

Georgia Bar Journal

December 2011 ■ Volume 17 ■ Number 4



Ethical Considerations
in Arbitration

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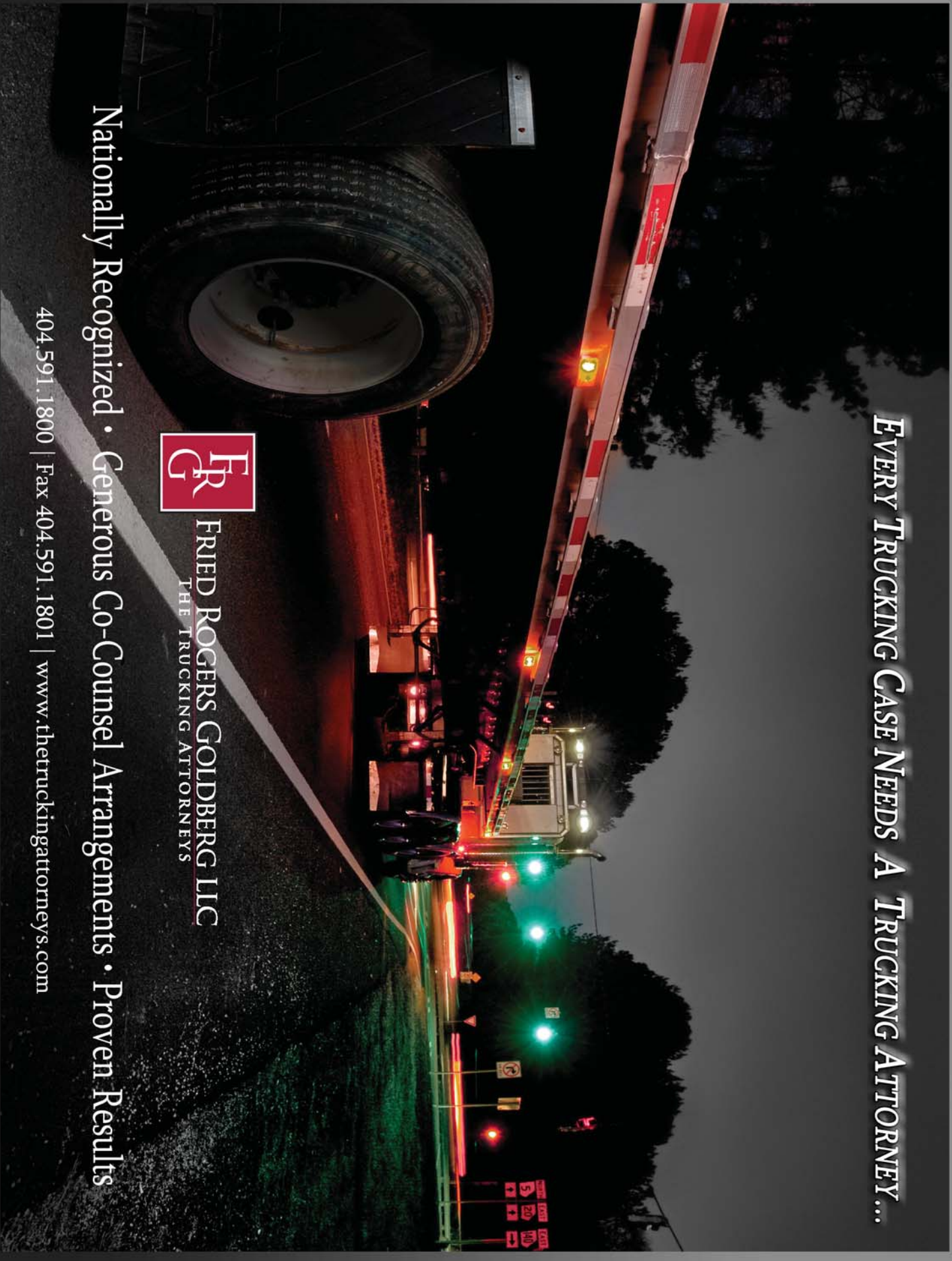
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by Kenneth L. Shigley

Tough On Crime, Smart On Crime

My first job after law school was as an assistant district attorney in the small town where I had graduated from

high school. I was 26 but in blue jeans rather than a suit

could have passed for a decade younger. We covered four mostly rural counties. Abe Lincoln might have recognized the circuit-riding aspect of that life, but for the fact that I traveled by '73 Dodge Dart instead of by horse.

The veteran DA was in his last term. Once when driving between county seats with the car windows wide open, he broke into an enthusiastic rendition of Johnny Paycheck's then-new hit, "Take This Job and Shove It." In the office where I was based, we had one desk; the ADA who got to the office first in the morning got to sit behind it. The two greenhorn ADA's in our office worked almost autonomously, with little supervision other than the sheriff, secretaries who baked many cakes to flesh out my then-skinny frame, the clerk of superior court who saved me from disaster more than once and judges who would not let us mess up too much.

It was grand experience for a budding trial lawyer as we were constantly trying cases. The month after joining the office, I assisted in a death penalty trial for the rape and murder of a young girl. After years of appeals the defendant's death sentence was reduced to life imprisonment and he remains in the prison system today, 34 years later.

"It is my hope that the hard work and leadership of the council, our governor and the legislature, with assistance from the State Bar, will lead to significant reforms here in Georgia."

A couple of weeks later, I tried my first solo jury trial on 30 minutes notice. Suspecting nothing, I was sitting with the DA on a Monday morning at the far end of the circuit in a courtroom full of folks who had been summoned for jury duty. He announced the first case for trial and the clerk called the first 12 jurors into the box. Without warning my boss handed me a file I had never seen on a case of robbery by sudden snatching. He said, "I'll strike the jury, you talk with the witnesses outside and be ready to try the case in 30 minutes." Thrown into the pool with no preparation, it was sink or swim. With no time to worry and obsess about it, I interviewed the

purse snatching victim and her husband, figured out that the keys in her purse at trial matched the charred keys found in the wood stove at the defendant's residence and eked out a conviction despite my lack of experience and preparation.

Other trials came in rapid succession and my confidence grew month by month. The fact that a prosecutor with discretion as to which cases to try, with a duty to prosecute the guilty and release the innocent, really

ought to win way more than 90 percent of the time, so my win rate was not due to any genius on my part, escaped my notice. Confidence soon evolved into cockiness. I relished the opportunity to strut into a courtroom toting an unloaded machine gun. To a hammer everything is a nail, and I was a brand new hammer. I began to see almost any citizen accused of a crime as less than human, and went along with a local practice of forcing lawyers from out of town to sit and wait all week for their cases to be reached rather than placing them on call. Reflecting upon that experience decades later, I recognize that some of my decisions were based more upon ambition, testosterone and a desire to prove myself tough than upon mature judgment.

After about a year I began to see that perhaps 85 percent of the people I was prosecuting probably would not have been in trouble but for alcohol, drugs and ignorance. Another 15 percent or so were primarily mean. There was, of course, a good deal of overlap between those groups. But lacking the concept of drug and DUI courts and any coordination with addiction or mental health counseling resources, we had no solution but prosecution, incarceration and probation. If timing and politics had been just a little different, I might have become a career prosecutor. But in the 1978 election my desk mate lost a race to succeed our employer as district attorney, and we both left the office in the transition. Over the next three years I handled a lot of indigent criminal defense cases under the old system of random appointment. Eager for courtroom experience, I often went to trial and got lucky, but soon learned that dedicated work on appointed cases did not pay my bills. When an offer came to join an insurance defense firm in Atlanta—at a time when I was 30, broke and single in a small town—I moved on and never looked back.

