, when the client received \$6,000 as restitution from her former attorney, she asked Fitch to hold those funds in safekeeping out of concern that cashing the check would be construed as full satisfaction before the client knew if there was any further harm from the former attorney's representation.

Approximately a year after receiving the funds to be held for the client, Fitch transferred the \$6,000 and \$831.21 from her escrow account to her operating account. Although her client

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repeatedly demanded return of the funds, Fitch did not notify her client that she removed her funds from her escrow account. Fitch claimed that she was owed the funds for work performed on the client's behalf, but had never sent the client any billing to indicate that any fees were due and the evidence showed that the client had paid all fees requested by Fitch at each phase of the representation. Fitch never provided an accounting to the client and did not respond to her client's repeated demands for return of the funds and an accounting.

The second appeal filed by Fitch was denied because no transcript was filed and the brief was inadequate because it had no statement of proceedings and only a one-sentence enumeration of error, cited an incorrect code section, and contained no citation to the record. The Court of Appeals imposed a \$250 penalty for frivolous appeal. Fitch did not promptly inform her client of the decision on the appeal. Fitch went on maternity leave for three months without making arrangements to have her mail checked or forwarded to her home.

Factors in mitigation included the absence of a prior disciplinary record and that Fitch provided belated reimbursement of the funds removed from her trust account. In aggravation, the Court found that Fitch's actions demonstrated a lack of concern for the interests of her client and were for a selfish motive, and that Fitch did not acknowledge the wrongful nature of her conduct.

Review Panel Reprimand

Chalmer Edwin Detling II

Marietta, Ga.

Admitted to Bar in 2004

On May 31, 2011, the Supreme Court of Georgia accepted the petition for voluntary discipline of Chalmer E. Detling II (State Bar No. 219500), and ordered that he be administered a Review Panel

"He who is his own lawyer has a fool for his client."

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reprimand. In 2006 Detling represented a limited liability corporation (LLC) in its attempt to finance the purchase of a second corporation; in connection with that representation, he signed an opinion letter averring, in pertinent part, that he knew of nothing that could materially affect the transaction or the LLC's right to carry on business substantially as then conducted or that could adversely affect the LLC's financial condition. At the time that he signed the opinion letter, Detling knew that the director and officer of the sole member of the LLC was facing federal criminal charges because Detling was representing that director in the criminal case. The LLC deal closed in November 2006 and the director entered a guilty plea to a charge of failing to report a crime in April 2007. The director was sentenced to serve 90 days incarceration and 90 days home confinement. The business the LLC acquired operated until sometime in 2009, when it failed to the extent that it reverted to the trustee of the transaction. No connection exists between the business' downfall and the director's indictment or subsequent decision to enter a guilty plea.

The Court found in mitigation that Detling was inexperienced in the practice of law at the time; that it was an isolated incident; that Detling was remorseful; that he had no prior discipline; that he

had no dishonest motive in signing the opinion letter or in failing to associate more experienced counsel; and that he was cooperative in the disciplinary proceedings. The Court also found that Detling has a good reputation; that he does significant *pro bono* work; that he serves as a mentor in the State Bar's mentor program; and that he is active in the community. The Court found that Detling was merely negligent in failing to associate more experienced counsel, no actual injury occurred as a result of his actions and that the State Bar raised no objection to the requested discipline.

Justices Benham, Melton and Nahmias dissented.

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 April 15, 2011, three lawyers have been suspended for violating this Rule and one has been reinstated. 



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

Five End-of-Summer Tips for a Better Running Practice

by Natalie R. Kelly

Do Your Books

Reconcile Accounts

Make sure you reconcile all of your bank accounts each month. Look for outstanding and unexpected items to make sure they don't negatively impact your cash flow. Trust accounts should be verified by overall account balance and individual client account balances — *always*.

Forecast

Write out a budget for the rest of 2011 and for 2012 based on financial information you have compiled for the last year or so. This planning will help you control office costs as well as help with planning for the financial future of your practice. You should also plan to have a review of financial statements each month to make sure you stay on track and up to date with where the firm is revenue wise.

Bill

Make sure that your current billing cycle is being adhered to and that any accounts receivable (money owed to you) is being dealt with via your collections process. Billing at least monthly for your work will help your practice with better cash flow management. Also, make sure your bills are "saying something." A detailed description of your work is usually preferred and helps the client understand what you are doing on their case. If you have entries that you are not charging for, be sure to include them on the bill with a *no charge* notation beside them. This step can add value to the service you are providing. Always do a careful review of any items you plan to write-off.

Get Real with Your Staff

Do Performance Evaluations

Meet with staff to review their job performance. If you are not getting what you want out of staff, the evaluation process is another means of communicating this beyond the everyday "praise and plan for improvement" steps



you should already be taking. Have the staff person do a self-evaluation so you can easily see what they think they are doing right or are expected to be doing.

Set Goals for Improvement

Outline specific issues you want your staff to address and make sure you follow up to evaluate their progress. If it seems you are not able to get the staff to perform in the way you need, you can revisit the goals and come up with a more workable plan for improvement. Have staff draft their own improvement plans to get you started.

Use Realistic Compensation Plans

Paying staff is one of the largest expenditures for firms, and any deviations either up or down should be weighed carefully. It is easier to put a hold on increases than to take back or decrease what you have paid in the past. Setting realistic tie-ins to performance can help deal with responding to pay increase inquiries from staff when finances are tight for the firm. Don't forget to consider bonuses for staff and shoring up firm reserves if business is doing much better than in recent

times. Salary ranges and steps for bonuses that promote retention can help you keep your workers paid and happier.

Build Up Your Management Team

Hire an Effective Office Manager/Administrator

Look to bring aboard a strong office manager/administrator to enforce and develop firm policies and procedures. Make sure that you appropriately assign and empower the office manager/administrator so they can effectively act on your behalf as it relates to firm operations. Outline in detail what is expected in the job description and do regular progress checks to see that you are getting the job done the way you need.

Fire (or Fire Up) an Ineffective Office Manager/Administrator

If you are not happy with the performance of your office manager/administrator, first look in the mirror to see if you have correctly communicated your needs and expectations to them. If you have and are still not seeing results, you need to decide to part ways or work on a plan to improve the performance to an acceptable level. Be extremely specific in communicating what you need them to do for the firm, and how you expect operations to be handled. If you are not good at “training up” this person, then consider an outside training program or session to keep from losing a potentially great employee. Like looking before you leap, always “look before you fire” when it comes to staff. There may be ways to salvage good employees.

Assess the Effectiveness of Your Managing Partner

Whether by committee or just a pure head-to-head meeting, be sure not to continue the year without evaluating the effectiveness of your managing partner. Ascertain whether or not the firm’s goals for

operations are being met. Decide what specific things need to be addressed with and by the managing partner to attain the required goals. Make sure that you orientate new managing partners and provide resources for their success in leading the overall management team. As with other staff, do not rule out training events or conferences to help managing partners become more effective for the firm.

Review Your Business Plans

Disaster Recovery and Business Continuation First

Make it a priority for the firm to have a written disaster recovery and business continuation plan. This written plan should be realistic for your practice set up and be flexible enough to easily update specific parts as needed. Knowing exactly how you will keep going in the event of a disaster should be at the top of your business planning checklist. With the recent increase in natural disasters, now is a good time to get this plan in place for your firm.

Marketing and Growth Plans Next

Whether by a social media marketing blitz or a steady review and outreach to referral sources, the firm should be proactive in creating a viable marketing and business development plan. Write out specific expectations from the plan, and review your efforts monthly to see what works or needs to be changed. A mix of old and new ways of getting business is most likely in order as the legal field is experiencing great shifts in growth and business change, and the world is seeing more and more options for doing business over and on the Internet.

Review Your Technology Investments and Usage

Assess Current Technology

Have your IT staff or hired contractor outline your office network and expand the layout to include


hardware and software in use by the firm. Keep a chart of what programs you use and what level of proficiency you have for each program. Identify your “power” or advanced users for every system, and have them review any existing procedures for which they might be responsible.

Plan for Needed New Technology

Do you really need a tablet computer for your work? Will the new document management system you learned about work wonders for your office? Approach each technology purchase as an investment, and include an analysis of how much time and effort will need to be expended to get the technology to work best for you. Make a plan for future technology and be flexible to catch up with any fast-moving technologies that might immediately impact your practice.

Plan For and Get Training

Training is arguably the most important part of any technology investment, but is so often overlooked by well-meaning business owners who rely on their “amazing and smart” staff or selves to figure it all out. Take the time and money to get where you need to be with technology by making training your first priority with both the technology you already have and any that you plan to purchase.

Doing a quick check in your office for improving these areas can mean the difference between having the same old run of the mill year or one that promises to be more profitable and productive. For assistance with any business management aspect of your law practice, feel free to contact the Law Practice Management Program at 404-527-8772. 



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.

And the Winners Are . . .

by Derrick W. Stanley

The State Bar honors outstanding sections each year for their members' dedication and service to their areas of law practice and for devoting significant hours of volunteer effort to the profession. The Section of the Year Award is given to the one section that goes beyond advancing the good will of the profession. Awards of Achievement are given to sections whose members diligently strive to advance the causes of the section.

The State Bar of Georgia's Labor & Employment Law Section, chaired by James E. Rollins Jr. of Schwartz Rollins LLC in Atlanta, received the Section of the Year Award, presented during the plenary session of the State Bar's Annual Meeting on June 3 at Myrtle Beach, S.C.

The section's other executive committee members include D. Albert Brannen, chair emeritus, Fisher & Phillips LLP; Josh Viau, vice chair, Elarbee, Thompson, Sapp & Wilson, LLP; Ottrell Edwards, secretary, EEOC-Atlanta District Office; and Tessa Warren, treasurer, Quinn Walls Weaver & Davies LLP.

The State Bar of Georgia's Creditors' Rights Section, co-chaired by Harriet C. Isenberg of Isenberg & Hewitt, P.C., in Atlanta and Roswell attorney Janis L. Rosser; and the State Bar of Georgia's Corporate Counsel Section, chaired by Janet E. Taylor of Haverty's in



Photos by Sarah I. Coole and Derrick W. Stanley

James R. Rollins Jr. receives the Section of the Year Award from 2010-11 President Lester Tate during the plenary session at the Annual Meeting.

Atlanta, received the Section Award of Achievement, also presented during the Annual Meeting.

The following are examples of the good work the sections are doing.

Labor and Employment Law Section

Section of the Year

- Donated \$10,000 to the State Bar of Georgia's Pro Bono Project.

- Formed a committee to ensure the 11th Circuit Pattern Jury Instructions represented both management and individuals perspectives.
- Sponsored the second annual B.A.S.I.C.S. Benefit Reception
- Held section events in the South and Coastal Georgia Offices for members outside of Atlanta.
- Participated in the Chief Justice's Commission on Professionalism's Convocation on Professionalism.
- Sponsored the 40th Annual Labor & Employment Law Institute.

Corporate Counsel Law Section


Award of Achievement

- Held the 2010 Corporate Counsel Institute.
- Sponsored the Atlanta Volunteer Lawyers Foundation's Wine Tasting fundraiser and donated an additional \$10,000.
- Facilitated a grant to the Pro Bono Partnership of Atlanta in the amount of \$15,000.

Creditors' Rights Section

Award of Achievement

- Conducted the annual Advanced Debt Collection seminar which drew a record number of participants.
- Initiated and assisted in implementing a new program in partnership with the Atlanta Volunteer Lawyers Foundation.

The above items and events are but a small sampling of the work being done by sections, providing strong proof of the value of the sections to the bar and the community. 



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



2010-11 State Bar President Lester Tate presents the Award of Achievement to (left to right) Harriet C. Isenberg and Janis L. Rosser, co-chairs of the Creditors' Rights Section.



(Left to right) Criminal Law Section Chair Mike Cranford, member Amy Stone and Teresa Cranford during the Opening Night Festival at Myrtle Beach.

For information on how to join a Section, please go to www.gabar.org/sections.

Boolean Searching in Fastcase

by Sheila Baldwin

Conducting legal research online can be timesaving and productive. “Can be” is the operative phrase because, for many (especially those who have spent most of their careers researching in books), it is more of a frustration. Success depends upon knowing the Boolean operators and how they are used to connect terms. Strategy in constructing a good query is also an important element: taking time to consider the issues of your case and how to incorporate the particulars is worthwhile.

Fastcase supports Boolean logic, allowing you to combine terms to create an effective and precise search. Boolean search logic is accomplished using a series of symbols or operators. Fastcase’s search protocol, found under the search query box for your convenience

(see fig. 1), uses the six common Boolean operators described in the chart on page 84.

Special Cases

Plurals

Fastcase automatically searches for regular plurals when you use natural language search (but not when you search by keyword). When searching the word “cart” with Georgia as your jurisdiction, a natural language search results in 517 cases. The same search using the Boolean key word option results in only 420 cases, unless you frame the query as “cart or carts” which will result in 517 cases.

Order of Operations

Fastcase processes your query searches from left to right unless you direct the order with the use of parenthesis. Searching (landlord or lessor) and (pledge or security) broadens the terms to include synonyms as well as prioritizes how you wish to find them by use of the parenthesis. Searching Georgia courts with these terms, 711 cases are identified; adding “security deposit” narrows the results to 15 cases. By adding “returned” w/7 and enclosing it in parenthesis as in this example, (landlord or lessor) and (pledge or security) and (“security deposit” w/7 returned)

1

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(change* w/7 condition*) and (return* w/7 work*) and "termination of benefits"

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Syntax	Example (click to run a search)	Result
AND, &	copyright AND preemption	cases with both the words "copyright" and "preemption"
OR	landlord OR lessor	cases with either the word "landlord" or "lessor"
NOT	chemical waste NOT management	cases with the words "chemical" and "waste" but not "management"
()	(security OR pledge) AND assignment	cases with either "security" or "pledge", and also the word "assignment"
" "	"felony murder"	cases containing the exact phrase "felony murder"
w/2, /2	capital w/2 punishment	cases in which the word "capital" appears within 2 words of the word "punishment"
*	termin*	wildcard - cases containing variations of the stem, such as "terminal", "terminate", "terminator"

2

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Advanced Caselaw Search

Search Type: ☒ Keyword Search (Boolean) ☐ Natural Language ☐ Citation Lookup

(landlord or lessor) and (pledge or security) and ("security deposit" w/7 returned)

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Syntax	Example (click to run a search)	Result
AND, &	copyright AND preemption	cases with both the words "copyright" and "preemption"
OR	landlord OR lessor	cases with either the word "landlord" or "lessor"
NOT	chemical waste NOT management	cases with the words "chemical" and "waste" but not "management"
()	(security OR pledge) AND assignment	cases with either "security" or "pledge", and also the word "assignment"
" "	"felony murder"	cases containing the exact phrase "felony murder"
w/2, /2	capital w/2 punishment	cases in which the word "capital" appears within 2 words of the word "punishment"
*	termin*	wildcard - cases containing variations of the stem, such as "terminal", "terminate", "terminator"

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Results Interactive Timeline

Jurisdiction: All Jurisdictions 1 to 7 of 7 results Print List of Results
Print/Save Documents in Queue

Relevance	Case	Decision Date	Authority Check
100%	1. Preece v. Turman Realty Co., Inc., 492 S.E.2d 342, 228 Ga.App. 609 (Ga. App., 1997) Attorney fees are recoverable only when specifically provided for by statute. <i>Bearden v. City of Austell</i> , 212 Ga.App. 398, 400(4), 441 S.E.2d 782 (1994). OCGA § 44-7-35(c) provides, in pertinent part, that "[a]ny landlord who fails to return any part of a security deposit which is required to be returned to a tenant pursuant to this article shall be liable to the tenant in the amount of three times the sum improperly withheld plus reasonable attorney's fees." The statute is perfectly...	September 29, 1997	2
92%	2. Travelers Ins. Co. v. Linn, 510 S.E.2d 139, 235 Ga.App. 641 (Ga. App., 1998) OCGA § 44-7-33(b) provides that "[w]ithin three business days after the date of the termination of occupancy, the landlord or his agent shall inspect the premises and compile a comprehensive list of any damage done to the premises which is the basis for any charge against the security deposit and the estimated dollar value of such damage." (Emphasis supplied.) OCGA § 44-7-34(a) states that "[i]n the event that actual cause exists for retaining any portion of the security deposit, the landlord ...	December 4, 1998	1
67%	3. West-Ro v. Coletti, 243 S.E.2d 104, 144 Ga.App. 883 (Ga. App., 1978) This action was commenced against defendants due to the occurrence of default under the terms of the lease. Rental payments totaling \$39,200 have been made to plaintiff under the lease. Plaintiff seeks \$12,400 for payments due under the lease and guaranty, plus attorney fees authorized in the guaranty. However, by amendment plaintiff sought total damages in the amount of \$30,000 plus attorney fees. In another amendment plaintiff sought \$6,450 in quantum meruit as the value of the use of the...	February 21, 1978	0

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

Syntax	Example	Result
AND, &	Copyright AND Preemption	Results must contain <i>both</i> the words “Copyright” and “Preemption”
OR	Landlord OR Lessor	Results must contain <i>either</i> the word “Landlord” <i>or</i> the word “Lessor.” (They may contain both words).
NOT	Waste NOT Management	Results <i>must contain</i> the word “Waste” but must not contain the word “Management.”
w/3, /3	Capital w/3 Punishment	Results must contain the word “Capital” within 3 words of the word “Punishment.” Any integer between 2 and 50 can be used with this operator.
*	Litig*	Results must contain some variation of the stem “Litig” such as Litigation, Litigated, Litigator, etc.
“ ”	“Felony Murder”	Results must contain the precise phrase “Felony Murder.”
()	(Security OR Pledge) AND Assignment	Parentheses are used to define the order of operations when you use multiple Boolean operators. This example search will yield results that contain the word “Assignment” as well as either the word “Security” or the word “Pledge.”

the search narrows to seven cases (see fig. 2 and 3).