Thirty years later, I was installed as State Bar president and Gov. Nathan Deal appointed me to the

newly created Special Council on Criminal Justice Reform. At the bill signing ceremony at a drug court session in his son's superior court courtroom in Gainesville, I was convinced that Gov. Deal is absolutely sincere about salvaging lives of non-violent offenders caught in the cycle of addiction, not merely saving money in the state budget. At the same time, the Bar role thrust me into dealing with issues regarding the statewide indigent defense system and the proposed Juvenile Code, attempting to quickly get up to speed on areas of law I had not touched in three decades.

Being thrown once again into the deep end of a pool, this time a pool of criminology research, I appointed a State Bar Committee on Criminal Justice Reform. It is chaired by Cobb Judicial Circuit District Attorney Pat Head and comprised of a stellar group of prosecutors, judges and defense lawyers with a wealth of "boots on the ground" experience.¹ I hope that our blue ribbon Bar committee will play a significant role as the state moves forward with criminal justice reform over the next few years.

The Special Council on Criminal Justice Reform included Chief Justice Hunstein, trial judges with intense criminal law experience, Judicial Qualifications Commission member Linda Evans, a bipartisan group of dedicated legislators, one district attorney and me.² It was formed to address the budget-busting fact that 1 in 70 adults in Georgia were behind bars at the end of 2007, compared to the national incarceration rate of 1 in 100 adults, and Georgia had the fourth highest incarceration rate in the country. Moreover, 1 in 13 Georgians are under some form of corrections supervision, the highest rate in the nation. Young African-American males today are more likely to go to prison than to college. People caught in a cycle of addiction, crime and unemployment are as a practical matter unavailable for productive employment and responsible parenting of children they help bring into the world. Those who complete

long mandatory sentences emerge with pocket change, a bus ticket and no marketable skills other than those they learn from other inmates. The vicious cycle of recidivism continues.

The top leadership of state government laid out the following goals for the Council: (1) address the growth of the state's prison population, contain corrections costs and increase efficiencies and effectiveness that result in better offender management; (2) improve public safety by reinvesting a portion of the savings into strategies that reduce crime and recidivism; and (3) hold offenders accountable by strengthening community-based supervision, sanctions and services.³

This council worked through the summer and fall. We received technical assistance from a strong team of state public safety and corrections officials and from the Public Safety Performance Project of the Pew Center on the States (Pew) as part of the state's selection to participate in the Justice Reinvestment Initiative of the U.S. Department of Justice. Pew has provided assistance to more than a dozen states by analyzing data to identify the drivers of prison growth and by developing research-based, fiscally sound policy options to protect public safety, hold offenders accountable and contain corrections costs. Pew's team was assisted by the Crime and Justice Institute and Applied Research Services, Inc.

Council members divided into three working groups to develop specific recommendations in three areas: sentencing and prison admissions; prison length-of-stay and parole; and community supervision. In November, the Council released its findings and recommendations, with the underlying goal of protecting and improving public safety, in a report to the legislature and other state leadership.

Here's part of what we found. Supervising the nearly half a million people under correctional control in Georgia costs state taxpayers more than \$1 billion dollars per year. Despite this tremen-

dous financial commitment, our recidivism rates remain stubbornly high. In short, we are not achieving public safety returns sufficient to justify this level of public expenditure. In these hard times, we must ensure that our resources are being used in the most effective way possible to keep our communities safe. Georgia's prison population has grown 35 percent over the past decade. If we do nothing, it is projected to grow an additional 8 percent during the next five years, bringing the total to nearly 60,000 inmates and forcing the state to spend an additional \$264 million on corrections. What accounts for this extraordinary growth? It cannot be chalked up simply to the violent crime rate, which has declined 20 percent over the past decade. Rather, it is the result of policy decisions that have sent more people to prison and held them there for longer.

Whatever else we do, we must remember prisons are important in the fight against crime. As a prosecutor long ago, I looked into the heart of darkness, the evil that drives the most hard-core of criminals. There is no doubt that serious violent offenders need to be locked up for a long time to protect law-abiding citizens, and the money we spend to put them behind bars is money well spent. However, approximately two-thirds of those admitted to prison in Georgia have been convicted of non-violent offenses and more than half have never before been to prison. The percentage of sentence served for offenders in prison has more than doubled over the past 20 years. Turning even a small percentage of non-violent offenders from tax burdens in prison to tax payers in community based corrections, and reinvestment of a portion of the cost of prison into programs that have proven effective elsewhere, could help both public safety and public budgets.

It is not just the prison population that has grown. Since 2000, Georgia's felony probation popu-

lation has grown 22 percent and the parole population has grown 9 percent. With an overwhelming majority of its corrections budget allocated to prisons, Georgia spends relatively few resources on community corrections, leaving agencies strained in their efforts to effectively supervise offenders in the community. For example, probation officers in Georgia have an average caseload of about 200, and the state spends just over \$1 per day supervising each probationer. In addition, there are limited program options to address the significant substance abuse and mental health problems among this population and long lines for the ones that do exist. We need look no farther than our high recidivism rates to see that these inadequate community supervision options are not enough.

Ensuring that Georgia's community corrections agencies have the resources and authority to supervise this growing number of offenders effectively is essential to public safety. If we adopt proven strategies to improve their success rate—by creating incentives for success and strengthening their supervision, sanctions and services—we all win, with less crime, fewer victims, more accountability and reduced costs of punishment. The council developed a number of recommendations to meet this objective: expanding drug, DUI, mental health and veterans accountability courts that have been proven to effectively improve public safety; expanding treatment options for those offenders with substance abuse and mental health issues; implementing programs and practices such as cognitive interventions that research has proven are effective at reducing recidivism; and introducing earned compliance credits to encourage offenders to comply with the conditions of their supervision and to participate in programs while under supervision. We agreed on reclassifying minor traffic offenses as administrative rather than criminal, and adjusting the felony

threshold on property offenses to account for 30 years of inflation. These are just a few of the recommendations that will focus not just on saving money, but also on protecting families and communities.

While the council enjoyed broad consensus on a number of issues, including accountability courts, reclassification of some offenses and more community-based corrections, we were not able to make a unanimous recommendation on modifications of the mandatory minimum sentences that cumulatively drive a portion of the increase in Georgia prison populations. In the 1990s, Georgia was one of a number of states that reacted to a perception of softness among judges and parole boards by enacting a set of mandatory minimum sentences that sounded good politically but in application to individual cases could be unfair because they ignore the infinite variations of facts unique to each case.


One view is that more sentencing discretion should be restored to judges, possibly through a "safety valve" procedure requiring findings of fact and conclusions of law on a list of factors that would justify departure from prescribed sentence ranges. Such a "safety valve" might include the right of the district attorney to appeal from a sentencing decision. A variety of such procedures are employed to varying degrees in federal courts and some other states that have mandatory minimum sentencing laws. A second view is that mandatory minimums are important due to the perception that some judges would be reluctant to impose adequate sentences on dangerous offenders and that district attorneys who are familiar with the cases and the offenders should be able to control sentencing through exercise of discretion as to charging greater or lesser offenses. A third approach is to modify mandatory minimum sentences by attempting to carve out identifiable inequities without restoring broader sentencing discretion to judges, partly out of concern that too much discretion would be open to favoritism based

in part upon factors of race, class, politics and other considerations.