Within

Using the symbol w/n (within a certain number of words) creates a hybrid of “quotes” and “and” searching. Using quotation marks may be too limiting, expanding your search to within several words brings more results but keeps the relevancy high. Searching “chemical waste” in Georgia brings three results but in searching *chemical w/5 of waste* brings the three cases plus an additional case that may be on point.

Not

Be careful when using this Boolean operator. Limiting your results by excluding key terms is often helpful but you may exclude a case that is on point. In the example, “chemical waste *not* management,” you will eliminate an entire group of cases that deal with the management side of chemical waste but if the word “management” is used anywhere within the case it will be excluded from the results list.


Strategy is the other component of constructing a good query.

Moving from broad to narrow is a good approach. It may be best to set your jurisdiction and time filters broad to include the maximum results since these can be narrowed very easily from the results page.

Read over your case and consider first the legal concepts at issue. If you are searching unfamiliar areas of law, you may want to do a natural language search to identify similar cases or statutes that help you learn the terminology used by the courts or to understand the doctrines that govern your case. Exploring treatises, or law review and bar journal articles may also be helpful in the initial stages of your research.


Once you have a grasp of the issues, consider the key words you would expect to find in cases and build a query using the appropriate Boolean language. Add some particulars of your case as you hone in on seminal cases. A common mistake is to craft a long, complex query. If you build simple queries and add to them, you can identify what terms may be bringing good results and which are not. Electronic researching is not a science but an art so be creative as well

as logical, tweak your search terms and restructure them to bring the best results. Are your results too narrow? Try adding synonyms or removing redundant language. Are your results too broad? Try adding additional terms or filtering irrelevant results with the “NOT” connector. With a little practice, you may become an expert researcher using Fastcase.

Beginners may want to attend “Keyword Search Made Easy,” a webinar lead by Fastcase reference attorneys. In this webinar, you will learn how Boolean search differs from index searching. Please check our schedule under “Bar News and Events” on the front page of the State Bar of Georgia website to register. As always, feel free to call or e-mail with questions or concerns, sheilab@gabar.org. 



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



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Back to Basics

Subject-Verb Agreement

by Karen J. Sneddon and David Hricik

We all have them, questions about grammar and mechanics to which we feel we ought to know the answers, but don't. This installment of "Writing Matters" goes back to basics to answer questions you may be embarrassed to admit you have about subject-verb agreement.

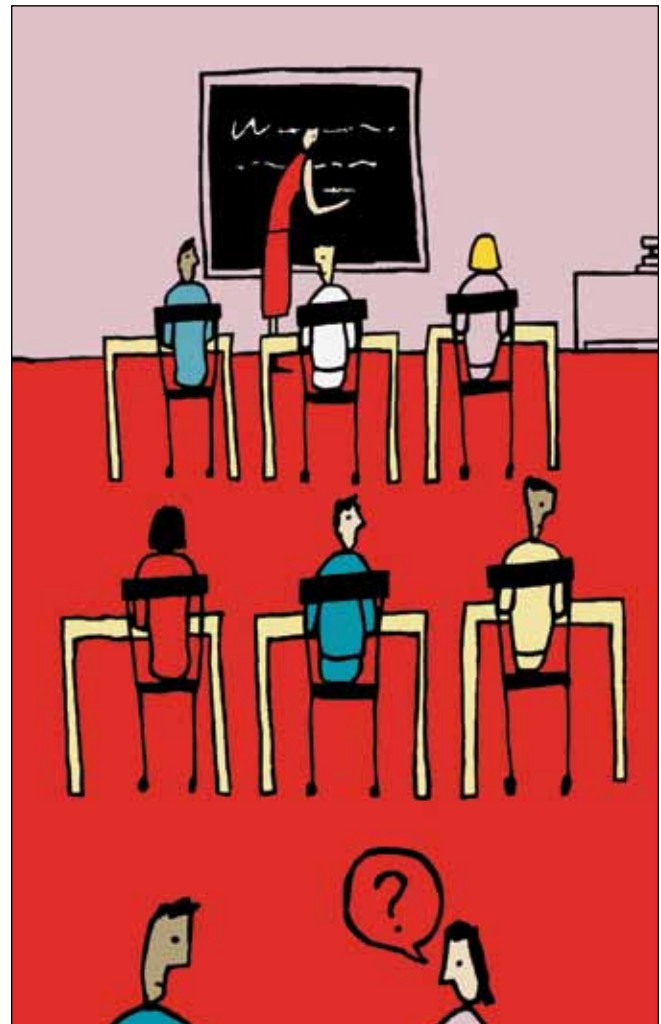
Now, you may be thinking that it is crazy to even raise the issue of subject agreement. The basic rule is straightforward. A subject must agree with its verb. A singular noun requires a singular verb. The lawyer files the brief in the clerk's office. A plural noun requires a plural verb. *The lawyers arrive at the client's office at 10 o'clock in the morning.* No lawyer would write: *The lawyer file the brief* or *The lawyers arrives at the client's office.*

But there's more to know about this basic rule of grammar. This installment features five variations to the basic rule. We've followed the variations with problems on which you can test your new knowledge, or old wisdom.

Multiple Subjects

When two subjects are joined by the word "and," a plural verb is typically used. So, if it is "the deed and the will" then a plural verb is used: *The deed and the will are filed now.* (Excuse the passive voice!) However, there is a narrow exception: if the two words are effectively one subject, like "peanut butter and jelly," a singular verb is used. *Peanut butter and jelly is Karen's favorite sandwich.*

When plural subjects are joined with the *neither/nor* or the *either/or* construction, a plural verb is used. Conversely, when singular subjects are joined with the



neither/nor or the *either/or* construction, a singular verb is used.

That's pretty straightforward, right? But what if a singular subject and a plural subject are joined with the *neither/nor* or the *either/or* construction? Then, it

depends. The verb should agree with the subject that it is closest to in the sentence. For example, this is correct: *Neither the deed nor the wills are filed with the court.* But, switch the plural and singular and it would be: *Neither the wills nor the deed is filed with the court.*

To make things a little more complicated we show below that, with indefinite pronouns, when multiple subjects are preceded with *each* or *every*, the verb is usually singular—usually!

Collective Nouns

Collective nouns represent a group of people or things, such as a jury. Because a collective noun refers to one unit, a singular verb usually accompanies a collective noun. (In contrast, in Commonwealth English, collective nouns are usually accompanied by plural verbs.) The word “court” is a collective noun and is always treated as singular, regardless of the number of judges or justices on the court: *The court holds the plaintiff in contempt.*

Company names are also treated like collective nouns.

On a related note, some nouns refer to one item but are actually treated as plural, such as eyeglasses. *My eyeglasses were expensive.* But write “the pair of eyeglasses” and a singular verb should be used. Another common outlier is the word “news,” which is singular, even though it ends in “s.”

Troublesome Indefinite Pronouns

A pronoun is a word that takes the place of a noun. There are personal pronouns (he, she, it, we, you and they), relative pronouns (who, which, that and what), interrogative pronouns (who, which and what), adjective pronouns (further subdivided into demonstrative, distributive, indefinite and possessive).

While all pronouns create problems, indefinite pronouns cause the most problems. Indefinite pronouns don’t refer to a specific person or thing. The prob-

lem arises because indefinite pronouns can be singular or plural, and it isn’t necessarily intuitive which one is which. Examples of indefinite pronouns include everybody and many (see chart on page 89).

Prepositions

Even though studies show a typical reader can only absorb sentences with less than 25 words, we sometimes need to craft those 35, 55 or 75 word sentences. When that happens, words or phrases (usually in the form of prepositional phrases) spring up between the subject and the verb. These words or phrases, now situated closest to the verb, can confuse the writer. The writer should ignore the intervening words and match the subject with the verb. *One of my favorite law school classes is legal writing.*

Delayed Subjects

There are many reasons not to use “There is,” “There are,” “Here is” and “Here are” constructions.

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(The client story is used with permission. The photograph and name do not necessarily represent the actual client.)

Singular Indefinite Pronouns	Plural Indefinite Pronouns	Singular or Plural Indefinite Pronouns
anybody/anyone	both	all
each	few	any
either/neither	many	more/most
everyone/everybody	others	none
less	several	some
no one/nobody		
one		
someone/somebody/ something		

Really, there are. These constructions tend to attract unnecessary words and create reader confusion. In addition, these constructions also raise the issue of subject-verb agreement. That's because the word "there" isn't the subject, so the writer must search for the delayed subject to make the verb choice of "is" or "are."

Try It:

1. Neither the plaintiff's lawyer nor the defendant's lawyers *agrees/agree* to postpone the hearing.
2. Each board member, committee chair and committee member *was/were* involved in the planning of the retreat.
3. Neither of the options *is/are* ideal.
4. Either Frank or his brothers *is/are* going to put flowers on the grave this afternoon.
5. The crowd *has/have* dispersed from the courtroom.
6. All the committee members *was/were* present at the reception.
7. Anyone who wants to practice law *has/have* to pass the bar exam.
8. The attorney, as well as both paralegals, *has/have* witnessed the execution of the contract.
9. There *is/are* many documents to sign today.

Suggested Responses

1. Neither the plaintiff's lawyer nor the defendant's lawyers *agree* to the postponement of the hearing.

The plural subject is closest to the verb, so the plural "agree" is used.

2. Each board member, committee chair, and committee member *was* involved in the planning of the retreat.

*Although this is a compound subject, a singular verb is used because the word "each" precedes the compound subject. A singular verb would also be appropriate for the following sentence: Each of the board members *was* involved in the planning of the retreat.*

3. Neither of the options *is* ideal.
Although the sentence seems to be referring to multiple things (here, multiple options), the singular "is" is used with the pronoun neither.
4. Either Frank or his brothers *are* going to put flowers on the grave this afternoon.

With the "either/or" construction, the verb should agree with the subject located nearest. Here, that is the subject "brothers." While it is correct, some readers will find the following sentence awkward. Either his brothers or Frank is going to put flowers on the grave this afternoon. For that reason, the sentence may be reworked to locate the plural subject next to the verb.

5. The crowd *has* dispersed from the courtroom.

Crowd, like committee, corporation, family, group, jury and staff, is a collective noun. A

singular verb should be used. However, if the sentence refers to the individuals that make up the group, a plural is used. Members of the crowd have left the courtroom.

6. All the committee members *were* present at the reception.

"All" is an indefinite pronoun that can be singular or plural. It depends on the word (or words) that "all" refers to. Here, "all" refers to the plural "committee members," so "were" is the proper choice.


7. Anyone who wants to practice law *has* to pass the bar exam.

The indefinite pronoun anyone is singular, even though it conveys a plural meaning.

8. The attorney, as well as both paralegals, *has* witnessed the execution of the contract.

*The subject of this sentence "attorney" is singular, so a singular verb should be used. The words "as well as," "along with," "together with," "including," "in addition" seem to make the subject plural. But these phrases don't make the subject plural, so singular is appropriate here. The attorneys, as well as both paralegals, *have* witnessed the execution of the contract.*

9. There *are* many documents to sign today.

The delayed subject of the sentence is "many documents," so a plural verb is used. 



Karen J. Sneddon is an associate professor at Mercer Law School and teaches in the Legal Writing Program.



David Hricik is a professor at Mercer Law School who has written several books and more than a dozen articles. The

Legal Writing Program at Mercer Law School is currently ranked as the nation's No. 1 by U.S. News & World Report.

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George School of Law (1979)
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Atlanta Law School (1976)
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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, *2010-2011 State Bar of Georgia Directory and Handbook*, p. H-6 (hereinafter referred to as "*Handbook*").

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

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 2011-2
MOTION TO AMEND THE RULES AND
REGULATIONS OF THE
STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors, and upon the concurrence 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 *2010-2011 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, The State Bar respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

Proposed Amendments to Part I, Creation and Organization, Chapter 2, Rule 1-206.1 of the Rules of the State Bar of Georgia

It is proposed that Rule 1-206.1 regarding Law Student Members in Part I, Chapter 2, of the Rules of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 1-206.1. Law Student Members

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law Student members may be furnished copies of appropriate publications electronically and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

If the proposed amendments to the Rule are adopted, the new Rule 1-202(d) would read as follows:

Rule 1-206.1. Law Student Members

In addition to the membership and classes of membership provided in this Chapter, the State Bar may recognize as law student members, without the rights and privileges of membership, those law students currently enrolled in a law school approved by the American Bar Association or any law school approved by the Georgia Board of Bar Examiners. Law Student members may be furnished copies of appropriate publications electronically and may be entitled to attend and participate, without the right to vote or hold office, in those meetings and activities conducted by the State Bar and any of its component parts or sections.

II.

Proposed Amendments to Part IV, Chapter 1, Georgia Rules of Professional Conduct, Rule 5.5

It is proposed that Rule 5.5 of the Georgia Rules of Professional Conduct regarding the Unauthorized Practice of Law and the Multijurisdictional Practice of Law be amended by deleting the struck-through sections and inserting the sections underlined as follows:

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in

such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services

arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of ~~this grant~~ the grants of authority found in (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

The maximum penalty for a violation of this rule is disbarment.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. ~~See Rule 5.3, Responsibilities Regarding Nonlawyer Assistants.~~

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. *See also Rules 7.1(a) and 7.5(b).*

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies five such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign or Domestic Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or

paragraph (e). Services may be “temporary” even though the Foreign or Domestic Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e) and (f) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be

authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and Paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer’s practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer’s practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer’s practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer’s prac-

tice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or

b) The Domestic or Foreign Lawyer's client may be resident in, ~~or have an office in~~ or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; ; or

c) The matter, although involving other jurisdictions, may have a significant connection with ~~that the jurisdiction in which the Domestic or Foreign Lawyer is admitted;~~ or

d) ~~In other cases,~~ Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in ~~that the jurisdiction in which the Domestic or Foreign Lawyer is admitted~~ or another jurisdiction; or

e) ~~a~~ A significant aspect of ~~the~~ a matter may involve the law of ~~that the jurisdiction in which the Domestic or Foreign Lawyer is admitted;~~ or

f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

g) The lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

h) ~~The necessary relationship might arise when t~~ The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or.

i) ~~In addition, t~~ The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary

basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), ~~(e) or (f) or (e)~~ or otherwise is subject to the disciplinary authority of this jurisdiction. *See Rule 8.5(a).*

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See Rule 1.4.*

[21] Paragraphs (c), (d), ~~and (e) and (f)~~ do not authorize communications advertising legal services to

prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

If the proposed amendments to the Rule are adopted, the new Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law would read as follows:

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the Domestic

Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

The maximum penalty for a violation of this rule is disbarment.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. *See Rule 5.3.*

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a

Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or Foreign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. *See also Rules 7.1(a) and 7.5(b).*

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies five such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Foreign or Domestic Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Foreign or Domestic Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e) and (f) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in

this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and Paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain

admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

- a) The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or
- b) The Domestic or Foreign Lawyer's client may be resident in, have an office in or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- c) The matter, although involving other jurisdictions, may have a significant connection with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or
- d) Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

e) A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

f) Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

g) The lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

h) The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or

i) The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction

for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this jurisdiction. *See Rule 8.5(a).*

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. *See Rule 1.4.*

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

III.

Proposed Amendments to Part IV, Chapter 1, Rule 4-109 of the Rules of the State Bar of Georgia

It is proposed that Rule 4-109 regarding refusal or failure to appear for a reprimand, contained in Part IV, Chapter 1 of the Rules of the State Bar of Georgia be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand

may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be ~~sent to the respondent by registered mail~~ served on the respondent as provided in Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

If the proposed amendments to the Rule are adopted, the new Rule 4-109 would read as follows:

Rule 4-109. Refusal or Failure to Appear for Reprimand; Suspension

Either panel of the State Disciplinary Board based on the knowledge or belief that a respondent has refused, or failed without just cause, to appear in accordance with Bar Rule 4-220 before a panel or the superior court for the administration of a reprimand may file in the Supreme Court a motion for suspension of the respondent. A copy of the motion shall be served on the respondent as provided in Rule 4-203.1. The Supreme Court may in its discretion, ten days after the filing of the motion, suspend the respondent until such time as the reprimand is administered.

IV.

Proposed Amendments to Part IV, Chapter 4, Rule 4-402 of the Rules of the State Bar of Georgia

It is proposed that Rule 4-402, regarding the Formal Advisory Opinion Board, contained in Part IV, Chapter 4 of the Rules of the State Bar of Georgia be amended by inserting the sections underlined as follows:

Rule 4-402. The Formal Advisory Opinion Board

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

- (1) Five members of the State Bar of Georgia at-large;
- (2) One member of the Georgia Trial Lawyers Association;
- (3) One member of the Georgia Defense Lawyers Association;
- (4) One member of the Georgia Association of Criminal Defense Lawyers;

(5) One member of the Young Lawyers Division of the State Bar of Georgia;

(6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board; and

(9) One member of the Review Panel of the State Disciplinary Board.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Association of Defense Lawyers, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial Representatives from the American Bar Association Accredited Law

Schools shall be appointed to one year terms; two of the initial law school representatives shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

If the proposed amendments to the Rule are adopted, the new Rule 4-402 would read as follows:

Rule 4-402. The Formal Advisory Opinion Board

(a) The Formal Advisory Opinion Board shall consist only of active members of the State Bar of Georgia who shall be appointed by the President of the State Bar of Georgia, with the approval of the Board of Governors of the State Bar of Georgia.

(b) The members of the Formal Advisory Opinion Board shall be selected as follows:

(1) Five members of the State Bar of Georgia at-large;

(2) One member of the Georgia Trial Lawyers Association;

(3) One member of the Georgia Defense Lawyers Association;

(4) One member of the Georgia Association of Criminal Defense Lawyers;

(5) One member of the Young Lawyers Division of the State Bar of Georgia;

(6) One member of the Georgia District Attorneys Association;

(7) One member of the faculty of each American Bar Association Accredited Law School operating within the State of Georgia;

(8) One member of the Investigative Panel of the State Disciplinary Board; and

(9) One member of the Review Panel of the State Disciplinary Board.