The federal system led the way with mandatory minimum sentences for drug offenses and defendants with prior felony convictions. In October, after our council had essentially completed its work, the bipartisan United States Sentencing Commission concluded its study on the subject with recommendations that mandatory minimum penalties should “(1) not be excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, . . . (3) be applied consistently,” and that Congress should consider whether a statutory ‘safety valve’ mechanism similar to the one available for certain drug trafficking offenders . . . may be appropriately tailored for low-level, non-violent offenders convicted of other offenses.”⁴ It is above the pay grade of a State Bar president to say what the public policy of Georgia should be on this point.

Georgia’s public safety challenges are pressing but not unique. Across the nation, states are struggling with the frustrating reality of high prison costs and high recidivism. Several of our neighbors, including North Carolina, South Carolina, Arkansas, Kansas and Texas, are employing innovative strategies similar to those our council has considered, and demonstrating that it is possible to be both tough and smart on crime. Even very conservative states like Texas have found much success in their reform measures coordinated similar to those we studied, so we now have data from other states that suggests with fair confidence how evidence based practices are working to protect public safety and save money.

Georgia has an opportunity to join these and other states in passing legislation to improve public safety, hold offenders accountable, control corrections costs and turn tax burdens into tax payers. It is my hope that the hard work and leadership of the council, our governor and the legislature, with

assistance from the State Bar, will lead to significant reforms here in Georgia. We can afford no less. 

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

Endnotes

1. The State Bar Committee on Criminal Justice Reform includes: Patrick H. Head, chairperson, district attorney, Cobb Judicial Circuit, Marietta; Wilmer “Buddy” Parker III, vice chairperson, M. J. “Buddy” Parker, Atlanta; Markette Baker, solicitor general, Troup County, LaGrange; Mary Margaret Brannen, Georgia Public Policy Foundation, Atlanta; Fredric D. Bright, district attorney, Ocmulgee Circuit, Milledgeville; David Lee Cannon Jr., solicitor general, Cherokee County, Canton; Robert J. Castellani, senior superior court judge, DeKalb County; Brenda S. Hill Cole, judge, State Court of Fulton County, Atlanta; J. Michael Cranford, past chair, Criminal Law Section and past president, Georgia Association of Criminal Defense Lawyers, Macon; Michael Joseph Cuccaro, Administrative Office of the Courts, Atlanta; Gregory W. Edwards, district attorney, Dougherty Judicial Circuit, Albany; Jon Vincent Forehand, Allen & Forehand, Moultrie; Brian Keith Fortner, solicitor general, Douglas County, Douglasville; William A. Foster III, senior superior court judge, Paulding Judicial Circuit, Dallas; Jason William Hammer, Carlock, Copeland & Stair, LLP, Atlanta; C. LaTain Kell, superior court judge, Cobb Judicial Circuit, Marietta; Seth D. Kirschenbaum, Davis, Zipperman, Kirschenbaum & Lotito, Atlanta; Christine Anne Koehler, Koehler & Riddick, LLC, Lawrenceville; John Richard Martin, Martin Bros., PC, Atlanta; Steven J. Messinger, chief assistant district attorney, Paulding Judicial Circuit, Dallas; Bonnie Chessher Oliver, superior court judge, Northeastern Judicial Circuit, Gainesville; Claudia Susan Saari, chief public defender, Stone Mountain Judicial Circuit, Decatur; Dennis C. Sanders, district attorney, Toombs Judicial Circuit, Thomson; Robert Frank Schnatmeier Jr.,

- Gentry Smith Dettmering Morgan & Schnatmeier LLP, Marietta; Carmen D. Smith, solicitor general, Fulton County, Atlanta; Hon. D. Jay Stewart, superior court judge, Atlantic Judicial Circuit, Claxton; Frank C. Winn, Winn & Winn, Douglasville; Rebecca Ashley Wright, district attorney, Augusta Judicial Circuit, Augusta. Advisors: Ronald L. Carlson, University of Georgia School of Law; Sen. Jason Carter, District 42, Decatur; Russell Dean Covey, Georgia State University School of Law; Sen. William S. Cowser, District 46, Athens; Stan Gunter, Prosecuting Attorneys Council; Sen. William Hamrick III, District 30, Carrollton; Sen. Josh McKoon, District 29, Columbus; Rep. Wendell K. Willard, District 49, Sandy Springs; Karen Lisa Worthington, Karen Worthington Consulting.
2. Gubernatorial Appointees: Hon. Todd Markle (chair and designee of the governor) superior court judge, Atlanta Judicial Circuit; Linda Evans, member, Judicial Qualifications Commission; David McDade, district attorney, Douglas County; Ken Shigley, president, State Bar of Georgia; Senate Appointees: Sen. John Crosby, District 13, Tifton; Sen. Bill Hamrick, District 30, Carrollton; Sen. Ronald Ramsey, District 43, Decatur; House Appointees: Rep. Mary Margaret Oliver, District 83, Decatur; Rep. Jay Powell, District 171, Camilla; Rep. Willie Talton, District 145, Warner Robins; Judicial Branch Appointees: Carol W. Hunstein, chief justice, Supreme Court of Georgia; Michael P. Boggs, superior court judge, Waycross Judicial Circuit; Ural Glanville, superior court judge, Atlanta Judicial Circuit.
3. Letter to the Department of Justice and the Pew Center on the States dated May 27, 2011, signed by Gov. Nathan Deal, Chief Justice Carol W. Hunstein, Lt. Gov. Casey Cagle and Speaker David Ralston.
4. United States Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (October 2011), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm (last visited Nov. 14, 2011).



by Stephanie Joy Kirijan*

Juvenile Code Poised for Legislative Action

**Thank you to Kirsten Widner, former co-chair of the YLD Juvenile Law Committee and director of policy and advocacy for the Barton Child Law & Policy Center, for providing information for this article.*

Georgia's current juvenile code is found in Title 15, Chapter 11 of the Official Code of Georgia. It provides the jurisdiction, structure and requirements for juvenile court practice, particularly with respect to three main types of cases: delinquency, deprivation and status offenses.

The Georgia juvenile code has been revised in a piecemeal fashion since it was adopted in 1971. This has left the current code at best confusing, and at worst, contradictory. Judges and lawyers who use the current code everyday describe it as difficult to use, lacking in clarity and outdated. Thus, a comprehensive rewrite of the juvenile code is necessary to ensure clarity and consistency, while incorporating best practices that have been developed in the 40 years since the current code was adopted. The General Assembly recognized that the current code is out of date by pass-

ing a resolution in 2005 calling for a complete overhaul of the juvenile code.

Seven years ago, the Juvenile Law Committee of the Young Lawyers Division (YLD) undertook an ambitious project, funded in large part by grants from the Georgia Bar Foundation (GBF), to create a model juvenile code that could provide a framework, based on proven best practices and scientific research, for revising Georgia's juvenile code. In March 2008, the committee released the Proposed Model Code.¹ The Proposed Model Code developed a new organizational structure, created and maintained stylistic consistency and incorporated proposals for substantive revisions that reflect best practices.

The Proposed Model Code was the culmination of four years of best practice research and hard work by the YLD code reporters; Georgia juvenile attorney Soledad McGrath; Hon. Velma Tilley, juvenile court judge, Bartow County; and Prof. Lucy McGough, Louisiana State University, who was one of the drafters of Georgia's current juvenile code. In developing the Proposed Model Code, the reporters conducted comprehensive surveys of the juvenile laws and practices of all 50 states; studied scientific research

"To learn more about the contents of HB 641 or how you can get involved, please visit the JUSTGeorgia website at www.justgeorgia.org."

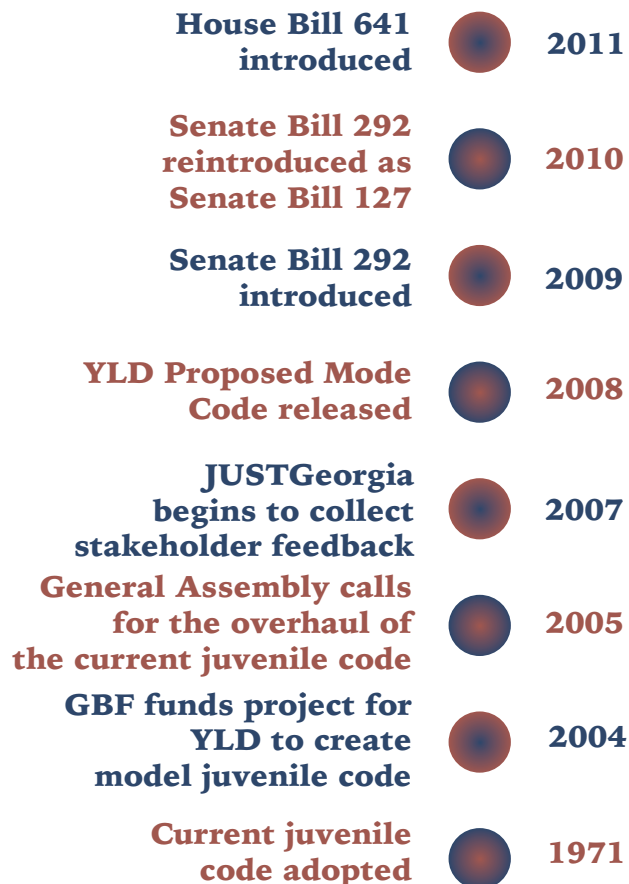
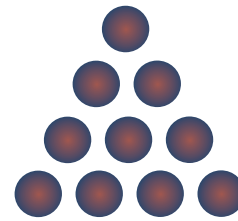
on child development, adolescent brain development, rehabilitation of youthful offenders and responses to child abuse and neglect; and reviewed recommendations made by experts, such as those at the National Council of Family and Juvenile Court Judges, the American Bar Association Center on Children and the Law and the National Association of Counsel for Children.

While the Proposed Model Code was being developed, a partnership called JUSTGeorgia was formed through funding from the Sapelo Foundation to help reform Georgia's juvenile code. The lead partners of JUSTGeorgia are the Barton Child Law and Policy Center at Emory University School of Law, Georgia Appleseed and Voices for Georgia's Children. These partners have built a coalition of more than 80 member organizations and hundreds more individual members.

In 2007, JUSTGeorgia began a process of collecting stakeholder feedback on Georgia's current juvenile code through town hall meetings in each of Georgia's judicial circuits and through personal interviews with hundreds of individual stakeholders conducted by pro bono volunteers from the state's most prominent law firms. JUSTGeorgia has also worked diligently to educate stakeholders and the community about its contents, and to seek their input on how it could best be adapted to meet Georgia's needs.

After the Proposed Model Code was released in 2008, JUSTGeorgia began another intensive effort to gather stakeholder feedback. The Juvenile Law Committee worked with the JUSTGeorgia partners to incorporate all of the stakeholder feedback into the Proposed Model Code to create a legislative package that reflects national best practices and meets the specific needs of Georgia's children and the professionals who serve them. The result was a legislative package that would comprehensively reform Georgia's juvenile code. Through

House Bill 641 poised for legislative action 2012 Legislative Session



JUSTGeorgia's efforts, this legislative package was introduced on the 39th day of the 2009 legislative session, by Sen. Bill Hamrick, as Senate Bill 292.

Although SB 292 did not pass during the 2009-10 legislative session, it received approximately 10 hearings in the Senate Judiciary Committee, which allowed for substantial public comment and discussion. JUSTGeorgia followed up on


these hearings by holding a series of working meetings with representatives from a broad range of stakeholder groups, including the Council of Juvenile Court Judges, the Prosecuting Attorneys Council, juvenile defense attorneys, parents' attorneys, child advocate attorneys, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities and the Division of Family and

Children Services. Through these working meetings, many compromises were reached and the legislation was revised for re-introduction in the 2011 session by Sen. Hamrick as Senate Bill 127. After a hearing on SB 127, another working meeting was held with stakeholders and additional compromises were achieved. These compromises were incorporated into a revised version of the legislation that was introduced in the House at the end of the 2011 session by Rep. Wendell Willard as House Bill 641.

The bill's sponsors and JUSTGeorgia are committed to transparency, stakeholder participation and thoughtful juvenile code reform. Stakeholders have expressed universal agreement that Georgia's current juvenile code needs to be revised and all stakeholders that

have reviewed HB 641 to-date support adoption of its organizational structure and improved clarity and consistency. Because of the sweeping nature of the changes, however, HB 641 will both benefit and challenge every player in the juvenile court system to some degree. The stakeholders' positions that have been expressed have been considered and incorporated to the extent possible, and JUSTGeorgia has brokered appropriate compromises on sensitive issues as part of the extensive vetting process described above.

HB 641 is poised for legislative action in the 2012 legislative session, which begins Jan. 9. Although some additional public policy considerations remain to be explored and debated, HB 641 balances the thoughtful research of the YLD Proposed Model Code with the

practical concerns of practitioners, judges and youth who experience the juvenile court system every day. It will improve the practice of law, as well as outcomes for communities, children and their families. To learn more about the contents of HB 641 or how you can get involved, please visit the JUSTGeorgia website at www.justgeorgia.org. 

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.

Endnote

1. The full text of the Proposed Model Code can be found on the State Bar website at: http://gabar.org/public/pdf/yld/Model_Juvenile_Code_08.pdf.

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Ethical Considerations in Arbitration

by John A. Sherrill

While the high cost in delays experienced in federal and state court litigation today is driving many business users to use alternative dispute resolution procedures, mediation continues to be the preferred method of ADR for business disputes,¹ and the use of arbitration is a much more deliberative process for most business users, generally being favored by those who have more experience with it and agree in advance that it will be the means of resolving any disputes. This is true for many reasons, including the relative finality of the result in arbitration, the higher level of confidentiality involved, the ability to select qualified neutral arbitrators and many other business reasons that may vary from case to case and affect different industries in different ways.



This is also the case because one choosing arbitration cannot expect the full panoply of procedural and substantive protections offered by a court of law,

despite the fact that arbitrators enjoy a "quasi-judicial immunity" for performing judicial-like services.² Moreover, precisely because of these differences between litigation and arbitration, the ethical considerations and guidelines for all persons engaged in an arbitration proceeding—whether as parties, advocates or arbitrators—are important to consider in evaluating the decision of whether to use arbitration.

This article will examine the applicability of the ethical regulations that confront those who participate in arbitration proceedings, which are collectively contained in several different sources.