(c) All members shall be appointed for terms of two years subject to the following exceptions:

(1) Any person appointed to fill a vacancy occasioned by resignation, death, disqualification, or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(2) The members appointed from the Investigative Panel and Review Panel of the State Disciplinary Board shall serve for a term of one year;

(3) The terms of the current members of the Formal Advisory Opinion Board will terminate at the Annual Meeting of the State Bar following the amendment of this Rule regardless of the length of each member's current term; thereafter all appointments will be as follows to achieve staggered, two-year terms:

(i) Three of the initial Association members (including the Georgia Trial Lawyers Association, the Georgia Association of Defense Lawyers, the Georgia Association of Criminal Defense Lawyers, the Georgia District Attorneys Association and the Young Lawyers Division of the State Bar) shall be appointed to one-year terms; two of the initial Association members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(ii) Two of the initial members appointed from the State Bar of Georgia at-large (the "At-Large Members") shall be appointed to one-year terms; three of the initial At-Large members shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(iii) Two of the initial Representatives from the American Bar Association Accredited Law Schools shall be appointed to one year terms; two of the initial law school representatives shall be appointed to two-year terms. As each initial term expires, the successor appointee shall be appointed for a term of two years;

(4) All members shall be eligible for immediate reappointment to one additional two-year term, unless the President of the State Bar of Georgia, with approval of the Board of Governors of the

State Bar of Georgia, deems it appropriate to reappoint a member for one or more additional terms.

(d) The Formal Advisory Opinion Board shall annually elect a chairperson and such other officers as it may deem proper at the first meeting of the Formal Advisory Opinion Board after July 1 of each year.

(e) The Formal Advisory Opinion Board shall have the authority to prescribe its own rules of conduct and procedure.

V.

Proposed Amendments to Part IV, Chapters 1 and 2 of the Rules of the State Bar of Georgia Regarding Creation of A Coordinating Special Master

It is proposed that Part IV, Chapters 1 and 2 of the Rules of the State Bar of Georgia be amended to create the position of Coordinating Special Master by deleting the struck-through sections and inserting the sections underlined in the following rules as set out below:

A.) Proposed Amendments to Rule 4-106.

Rule 4-106, regarding the conviction of a crime, contained in Part IV, Chapter 1 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-106. Conviction of a Crime; Suspension and Disbarment

(a) Upon receipt of information or evidence that an ~~a~~Attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of *nolo contendere* or imposition of first offender probation, the Office of the General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Georgia Supreme Court for the appointment of a ~~s~~Special mMaster to conduct a show cause hearing.

(b) The petition shall show the date of the verdict or plea and the court in which the ~~r~~Respondent was convicted, and shall be served upon the ~~r~~Respondent pursuant to Bar Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the ~~Court~~ Coordinating Special Master that appointment of a ~~s~~Special mMaster is appropriate.

(d) The ~~Court~~ Coordinating Special Master as provided in Rule 4-209.3 will appoint a ~~s~~Special mMaster, pursuant to Rule 4-209(b).

(e) The show cause hearing should be held within fifteen days after service of the Petition for Appointment of Special Master upon the ~~r~~Respondent or appointment of a ~~s~~Special mMaster, whichever is later. Within thirty days of the hearing, the ~~s~~Special mMaster shall file a recommendation with the Supreme Court of Georgia which shall be empowered to order such discipline as deemed appropriate.

(f) (1) If the Supreme Court of Georgia orders the ~~r~~Respondent suspended pending the appeal of the conviction, upon the termination of the appeal the State Bar of Georgia may petition the ~~s~~Special mMaster to conduct a hearing for the purpose of determining whether the circumstances of the termination of the appeal indicate that the suspended ~~r~~Respondent should:

(i) be disbarred under Rule 8.4, or

(ii) be reinstated, or

(iii) remain suspended pending retrial as a protection to the public, or

(iv) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these rules.

(2) Reports of the ~~s~~Special mMaster shall be filed with the Review Panel as provided hereafter in Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Rule 4-218.

(g) For purposes of this rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea of guilty or plea of *nolo contendere* or the imposition of first offender treatment shall be prima facie evidence of an infraction of Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

If the proposed amendments to the Rule are adopted, the new Rule 4-106 would read as follows:

Rule 4-106. Conviction of a Crime; Suspension and Disbarment

(a) Upon receipt of information or evidence that an Attorney has been convicted of any felony or misdemeanor involving moral turpitude, whether by verdict, plea of guilty, plea of *nolo contendere* or imposition of first offender probation, the Office of the

General Counsel shall immediately assign the matter a State Disciplinary Board docket number and petition the Georgia Supreme Court for the appointment of a Special Master to conduct a show cause hearing.

(b) The petition shall show the date of the verdict or plea and the court in which the Respondent was convicted, and shall be served upon the Respondent pursuant to Bar Rule 4-203.1.

(c) Upon receipt of the Petition for Appointment of Special Master, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, shall give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(d) The Coordinating Special Master as provided in Rule 4-209.3 will appoint a Special Master, pursuant to Rule 4-209(b).

(e) The show cause hearing should be held within fifteen days after service of the Petition for Appointment of Special Master upon the Respondent or appointment of a Special Master, whichever is later. Within thirty days of the hearing, the Special Master shall file a recommendation with the Supreme Court of Georgia which shall be empowered to order such discipline as deemed appropriate.

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

(i) be disbarred under Rule 8.4, or

(ii) be reinstated, or

(iii) remain suspended pending retrial as a protection to the public, or

(iv) be reinstated while the facts giving rise to the conviction are investigated and, if proper, prosecuted under regular disciplinary procedures in these rules.

(2) Reports of the Special Master shall be filed with the Review Panel as provided hereafter in Rule 4-217. The Review Panel shall make its findings and recommendation as provided hereafter in Rule 4-218.

(g) For purposes of this rule, a certified copy of a conviction in any jurisdiction based upon a verdict, plea

of guilty or plea of *nolo contendere* or the imposition of first offender treatment shall be prima facie evidence of an infraction of Rule 8.4 of Bar Rule 4-102 and shall be admissible in proceedings under the disciplinary rules.

B.) Proposed Amendments to Rule 4-108.

Rule 4-108, regarding the conduct constituting a threat of harm to a client of the public contained in Part IV, Chapter 1 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension

(a) Upon receipt of sufficient evidence demonstrating that an ~~a~~Attorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of General Counsel shall petition the Georgia Supreme Court for the suspension of the ~~a~~Attorney pending disciplinary proceedings predicated upon the conduct causing such petition.

(b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.

(c) The petition for emergency suspension shall be served upon the Respondent pursuant to Bar Rule 4-203.1.

(d) Upon receipt of the petition for emergency suspension, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number and shall notify the ~~Court~~ Coordinating Special Master that appointment of a Special Master is appropriate.

(e) The ~~Court~~ Coordinating Special Master will ~~nominate~~ appoint a Special Master pursuant to Rule 4-209(b) to conduct a hearing where the State Bar shall show cause why the Respondent should be suspended pending disciplinary proceedings.

(f) Within fifteen days after service of the petition for emergency suspension upon the Respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.

(g) Within twenty days of the hearing, the Special Master shall file his or her recommendation with the

Supreme Court of Georgia. The Court sitting en banc may suspend the Respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other action as it deems appropriate.

If the proposed amendments to the Rule are adopted, the new Rule 4-108 would read as follows:

Rule 4-108. Conduct Constituting Threat of Harm to Clients or Public; Emergency Suspension

(a) Upon receipt of sufficient evidence demonstrating that an Attorney's conduct poses a substantial threat of harm to his clients or the public and with the approval of the Immediate Past President of the State Bar of Georgia and the Chairperson of the Review Panel, or at the direction of the Chairperson of the Investigative Panel, the Office of General Counsel shall petition the Georgia Supreme Court for the suspension of the Attorney pending disciplinary proceedings predicated upon the conduct causing such petition.

(b) The petition for emergency suspension shall state the evidence justifying the emergency suspension.

(c) The petition for emergency suspension shall be served upon the Respondent pursuant to Bar Rule 4-203.1.

(d) Upon receipt of the petition for emergency suspension, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, shall assign the matter a Supreme Court docket number and shall notify the Coordinating Special Master that appointment of a Special Master is appropriate.

(e) The Coordinating Special Master will appoint a Special Master pursuant to Rule 4-209(b) to conduct a hearing where the State Bar shall show cause why the Respondent should be suspended pending disciplinary proceedings.

(f) Within fifteen days after service of the petition for emergency suspension upon the Respondent or appointment of a Special Master, whichever is later, the Special Master shall hold a hearing on the petition for emergency suspension.

(g) Within twenty days of the hearing, the Special Master shall file his or her recommendation with the Supreme Court of Georgia. The Court sitting en banc may suspend the Respondent pending final disposition of disciplinary proceedings predicated upon the conduct causing the emergency suspension, or order such other action as it deems appropriate.