Statutes

The Federal Arbitration Act

The Federal Arbitration Act (FAA),³ originally enacted in 1925, governs interstate as well as international arbitrations. The FAA reflects a strong public policy favoring arbitration when arbitration has been selected by the parties. Although the FAA neither contains nor prescribes specific ethical standards, several of the FAA's provisions set forth or incorporate minimum ethical standards of behavior that arbitrators must follow if their award is to receive judicial recognition and enforcement. In fact, the very limited grounds for vacating an arbitration award, found in § 10(a) of the FAA, primarily involve ethical violations by the arbitrators, including:

- (1) where the award was procured by corruption, fraud or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so

imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.⁴

As will be discussed in more detail, these limited review standards have resulted in the requirement that arbitrators conduct the arbitration procedurally and substantively in an impartial, professional and ethical manner, and that arbitrators carefully research and disclose any potential conflict that might create even the appearance of partiality or impropriety.

Georgia Arbitration Code

The Georgia Arbitration Code (GAC),⁵ enacted in its present form in 1978, is even more barebones procedurally than the FAA, although the grounds for vacating an award under the GAC are very similar to the FAA. Georgia arbitration awards shall be vacated only on the application of a party who either participated in the arbitration or was served with the demand for arbitration, if the court finds that the rights of that party were prejudiced by:

- (1) Corruption, fraud or misconduct in procuring the award;
- (2) Partiality of an arbitrator appointed as a neutral;
- (3) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite award upon the subject matter submitted was not made;
- (4) A failure to follow the procedure of this part, unless the party applying to vacate the award continued with the arbitration with notice of this failure and without objection; or
- (5) The arbitrator's manifest disregard of the law.⁶

The GAC also provides certain parameters that arbitrators are ethically mandated to follow in the conduct of the evidentiary hearing. The arbitrators must notify the

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parties in writing not less than 10 days in advance of the setting of the time and place for the hearing, and that the parties are “entitled to be heard; to present pleadings, documents, testimony, and other matters; and to cross-examine witnesses.”⁷ Also, a party has the right to be represented by an attorney; the hearing shall be conducted by all of the arbitrators unless the parties agree otherwise; and the arbitrators are obligated to maintain a record of all pleadings, documents, testimony and other matters introduced at the hearing.⁸

Rules of the Administering Agency

In most instances, parties either will be required to have or will want to have a particular arbitral organization administer the arbitration. Most such arbitral organizations have promulgated their own rules of procedure that contain provisions related to ethical obligations of the participants. ADR parties and the public are entitled to fair processes and impartial forums, and as justice providers, ADR provider-organizations have an obligation to take all reasonable steps to ensure the impartiality and fundamental process fairness of their services. Key indicia of fair and impartial processes include: competent, qualified, and impartial neutrals; rosters of neutrals that are representative of the community of users; joint party selection of neutrals; adequate representation; access to information; reasonable cost allocation; reasonable time limits; and fair hearing procedures.

The two most common administering agencies nationally are the American Arbitration Association (AAA) and JAMS, and their rules

will be summarized to provide typical examples.

American Arbitration Association⁹

Although most of the AAA rules deal with the specific procedural aspects of arbitrations conducted thereunder, numerous ethical implications can be drawn from their provisions.

Rule R-16 deals with disclosure, and provides that any person appointed as an arbitrator shall disclose “any circumstance likely to give rise to justifiable doubt as to the arbitrator’s impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.” It cannot be overstated from an ethical perspective how important it is for an arbitrator to fully satisfy this disclosure requirement. Not only is failure to disclose the most common basis for overturning an arbitration award, but the fairness and impartiality of the arbitration process hinges on the actuality, *and* the parties’ perception, of the neutrality and unbiased perspective of persons serving as arbitrators.¹⁰ In other words, the obligation of the arbitrator is to disclose, disclose, disclose, and then let the parties themselves reach a conclusion as to whether the information disclosed could affect the arbitrator’s impartiality.

Rule R-18 makes it clear that there shall be no *ex parte* communications between an arbitrator and a party representative on any substantive issue, and an arbitrator should assiduously attempt to satisfy this ethical requirement to maintain the appearance of impartiality. The issue of the ethical obligation of

arbitrators to maintain confidentiality is dealt with in several places in the AAA Rules. In Rule R-23, it is mandated that the arbitrator and the AAA “shall maintain the privacy of the hearings unless the law provides to the contrary.” Although arbitrations are not fully confidential from the parties’ perspective,¹¹ the fact that arbitration proceedings are not public record is considered an advantage by many users.

An important touchstone of the AAA Rules is that the arbitrator is vested with wide discretion in setting up and managing the procedures to be followed during the course of the arbitration, but it is clear that the arbitrator has an ethical obligation to ensure that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.¹² Beyond that, the specific ethical considerations that must be taken into account by the arbitrator in conducting this discretionary management are mandated elsewhere.

JAMS

The JAMS Rules also emphasize the importance of conflict checks by potential arbitrators to preserve neutrality and impartiality.¹³ JAMS Rule 9 specifically requires:

Each Party shall afford all other Parties reasonable and timely notice of its claims, affirmative defenses or counterclaims. Any such notice shall include a short statement of its factual basis. No claim, remedy, counterclaim or affirmative defense will be considered by the Arbitrator in the absence of such prior notice to the other Parties¹⁴

The basis for this requirement of specifically giving notice of all claims, defenses and counter-claims is stated by JAMS Rule 9 to prevent unfair prejudice to any party. Like the AAA Rules, the JAMS Rules also give the arbitrator broad discretion in managing the process and the final hearing.¹⁵ Also similar to the AAA Rules, the JAMS Rules are primarily procedural, but do touch on ethical obligations of participants in several particulars. Rule 17 (Exchange of Information) requires that "[t]he Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information ['ESI']) relevant to the dispute or claim" This good-faith obligation is continuing throughout the arbitration process.¹⁶ From the arbitrator's perspective, in addition to the arbitrator's obligation for neutrality and impartiality and to fairly

and equitably administer the proceedings, JAMS Rule 26 adds that "JAMS and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing . . .," and the arbitrator may specifically issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.¹⁷

JAMS Rule 29 (Sanctions) specifically authorizes the arbitrator to order appropriate sanctions for failure of a party to comply with ethical obligations or other obligations under any of the JAMS Rules. These sanctions may include, but are specifically not limited to:

assessment of Arbitration fees and Arbitrator's compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or,

in extreme cases, determining an issue or issues submitted to arbitration adversely to the Party that has failed to comply.¹⁸

From the citations above, it is obvious that typical administering agency rules are largely procedural in nature, although ethical obligations are broadly outlined and provisions for enforcement of ethical behavior are generally described.

Professional Standards for Arbitrators

Georgia Alternative Dispute Resolution Rules

In 1993, the Supreme Court of Georgia created the Georgia Commission on Dispute Resolution. The Commission promulgated the Georgia Alternative Dispute Resolution Rules (Georgia ADR Rules), with the stated purpose of administering a statewide comprehensive court-annexed or court-referred ADR program to ensure

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the quality of court-annexed and court-referred ADR programs. The Georgia ADR Rules, by their own terms, apply only to court-annexed and court-referred programs,¹⁹ and, even then, they only provide general guidance regarding the required conduct of arbitrators. Appendix B to the Georgia ADR Rules establishes the basic requirements for qualification and training of neutrals (including arbitrators and mediators) and states: "Arbitration in court-annexed or court-referred non-binding arbitration programs may be conducted by panels of lawyers, panels made up of lawyers and experts, or by individual lawyers."²⁰ If the arbitration is conducted by a panel, the chief of the panel should be a lawyer with at least five years' experience.²¹

Chapter 1 of Appendix C to the Georgia ADR Rules is entitled "Ethical Standards for Neutrals," but the only ethical standards specifically addressed are those for mediators. However, the general principles enunciated should arguably apply to court-appointed arbitrators as well: self-determination of the parties; confidentiality of the process; and impartiality of the neutral, without bias or prejudice toward any party.