C.) Proposed Amendments to Rule 4-204.4.

Rule 4-204.4, regarding a finding of probable cause contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-204.4. Finding of Probable Cause; Referral to Special Master

~~(a) In all cases wherein the Investigative Panel, or subcommittee of the Panel, finds probable cause of the respondent's violation of one or more of the provisions of Part IV, Chapter 1 of these rules and refers the matter to the Supreme Court for appointment of a special master, it shall file with the Clerk of the Supreme Court of Georgia the following documents in duplicate:~~

~~(1) notice of its finding of probable cause;~~

~~(2) a petition for the appointment of a special master and proposed order thereon;~~

~~(3) a formal complaint, as herein provided.~~

~~(b) The documents specified in paragraph (a) above shall be filed with the Clerk of the Supreme Court within thirty (30) days of the finding of probable cause unless the Investigative Panel, or subcommittee of the Panel, or its Chairperson grants an extension of time for the filing of the documents.~~

In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Article IV, Chapter 1 of these rules it may refer the matter to the Supreme Court by directing the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

(a) (1) A formal complaint, as herein provided;

(2) A petition for the appointment of a Special Master; and

(3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or its subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

(b) A Notice of Discipline and proceed pursuant to Rule 4-208.1, Rule 4-208.2 and Rule 4-208.3.

If the proposed amendments to the Rule are adopted, the new Rule 4-204.4 would read as follows:

Rule 4-204.4. Finding of Probable Cause; Referral to Special Master

In the event the Investigative Panel, or a subcommittee of the Panel, finds Probable Cause of the Respondent's violation of one or more of the provisions of Article IV, Chapter 1 of these rules it may refer the matter to the Supreme Court by directing the Office of the General Counsel to file with the Clerk of the Supreme Court of Georgia either:

- (a) (1) A formal complaint, as herein provided;
- (2) A petition for the appointment of a Special Master; and
- (3) A notice of its finding of Probable Cause.

The documents specified above shall be filed in duplicate within thirty (30) days of the finding of Probable Cause unless the Investigative Panel, or its subcommittee of the Panel, or its Chairperson grants an extension of time for the filing.

- (b) A Notice of Discipline and proceed pursuant to Rule 4-208.1, Rule 4-208.2 and Rule 4-208.3.

D.) Proposed Amendments to Rule 4-208.1.

Rule 4-208.1, regarding the Notice of Discipline contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-208.1. Notice of Discipline

- (a) In any case where the Investigative Panel or a subcommittee of the Panel finds pProbable Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.
- (b) Unless the Notice of Discipline is rejected by the rRespondent as provided in Rule 4-208.3, (1) the rRespondent shall be in default; (2) the rRespondent shall have no right to any evidentiary hearing; and (3) the rRespondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court.

If the proposed amendments to the Rule are adopted, the new Rule 4-208.1 would read as follows:

Rule 4-208.1. Notice of Discipline

- (a) In any case where the Investigative Panel or a subcommittee of the Panel finds Probable Cause, the Panel may issue a Notice of Discipline imposing any level of public discipline authorized by these rules.

- (b) Unless the Notice of Discipline is rejected by the Respondent as provided in Rule 4-208.3, (1) the Respondent shall be in default; (2) the Respondent shall have no right to any evidentiary hearing; and (3) the Respondent shall be subject to such discipline and further proceedings as may be determined by the Supreme Court.

E.) Proposed Amendments to Rule 4-208.2.

Rule 4-208.2, regarding the contents of the Notice of Discipline contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-208.2. Notice of Discipline; Contents; Service

- (a) The Notice of Discipline shall state the following:

- (1) The ~~Standards Rules~~ which the Investigative Panel found that the rRespondent violated,
- (2) The facts, which if unrefuted, support the finding that such ~~Standards Rules~~ have been violated,
- (3) The level of public discipline recommended to be imposed,
- (4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the Investigative Panel to be relevant to such recommendation,
- (5) The entire provisions of Rule 4-208.3 relating to rejection of Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing same in the Notice,
- (6) A copy of the Memorandum of Grievance,
- (7) A statement of any prior discipline imposed upon the rRespondent, including confidential discipline under Rules 4-205 to 4-208.

- (b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the rRespondent pursuant to Bar Rule 4-203.1.

(c) This subparagraph is reserved.

(d) This subparagraph is reserved.

(e) This subparagraph is reserved.

(f) This subparagraph is reserved.

(g) The Office of General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(h) The level of disciplinary sanction in any Notice of Discipline rejected by the ~~r~~Respondent or the Office of General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

If the proposed amendments to the Rule are adopted, the new Rule 4-408.2 would read as follows:

Rule 4-208.2. Notice of Discipline; Contents; Service

(a) The Notice of Discipline shall state the following:

(1) The Rules which the Investigative Panel found that the Respondent violated,

(2) The facts, which if unrefuted, support the finding that such Rules have been violated,

(3) The level of public discipline recommended to be imposed,

(4) The reasons why such level of discipline is recommended, including matters considered in mitigation and matters considered in aggravation, and such other considerations deemed by the Investigative Panel to be relevant to such recommendation,

(5) The entire provisions of Rule 4-208.3 relating to rejection of Notice of Discipline. This may be satisfied by attaching a copy of the Rule to the Notice of Discipline and referencing same in the Notice,

(6) A copy of the Memorandum of Grievance,

(7) A statement of any prior discipline imposed upon the Respondent, including confidential discipline under Rules 4-205 to 4-208.

(b) The original Notice of Discipline shall be filed with the Clerk of the Supreme Court of Georgia, and a copy of the Notice of Discipline shall be served upon the Respondent pursuant to Bar Rule 4-203.1.

(c) This subparagraph is reserved.

(d) This subparagraph is reserved.

(e) This subparagraph is reserved.

(f) This subparagraph is reserved.

(g) The Office of General Counsel shall file the documents by which service was accomplished with the Clerk of the Supreme Court of Georgia.

(h) The level of disciplinary sanction in any Notice of Discipline rejected by the Respondent or the Office of General Counsel shall not be binding on the Special Master, the Review Panel or the Supreme Court of Georgia.

F.) Proposed Amendments to Rule 4-208.3.

Rule 4-208.3, regarding the rejection of a Notice of Discipline contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-208.3. Rejection of Notice of Discipline

(a) In order to reject the Notice of Discipline, the ~~r~~Respondent or the Office of General Counsel must file a Notice of Rejection of the Notice of Discipline with the Clerk of the Supreme Court of Georgia within thirty (30) days following service of the Notice of Discipline. ~~In the event service was accomplished by certified mail, the respondent shall have thirty-three (33) days from the date the Notice of Discipline was mailed to file the Notice of Rejection.~~

(b) Any Notice of Rejection by the ~~r~~Respondent shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the ~~r~~Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file ~~A~~ a copy of such written response ~~must also be filed~~ with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

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

If the proposed amendments to the Rule are adopted, the new Rule 4-408.3 would read as follows:

Rule 4-208.3. Rejection of Notice of Discipline

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

(b) Any Notice of Rejection by the Respondent shall be served by the Respondent upon the Office of the General Counsel of the State Bar of Georgia. Any Notice of Rejection by the Office of the General Counsel of the State Bar of Georgia shall be served by the General Counsel upon the Respondent. No rejection by the Respondent shall be considered valid unless the Respondent files a written response to the pending grievance at or before the filing of the rejection. The Respondent must also file a copy of such written response with the Clerk of the Supreme Court at the time of filing the Notice of Rejection.

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

G.) Proposed Amendments to Rule 4-208.4.

Rule 4-208.4, regarding the filing of a Formal Complaint after rejection of a Notice of Discipline contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within thirty days following the filing of a Notice of Rejection. ~~At the same time a Petition for Appointment of Special Master and proposed order thereon shall be filed.~~ The Notice of Discipline shall operate as the notice of finding of pProbable Cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any

new evidence regarding the grievance and take appropriate action.

If the proposed amendments to the Rule are adopted, the new Rule 4-408.4 would read as follows:

Rule 4-208.4. Formal Complaint Following Notice of Rejection of Discipline

(a) The Office of the General Counsel shall file with the Clerk of the Supreme Court of Georgia a formal complaint and a Petition for Appointment of Special Master within thirty days following the filing of a Notice of Rejection. The Notice of Discipline shall operate as the notice of finding of Probable Cause by the Investigative Panel.

(b) The Office of the General Counsel may obtain extensions of time for the filing of the formal complaint from the Chairperson of the Investigative Panel or his or her designee.

(c) After the rejection of a Notice of Discipline and prior to the time of the filing of the formal complaint, the Investigative Panel may consider any new evidence regarding the grievance and take appropriate action.

H.) Proposed Amendments to Rule 4-209.

Rule 4-209, regarding the appointment of a Special Master, contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master

(a) Upon receipt of a finding of ~~pProbable eCause~~, a petition for appointment of a ~~sSpecial mMaster~~ ~~and proposed order thereon~~ and a formal complaint from the Investigative Panel, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the ~~Court~~ Coordinating Special Master that appointment of a ~~sSpecial mMaster~~ is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of ~~pProbable eCause~~ need not be filed.

(b) ~~Upon~~ Within a reasonable time after receipt of a petition/motion for appointment of a ~~sSpecial mMaster~~ or notification that a ~~sSpecial mMaster~~ previously appointed has been disqualified, the ~~Court~~ Coordinating Special Master will ~~nominate~~ appoint a ~~sSpecial mMaster~~ to conduct formal disciplinary

proceedings in such complaint ~~within fourteen days~~. The ~~Court~~ Coordinating Special Master shall select as ~~sSpecial m~~Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a ~~sSpecial m~~Master may not be appointed to hear a complaint against a ~~r~~Respondent who resides in the same circuit as that in which the ~~sSpecial m~~Master resides.

(c) Upon being advised of appointment of a ~~sSpecial m~~Master by the ~~Court~~ Coordinating Special Master, the Clerk of the Court shall return the original ~~n~~Notice of ~~d~~Discipline, rejection of ~~n~~Notice of ~~d~~Discipline, if applicable, formal complaint, ~~p~~Probable ~~e~~Cause finding, petition for appointment of ~~sSpecial m~~Master ~~and the signed order thereon~~ to the Office of General Counsel of the State Bar of Georgia. Upon notification of the appointment of a ~~sSpecial m~~Master, the ~~State Bar~~ Office of General Counsel shall immediately serve the ~~r~~Respondent with the order of appointment of a ~~sSpecial m~~Master and with its formal complaint as hereinafter provided.

(d) Within ten days of service of the notice of appointment of a ~~sSpecial m~~Master, the ~~r~~Respondent and the State Bar ~~shall may~~ lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. ~~A The party filing such objections or challenges must also serve a copy of the objections or challenges shall be served upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenge. Within a reasonable time~~ The chairperson of the Review Panel shall, within fifteen days, consider the challenges, the responses of ~~counsel Respondent, the State Bar, the Coordinating Special Master and of the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master of his the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court, the Coordinating Special Master, the Special Master and the parties, the State Bar and the Respondent shall be notified of the disqualification and nomination appointment of a successor Special Master shall proceed as provided in this rule.~~

If the proposed amendments to the Rule are adopted, the new Rule 4-209 would read as follows:

Rule 4-209. Docketing by Supreme Court; Appointment of Special Master; Challenges to Special Master

(a) Upon receipt of a finding of Probable Cause, a petition for appointment of a Special Master and a formal complaint from the Investigative Panel, the Clerk of the Georgia Supreme Court shall file the matter in the records of the Court, give the matter a Supreme Court docket number and notify the Coordinating Special Master that appointment of a Special Master is appropriate. In those proceedings where a Notice of Discipline has been filed, the finding of Probable Cause need not be filed.

(b) Within a reasonable time after receipt of a petition/motion for appointment of a Special Master or notification that a Special Master previously appointed has been disqualified, the Coordinating Special Master will appoint a Special Master to conduct formal disciplinary proceedings in such complaint. The Coordinating Special Master shall select as Special Masters experienced members of the State Bar of Georgia who possess a reputation in the Bar for ethical practice; provided, that a Special Master may not be appointed to hear a complaint against a Respondent who resides in the same circuit as that in which the Special Master resides.

(c) Upon being advised of appointment of a Special Master by the Coordinating Special Master, the Clerk of the Court shall return the original Notice of Discipline, rejection of Notice of Discipline, if applicable, formal complaint, Probable Cause finding, petition for appointment of Special Master to the Office of General Counsel of the State Bar of Georgia. Upon notification of the appointment of a Special Master, the Office of General Counsel shall immediately serve the Respondent with the order of appointment of a Special Master and with its formal complaint as hereinafter provided.

(d) Within ten days of service of the notice of appointment of a Special Master, the Respondent and the State Bar may lodge any and all objections or challenges they may have to the competency, qualifications or impartiality of the Special Master with the chairperson of the Review Panel. The party filing such objections or challenges must also serve a copy of the objections or challenges upon the opposing counsel, the Coordinating Special Master and the Special Master, who may respond to such objections or challenge. Within a reasonable time the chairperson of the Review Panel shall, consider the challenges, the responses of Respondent, the State Bar, the Coordinating Special Master and the Special Master, if any, determine whether the Special Master is disqualified and notify the parties, the Coordinating Special Master and the Special Master

of the chairperson's decision. Exceptions to the chairperson's denial of disqualification are subject to review by the entire Review Panel and, thereafter, by the Supreme Court when exceptions arising during the evidentiary hearing and exceptions to the report of the Special Master and the Review Panel are properly before the Court. In the event of disqualification of a Special Master by the chairperson of the Review Panel, said chairperson shall notify the Clerk of the Supreme Court, the Coordinating Special Master, the Special Master, the State Bar and the Respondent of the disqualification and appointment of a successor Special Master shall proceed as provided in this rule.

I.) Proposed New Bar Rule 4-209.1.

Rule 4-209.1, regarding the Coordinating Special Master, would be a new Rule and would be contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia. It would read as follows:

Rule 4-209.1 Coordinating Special Master

(a) The appointment of and the determination of the compensation of the Coordinating Special Master shall be the duty of the Coordinating Special Master Selection and Compensation Commission. The Commission shall be comprised of the second, third and fourth immediate past presidents of The State Bar of Georgia. If any of the above named ex officio individuals should be unable to serve, the vacancy shall be filled by appointment by the Supreme Court.

(b) The Coordinating Special Master shall be selected by the Coordinating Special Master Selection and Compensation Commission, with the approval of the Supreme Court. The Coordinating Special Master shall serve as an independent contractor at the pleasure of the Coordinating Special Master Selection and Compensation Commission.

(c) The Coordinating Special Master shall be compensated by the State Bar of Georgia from the general operating funds of the State Bar of Georgia in an amount specified by the Coordinating Special Master Selection and Compensation Commission. The Coordinating Special Master's compensation shall be approved by the Supreme Court. On or before the first day of each calendar year, the Coordinating Special Master Selection and Compensation Commission shall submit to the Supreme Court for approval the hourly rate to be paid to the Coordinating Special Master during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

(d) The Coordinating Special Master shall have such office space, furniture and equipment and may incur

such operating expenses in such amounts as may be specified by the Supreme Court. Such amounts shall be paid by the State Bar of Georgia from the general operating funds. On or before the first day of each calendar year, the Supreme Court will set the amount to be paid for the above items during the fiscal year beginning the first day of July of that year.

(e) If the Coordinating Special Master position is vacant or the Coordinating Special Master has recused or been disqualified from a particular matter, the Supreme Court may appoint a temporary Acting Coordinating Special Master to act until the position can be filled or to act in any particular matter.

J.) Proposed Amendments to former Rule 4-209.1.

Former Rule 4-209.1, regarding Special Masters, would be re-designated as Rule 4-209.2 and would be amended by deleting the struck-through sections and inserting the sections underlined as set out below. Current Rule 4-209.2 would be deleted in its entirety.

Rule 4-209.12 Special Masters

(a) The Coordinating Special Master, subject to the approval of the Supreme Court, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the ~~Supreme Court~~ Coordinating Special Master. Said list ~~and~~ shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.

(b) Training for Special Masters and Hearing Officers is required expected, subject to the terms of this Rule: ~~Special Masters shall and shall consist of attend one Special Master training session within twelve months after selection by the Supreme Court to serve as Special Master. The Special Master and Hearing Officer training shall consist of a minimum of a six hour planned session conducted by ICJE or ICLE with input from the Office of General Counsel, the Respondent's Bar and the Supreme Court of Georgia be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training session shall periodically be removed from consideration for appointment in future cases. Failure to attend such a~~

training session shall not be the basis for a disqualification of any Special Master or Hearing Examiner; as such qualifications shall remain in the sole discretion of the Supreme Court. ~~Attorneys who are serving as Special Masters at the time this Rule is amended to require Special Master training shall be exempt from the provisions of this subparagraph; however, they are encouraged to participate in such training sessions.~~

(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court. Hearing Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.