The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes

The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (the AAA/ABA Code) was drafted by a joint committee of a five-member Special Committee on Code of Ethics for Commercial Arbitrators of the American Bar Association and five representatives appointed by the AAA, and was initially promulgated in 1977 after extensive basic research and input from all sectors of the arbitration community. The AAA/ABA Code was subsequently revised in 2004 by an ABA task force and special committee of the AAA. The AAA/ABA Code attempts to guide the conduct of lawyers acting as arbitrators, and stresses that

arbitrators, as dispensers of justice, have an ethical responsibility to the public as well as to the parties who come before them.²²

The AAA/ABA Code observes that arbitrators are usually engaged in other occupations before, during and after the time that they serve as arbitrators, and that there are fundamental differences between arbitrators and judges, although, as the decision-makers, arbitrators should observe the same fundamental standards of ethical conduct as judges. The AAA/ABA Code adds in the Preamble that its provisions, in addition to not being mandatory or having the force of law, do not take the place of or supersede any laws, agreements or arbitration rules to which the parties have agreed and "impose[] no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process."

Canon 1 of the AAA/ABA Code mandates high standards of conduct so that the integrity and fairness of the arbitration process will be preserved, and prohibits arbitrators from having any relationship or interest that would affect their impartiality. Canon 2 embodies a policy of full disclosure of the existence of any interests or relationships likely to affect the arbitrator's impartiality.²³ The Preamble emphasizes that the AAA/ABA Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement or the arbitration rules agreed to by the parties or applicable laws provide otherwise. "If any doubt or uncertainty exists, the party-appointed arbitrators should not serve as neutrals unless and until such doubt or uncertainty is resolved . . ."²⁴

To further ensure this principle of neutrality, Canon 3 proscribes any communications between the arbitrator and any party unless all parties and/or their counsel are present. Canon 4 deals with the arbitrator's

conduct of the proceedings, which includes numerous ethical responsibilities. The arbitrator must treat the parties equally and fairly and perform all duties diligently; the parties must be given an opportunity to be heard in person and to be represented by counsel; and the arbitrator may suggest that the parties discuss settlement of the case, but should not otherwise participate in settlement discussions. Canon 5 governs the arbitrator's decision-making process and makes it clear that arbitrators must deliberate carefully, exercise independent judgment and be just. Canon 6 considers the obligations that derive from the arbitrator's relationship of trust to the parties. The arbitrator must keep confidential all matters relating to the arbitration and may not use for personal benefit confidential information that was acquired during the arbitration process. Therefore, it is obvious that, although not mandatory, the AAA/ABA Code should be consulted for ethical guidance by all arbitrators involved in commercial disputes.²⁵

Professional Standards for Advocates

Unfortunately, little practical guidance is specifically available for lawyers who serve as advocates in arbitration proceedings, and no specific code of ethics in arbitration currently exists for advocates. To address these ethical issues, however, it is helpful to consult the Georgia Rules of Professional Conduct (GRPC), which are based generally on the ABA Model Rules of Professional Conduct, and which have been adopted by the Supreme Court of Georgia to apply to Georgia lawyers.²⁶ In addition, advisory comments have been added to the GRPC to assist Georgia lawyers in determining their ethical responsibility in various circumstances and settings.

The preamble to the GRPC notes the various functions that an attorney assumes, and these functions include the obligation as an advocate to "zealously assert[] the cli-

ent's position under the rules of the adversary system" in a "competent, prompt and diligent" manner. This acknowledgement within the GRPC of the multiple roles that an attorney performs supports the proposition that the GRPC are intended to apply to lawyers representing clients in arbitration, as well as litigation and other adversarial settings.

Certain provisions of the GRPC that appear to be specifically applicable to advocates in arbitration are as follows:

■ **Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law.** Although taken somewhat out of order, one of the first issues that must be addressed by an advocate in arbitration is the possible unauthorized practice of law in multijurisdictional practice. Rule 5.5 states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. The issue here, of course, is whether a lawyer not admitted in the state where the arbitration is pending can represent a party in an arbitration without obtaining at least some ad hoc admission to that state. Fortunately, Georgia is one of the more liberal states in this regard, and the general rule is that out-of-state lawyers can represent parties in arbitrations centered in Georgia. This issue should be researched carefully by Georgia advocates attempting to represent parties in arbitrations in other states, however, as the law is different in many jurisdictions.

■ **Rule 1.1: Competence.** This rule states that:

a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably

believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The implication here is that lawyers who are inexperienced in arbitrations should either do everything they can to familiarize themselves with the process to the extent necessary to satisfy the requirements of this rule, or to associate or refer the matter to another lawyer whom they know to be competent in arbitration procedures. This admonition is too often not followed by litigators who assume that they can represent a party in an arbitration simply because they have experience in the litigation process.

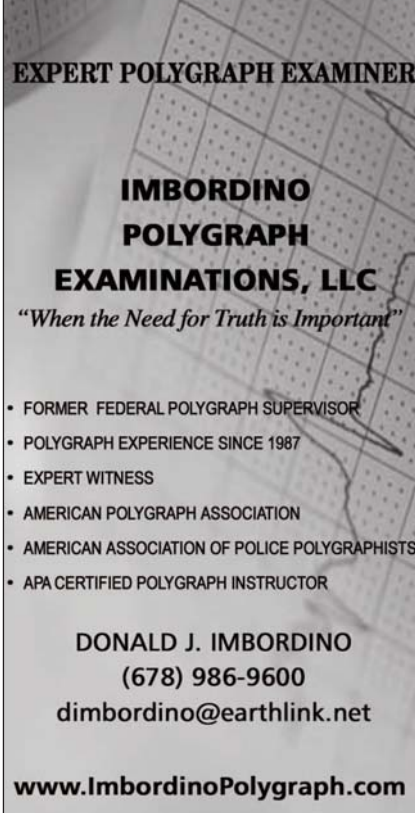
■ **Rule 1.6: Confidentiality of Information.** This rule states, "[a] lawyer shall maintain in confidence all information gained in the professional relationship with a client . . ." As has already been discussed, arbitrators have an obligation of confidentiality that does not specifically bind lawyers acting as advocates, although the wishes of the client should be discussed and respected, because often the selection of arbitration is at least partially precipitated by the recognition of the client that arbitration is not a public process.

■ **Rule 3.3: Candor Toward the Tribunal.** This rule requires that a lawyer not knowingly make "a false statement of material fact or law to a tribunal," and arbitration is generally considered to be within this definition, as a court would be. The comment to this rule adds that, as in litigation, an advocate is responsible for pleadings and other prepared documents, although the advocate is not necessarily required to have personal knowledge of the matters asserted there-

in. In fact, subsection (d) of Rule 3.3 states that the lawyer shall inform the tribunal "of all material facts known to the lawyer that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse." That is, legal argument based on a knowingly false representation of law constitutes dishonesty toward a tribunal, and a lawyer must refuse to offer evidence known to be false, regardless of the client's wishes, just as in court proceedings.²⁷

■ **Rule 3.4: Fairness to Opposing Party and Counsel.** This rule prohibits lawyers from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying or concealing a document having potential evidentiary value. This rule would apply equally to discovery in arbitrations or court proceedings.

■ **Rule 3.5: Impartiality and Decorum of the Tribunal.** This



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rule prohibits an advocate from seeking to improperly influence a decision-maker, to communicate ex parte with such person, or to otherwise engage in conduct intended to disrupt the tribunal. As previously mentioned, this admonition against ex parte contact applies equally to arbitrators and advocates.

In sum, lawyers acting as advocates in arbitrations in Georgia are bound by the Georgia Rules of Professional Conduct to the same extent as they would be if representing parties in litigation, and arbitrators should make it a point to remind advocates of this similar obligation as part of their general discussions with counsel at the beginning of any arbitration.

The Parties' Arbitration Agreement

In most cases, a written agreement will exist in which the parties have voluntarily submitted their differences to arbitration, although such a document may be entered into either before the existence of a dispute or after one has arisen. Because arbitration is a creature of contract, the participants are bound by the terms of their arbitration agreement, including any guidance on ethical questions that might arise during the course of the arbitration that are defined by the language of the agreement.

In addition to procedural requirements that might be set out in the arbitration agreement, it often also contains references that provide more detail, including how notice is to be given in the event of a dispute; how the arbitrator or arbitrators are to be selected by the parties; identification of the agency to administer the arbitration whose rules will be used; and even the method and extent of discovery that will be allowed. Therefore, although not directly addressing ethical issues, the arbitration agreement may well create parameters or identify governing rules and procedures that

will contain ethical and procedural requirements that the arbitrators and parties must follow, and must be consulted. However, in practice, most arbitration agreements are fairly general in nature, often including simply the actual agreement to arbitrate disputes.

Arbitration Panel Guidelines

As emphasized previously in this article, because arbitrators are given broad discretion to manage the process, it falls to them to see that the arbitration process is fair and neutral and is completed efficiently. In addition to my initial conflict disclosures, it is my standard procedure in my arbitrations to insert provisions in the Scheduling and Procedure Order that is entered after the preliminary conference that make it clear that I have disclosed and will continue to disclose any and all information concerning the parties, counsel, the other arbitrators or any other information that I feel could arguably be implied to affect my neutrality or create the appearance of impropriety and that I expect the parties to disclose any such information that comes to their attention during the course of the proceedings.


So as to ensure mutually ethical conduct by the parties and their counsel throughout the process, I also include in the Scheduling and Procedure Order the mandated procedures for resolving discovery disputes, for communications between the arbitrators, counsel and the parties, and the specific procedures for conduct of the final hearing. Furthermore, to ensure ethical and professional behavior from all concerned, I consider it important to obtain, to the maximum extent possible, agreement from counsel and the parties to those procedures that are set forth in the Scheduling and Procedure Order for the conduct of the arbitration from the beginning of the case through the final hearing.

Because of the broad discretion accorded to arbitrators to manage the process, it follows that

arbitrators have the authority to address and deal with abuses and disruption of the arbitration process.²⁸ In some cases, it has been held that arbitrators actually have the authority to halt proceedings where there is "abhorrent behavior" by the participants.²⁹ Other types of sanctions that arbitrators can award include an allocation of the fees and costs of the proceedings, barring the assertion of claims or defenses, drawing adverse inferences, or precluding the submission of evidence or testimony.³⁰

Conclusion

It is obvious that ethical violations could have serious consequences for arbitrators, counsel and parties, and threaten the public's confidence in arbitration as a viable dispute resolution mechanism. Such violations could also slow the process and increase the cost of arbitration, as well as negatively impact the fairness of the process.

At the same time, however, even though lawyers representing parties in arbitrations are governed generally by the same rules of professional responsibility as in litigation, from an examination of these procedures that govern ethical behavior in arbitrations, it becomes apparent that arbitrators must take primary responsibility for policing ethical violations that could affect the fairness of arbitration proceedings. In short, the great discretion that arbitrators have over the process necessarily includes an obligation to promote ethical, professional conduct by parties and their counsel. This is a heavy responsibility that cannot be taken lightly by those of us who serve as arbitrators. The very integrity of the arbitration process depends upon the arbitrator's willingness, power and ability to keep the process fair and civil. 



John Sherrill is senior partner in the Litigation Department of the Atlanta Office of Seyfarth Shaw LLP, and he is the chair of the

firm's National ADR Group. In addition to his litigation practice, he has served as a mediator in over 500 mediations and an arbitrator in over 200 arbitrations. He is a member of the Panel of Distinguished Neutrals of the CPR Institute, and an arbitrator and mediator on the Commercial, Construction and Large Complex Case and Olympic Arbitration Panels of the American Arbitration Association. Sherrill is a fellow in the American College of Civil Trial Mediators and the College of Commercial Arbitrators. He is currently on the Board of Directors of the ABA Dispute Resolution Section and the chair of the Dispute Resolution Section of the State Bar of Georgia.

Endnotes

1. See, e.g., David B. Lipsky and Ronald L. Seeber, *The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations* 9 (1998), available at <http://digitalcommons.ilr.cornell.edu/icrpubs/4> ("We conclude that ADR has made substantial inroads into the fabric of American business with [general] counsel overwhelmingly preferring mediation (63 percent); arbitration was a distant second (18 percent)").
2. Carrie Menkel-Meadow, *Ethics Issues in Arbitration and Related Dispute Resolution Processes*, 56 U. Miami L. Rev. 949, 963 (2002).
3. 9 U.S.C. §§ 1-16 (2006).
4. *Id.* § 10(a).
5. O.C.G.A. §§ 9-9-1 to 9-9-18 (2007 & Supp. 2011).
6. *Id.* § 9-9-13(b) (2007).
7. *Id.* § 9-9-8(b).
8. *Id.* § 9-9-8(c)-(f).
9. AAA publishes numerous sets of rules tailored to various types of disputes, including commercial, construction, international, etc., which are all similar, but this paper will address the topics under the numbered sections and specific procedures found in the AAA's Commercial Arbitration Rules.
10. An interesting aspect of the AAA disclosure requirement is the observation set forth in AAA R-16(c): "In order to encourage disclosure by arbitrators, disclosure of information pursuant to this section R-16 is not to be construed as an indication that the arbitrator considers that the disclosed circumstances are likely to affect impartiality or independence." This provision is meant to encourage full disclosure even for matters that may well not legally constitute a reversible conflict.
11. For example, discovery in arbitrations often involves unrelated third parties, the evidentiary hearings are often transcribed, and awards are often published and enforced through the court system.
12. *Id.* R-30(a).
13. JAMS R. 15.
14. *Id.* R. 9. The comparable AAA R-4(a)(i) provides that an arbitration demand "shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested." Any "new or different claim or counterclaim" must have the arbitrator's consent if it is submitted after the arbitrator is appointed. AAA R-6(a). If a respondent chooses not to file a specific answer to a demand, all allegations in the demand are deemed denied.
15. See JAMS R. 16, 17 & 22.
16. *Id.* R. 17(c).
17. *Id.* R. 26.
18. *Id.* R. 29.
19. Ga. ADR Rules at 1 (1993).
20. *Id.* App'x B, at 3.
21. *Id.*
22. AAA/ABA Code, Preamble.
23. Although an in-depth discussion of conflict check procedures is beyond the scope of this paper, suffice it to say, as stated previously, that it is critically important for the arbitrators, as soon as they are selected, to conduct a thorough conflict check of all parties, counsel, other arbitrators, potential witnesses, and anyone else who is identified as being involved, and to disclose any relationship or situation that might even arguably affect the arbitrator's neutrality, real or perceived.
24. In the rare instance where arbitrators appointed by one party are exempted from the rules of neutrality by the arbitration agreement between the parties (known as Canon 10 arbitrators), those arbitrators must still make the same good-faith disclosures as neutral arbitrators, should disclose to the other arbitrators and the parties whether or not they intend to communicate with their appointing parties, and should not disclose any deliberations by the arbitrators or the final decision in advance of the time that it is disclosed to all parties.
25. There are other specialized codes of conduct that deal with different types of arbitrations, including IBA Rules of Ethics for International Arbitrators, available at http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#ethics; Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, available at <http://www.naarb.org/code.html>; and the Code of Ethics for Maritime Arbitrators (Society of Maritime Arbitrators, Inc.), available at <http://www.smany.org/sma/about6-3.html> (supplementing the SMA's Rules of Procedure, which are known as the Maritime Arbitration Rules).
26. Per Rule 4-101 of the GRPC, the Supreme Court of Georgia delegated to the State Bar of Georgia the authority to administer and enforce the GRPC.
27. Rule 4.1 also prohibits advocates from making a false statement of material fact or law to a third person, and a lawyer is required to be truthful when dealing with others on a client's behalf. Although the obligations of Rule 3.3 more specifically govern an advocate's actions before an arbitration panel, the admonitions of Rule 4.1 would apply when dealing with opposing counsel, parties, witnesses, etc.
28. Canon 1.F. of the AAA/ABA Code states, "An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process."
29. See, e.g., *First Preservation Capital, Inc. v. Smith Barney, Harris Upham & Co.*, 939 F. Supp. 1559, 1565 (S.D. Fla. 1996).
30. See *Forsythe Int'l, S.A. v. Gibbs Oil Co.*, 915 F.2d 1017, 1023 n.8 (5th Cir. 1990).