(d) On or before the first day of March of each calendar year, the Supreme Court may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

~~Rule 4-209.2. Special Masters in Emergency Suspension Proceedings; Qualifications, Training, Terms, Powers and Duties~~

~~(a) In addition to the pool of Special Masters described in Rule 4-209.1, the Supreme Court shall appoint six members of the State Bar, and such additional number of members as the Court may feel to be desirable or necessary from time to time, to serve as Special Masters in emergency suspension show cause hearings and in such other matters as may be designated by the Supreme Court. Two (2) bar members shall be selected from each of the three federal judicial districts in Georgia, additional members shall be selected from appropriate federal judicial districts in Georgia as determined by the Court, and all appointees shall serve for five-year terms. A Special Master shall be eligible for reappointment.~~

~~(b) Training for Special Masters who serve in emergency suspension proceedings is required as provided in Bar Rule 4-209.1(b).~~

~~(c) A Special Master in an emergency suspension proceeding shall have the following powers and duties:~~

~~(1) to exercise general supervision over proceedings assigned to him or her and to perform all duties specifically enumerated in these Rules;~~

~~(2) to permit negotiations between the State Bar of Georgia and the Respondent;~~

~~(3) to receive and evaluate any Petition for Voluntary Discipline filed by a Respondent, to receive and evaluate responses to such petition from the Office of General Counsel and to make recommendations to the Supreme Court on such petition;~~

~~(4) to grant continuances and to extend any time limit provided for herein as to any matter pending before him or her;~~

~~(5) to apply to the Supreme Court of Georgia for an order naming a successor in the event that the Special Master becomes incapacitated to perform his or her duties;~~

~~(6) to sign subpoenas and exercise the powers described in Rule 4-221(b);~~

~~(7) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings; and~~

~~(8) to make a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings.~~

If the proposed amendments to the Rule are adopted, the new Rule 4-209.2 would read as follows:

Rule 4-209.2 Special Masters

(a) The Coordinating Special Master, subject to the approval of the Supreme Court, shall select and maintain a limited pool of qualified lawyers to serve as Special Masters for the State Disciplinary Board and Hearing Officers for the Board to Determine Fitness of Bar Applicants pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia. The names of those so selected shall be placed on a list maintained by the Coordinating Special Master. Said list shall be published annually in a regular State Bar of Georgia publication. Although not mandatory, it is preferable that a lawyer so selected shall only remain on such list for five years, so that the term may generally be considered to be five years. Any lawyer whose name is removed from such list shall be eligible to be selected and placed on the list at any subsequent time.

(b) Training for Special Masters and Hearing Officers is expected, subject to the terms of this Rule and shall consist of training session within twelve months after selection. The Special Master and Hearing Officer training shall be planned and conducted by the Coordinating Special Master. Special Masters and Hearing Officers who fail to attend such a minimum training session shall periodically be removed from consideration for appointment in

future cases. Failure to attend such a training session shall not be the basis for a disqualification of any Special Master or Hearing Examiner; as such qualifications shall remain in the sole discretion of the Supreme Court.

(c) The Special Masters may be paid by the State Bar of Georgia from the general operating funds on a per case rate to be set by the Supreme Court. Hearing Officers may be paid pursuant to Part A, Section 14 of the Rules Governing Admission to the Practice of Law in Georgia.

(d) On or before the first day of March of each calendar year, the Supreme Court may set the amount to be paid to the Special Masters during the fiscal year beginning the first day of July of that year, which rate shall continue until the conclusion of the fiscal year of the State Bar.

K.) Proposed New Bar Rule 4-209.3.

Rule 4-209.3, regarding the powers of the Coordinating Special Master, would be a new Rule and would be contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia. It would read as follows:

Rule 4-209.3 Powers and Duties of the Coordinating Special Master

The Coordinating Special Master shall have the following powers and duties:

- (1) to establish requirements for and supervise Special Master and Hearing Officer training;
- (2) to assign cases to Special Masters and Hearing Officers from the pool provided in Rule 4-209(b);
- (3) to exercise all of the powers and duties provided in Rule 4-210 when acting as a Special Master under sub-paragraph (8) below;
- (4) to monitor and evaluate the performance of Special Masters and Hearing Officers;
- (5) to remove Special Masters and Hearing Officers for such cause as may be deemed proper by the Coordinating Special Master;
- (6) to fill all vacancies occasioned by incapacity, disqualification, recusal or removal;
- (7) to administer Special Master and Hearing Officer compensation, if authorized as provided in Rule 4-209.2 or Part A, section 14 of the Rules Governing the Admission to the Practice of Law in Georgia;

(8) to hear pretrial motions when no Special Master has been assigned; and

(9) to perform all other administrative duties necessary for an efficient and effective hearing system.

L.) Proposed Amendments to Rule 4-210.

Rule 4-210, regarding the authority of a Special Master, contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-210. Powers and Duties of Special Masters

In accordance with these rules a duly appointed ~~s~~Special ~~m~~Master shall have the following powers and duties:

(a) to exercise general supervision over assigned disciplinary proceedings ~~assigned to him, including emergency suspension cases as provided in Rule 4-108,~~ and to perform all duties specifically enumerated in these Rules;

(b) to ~~pass~~ rule on all questions concerning the sufficiency of the formal complaint;

(c) to conduct the negotiations between the State Bar of Georgia and the ~~r~~Respondent, whether at a pre-trial meeting set by the ~~s~~Special ~~m~~Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter ~~pending before him;~~

(f) to apply to the ~~Supreme Court of Georgia for an order naming his~~ Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the rRespondent reside in the same circuit;

~~(g) to defer action on any complaint pending before him when he learns of the docketing of another complaint against the same respondent and believes that the new complaint will be assigned to him by the Supreme Court;~~

~~(h)~~ (g) to hear, ~~and~~ determine and consolidate action on the complaints, where there are multiple complaints against a ~~r~~Respondent growing out of differ-

ent transactions, whether they involve one or more complainants, ~~as separate counts~~, and may proceed to make recommendations on each ~~count~~ complaint as constituting a separate offense;

~~(f)~~ (h) to sign subpoenas and exercise the powers described in Rule 4-221(b);

~~(f)~~ (i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

~~(k)~~ (j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;

~~(f)~~ (k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases.

(l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings;

(m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written finds of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

If the proposed amendments to the Rule are adopted, the new Rule 4-210 would read as follows:

Rule 4-210. Powers and Duties of Special Masters

In accordance with these rules a duly appointed Special Master shall have the following powers and duties:

(a) to exercise general supervision over assigned disciplinary proceedings including emergency suspension cases as provided in Rule 4-108 and to perform all duties specifically enumerated in these Rules;

(b) to rule on all questions concerning the sufficiency of the formal complaint;

(c) to conduct the negotiations between the State Bar of Georgia and the Respondent, whether at a pretrial meeting set by the Special Master or at any other time;

(d) to receive and evaluate any Petition for Voluntary Discipline;

(e) to grant continuances and to extend any time limit provided for herein as to any pending matter;

(f) to apply to the Coordinating Special Master for leave to withdraw and for the appointment of a successor in the event that he or she becomes incapacitated to perform his or her duties or in the event that he or she learns that he or she and the Respondent reside in the same circuit;

(g) to hear, determine and consolidate action on the complaints, where there are multiple complaints against a Respondent growing out of different transactions, whether they involve one or more complainants, and may proceed to make recommendations on each complaint as constituting a separate offense;

(h) to sign subpoenas and exercise the powers described in Rule 4-221(b);

(i) to preside over evidentiary hearings and to decide questions of law and fact raised during such hearings;

(j) to make findings of fact and conclusions of law as hereinafter provided and to submit his or her findings for consideration by the Review Panel;

(k) to exercise general supervision over discovery by parties to disciplinary proceedings and to conduct such hearings and sign all appropriate pleadings and orders pertaining to such discovery as are provided for by the law of Georgia applicable to discovery in civil cases.

(l) in disciplinary cases, to make a recommendation of discipline, and in emergency suspension cases a recommendation as to whether the Respondent should be suspended pending further disciplinary proceedings;

(m) to conduct and exercise general supervision over hearings for the Board to Determine Fitness of Bar Applicants and to make written finds of fact and recommendations pursuant to Part A, Section 8 of the Rules Governing Admission to the Practice of Law in Georgia.

M.) Proposed Amendments to Rule 4-211.

Rule 4-211, regarding the filing of a Formal Complaint, contained in Part IV, Chapter 2 of the Rules of the State Bar of Georgia would be amended by deleting the struck-through sections and inserting the sections underlined as follows:

Rule 4-211. Formal Complaint; Service

(a) Within thirty days after a finding of ~~p~~Probable ~~e~~Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the ~~r~~Respondent after ~~nominat~~ion appointment of a Special Master by the ~~Supreme Court~~ Coordinating Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.

(b) This subparagraph is reserved.

(c) At all stages of the proceeding, both the ~~r~~Respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

If the proposed amendments to the Rule are adopted, the new Rule 4-211 would read as follows:

Rule 4-211. Formal Complaint; Service

(a) Within thirty days after a finding of Probable Cause, a formal complaint shall be prepared by the Office of the General Counsel which shall specify with reasonable particularity the acts complained of and the grounds for disciplinary action. A formal

complaint shall include the names and addresses of witnesses so far as then known. A copy of the formal complaint shall be served upon the Respondent after appointment of a Special Master by the Coordinating Special Master. In those cases where a Notice of Discipline has been filed and rejected, the filing of the formal complaint shall be governed by the time period set forth in Rule 4-208.4. The formal complaint shall be served pursuant to Bar Rule 4-203.1.

(b) This subparagraph is reserved.

(c) At all stages of the proceeding, both the Respondent and the State Bar of Georgia may be represented by counsel. Counsel representing the State Bar of Georgia shall be authorized to prepare and sign notices, pleadings, motions, complaints, and certificates for and in behalf of the State Bar of Georgia and the State Disciplinary Board.

SO MOVED, this _____ day of _____, 2011.

Counsel for the State Bar of Georgia

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