2012 State Bar Legislative Preview

by Tom Boller

College football is moving into bowl season, which must mean the holidays are upon us. And on Jan. 9, the same day the BCS national football championship will be decided, the Georgia General Assembly will convene for its 2012 legislative session. Over the past summer and fall, State Bar sections and committees have been hard at work developing proposals for lawmakers' consideration during the upcoming session. While the Bar's legislative agenda for 2012 has not been finalized, here is a preview of some of the important issues affecting lawyers and the judicial branch that are expected to be part of the conversation under the gold dome.

- **Criminal Justice Reform:** Last year, the leaders of all three branches of Georgia's state government—Gov. Nathan Deal, Chief Justice Carol Hunstein, House Speaker David Ralston and Lt. Gov. Casey Cagle—came together to create the Special Council on Criminal Justice Reform. The research and recommendations of the council are outlined by State Bar President Ken Shigley, who was appointed by Gov. Deal to serve on the council, in his President's Page column (see pg. 4). The council's package of legislative recommendations, which are aimed at reducing the non-violent offender population in our prison system and improving public safety, will be a major agenda item for the 2012 General Assembly.
- **Indigent Defense Funding:** In 2003, when the statewide public defender system was created, lawmakers identified a number of revenue sources




to fund the program. Those revenue sources have generated in excess of \$40 million annually, but the General Assembly has appropriated substantially less than that each year for the indigent defense system. To correct this problem and to ensure adequate funding for indigent defense, House Judiciary Non-Civil Committee Chairman Rich Golick has proposed a constitutional amendment (HR 977), which would guarantee those funds are used to fund indigent defense and could not be redirected for other purposes. The State Bar strongly supports this approach to funding indigent defense, and we urge you to ask your legislators to support passage of HR 977. Constitutional amendments require two-thirds approval in both the House of Representatives and the Senate, followed by a majority approval by the voters in the next general election.

- **Juvenile Code Revision:** Several years ago, the State Bar's Young Lawyers Division initiated an

effort to comprehensively reorganize and update Georgia's Juvenile Code. This has been a massive project supported by the Barton Institute at Emory University, Georgia Appleseed and many judges and practitioners across the state. After years of work with all stakeholders in the process, most components of the rewrite have been completed. And while there are still some substantive issues, including funding, to be resolved, it appears that 2012 may be the year for legislative action on the new Juvenile Code.

- **Other Issues:** Also likely to be addressed during the upcoming legislative session are state funding of the judicial branch, revisions to Georgia's garnishment law, enhancements to the international commercial arbitration process and changes to Georgia's Open Meetings Act. I encourage you to follow all the activities of the General Assembly during its 40-day session by visiting the State Bar website, www.gabar.org, where you will find summaries of all legislative proposals supported and opposed by the State Bar, weekly updates of legislative activity, links to specific legislation and their status in the process and links to live video coverage of committee and floor sessions. And please get involved in the process by contacting your legislators by phone or email and ask for their support on issues of interest to you.

If you have questions about the Bar's legislative program or issues before the General Assembly, don't hesitate to call our office at 404-872-0335 or email me at: tom@gacapitolpartners.com. 

Tom Boller, Rusty Sewell and Hunter Towns are the State Bar's professional legislative representatives. They can be reached at 404-872-0335, or by email at tom@gacapitolpartners.com.

How to Contact Your Legislator

Your state legislators expect and want your input on legislation. The most effective communication with legislators comes from constituents—those who live in their communities and vote in their districts. You can find out who your state representative and senator are by visiting the following website: www.congress.org/congressorg/state/main/?state=GA. Then send them a letter or email or call their office and respectfully ask for their favorable consideration on legislation important to you.



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Diversity Program Showcases Atlanta Mayor Kasim Reed and 6th Circuit Judge Bernice Donald

by Marian Dockery

King & Spalding hosted the 2011 Diversity Reception, featuring Atlanta Mayor Kasim Reed, selected by GOVERNING Magazine as a “2011 Public Official of the Year.” Hon. Kimberly Esmond Adams of the Fulton County Superior Court engaged her fellow Howard Law School alum in a 60-minute conversation regarding the successes of his administration, the challenges that lie ahead for the city and his plans to serve two terms as Atlanta’s mayor. Reed provided the audience with a wealth of information regarding his administration’s accomplishments and challenges.

A native son of Atlanta’s southside, Reed came from a family of four boys, all seeking different career paths and possessing different talents. But his father always wanted one of his sons to pursue law as a career and lead the city as mayor, and Reed was able to realize that dream.

In speaking to the group, Reed proclaimed that diverse attorneys who are recruited by law firms should commit to working for a minimum of seven years so that law firms get a return on their investments. The difficulty of retaining diverse attorneys is a two-way street, Reed said, and law firms must provide diverse attorneys



Photos by Don Morgan

Hon. Bernice Donald addresses the 19th annual State Bar of Georgia Diversity Luncheon attendees.

opportunities to grow by giving them challenging work assignments and visibility with their clients.

State Bar Annual CLE and Luncheon

The annual CLE met Sept. 28 at the Bar Center. The program opened with “The Judiciary’s Role

in Sustaining and Increasing Diversity in the Profession,” featuring a distinguished panel of jurists moderated by the first African-American woman to serve on the Court of Appeals of Georgia, Hon. M. Yvette Miller. Joining Miller on the panel were Hon. Anne Barnes, Court of Appeals, who was the first woman to be elected in a statewide judicial race without having been first appointed to the bench; Hon. Ural Glanville, Fulton County Superior Court, colonel, JAG Corps, U.S. Army Reserves; and Hon. Dax Lopez, DeKalb State Court, who is the second Hispanic on that court to serve as trial judge.

Corporate panel members discussed “Strategies to Diversify Outside Counsel,” moderated by Rick Goerss, chief privacy officer and regulatory counsel, Equifax, Inc.; Virginia Wadsworth, vice president, chief legal officer & corporate secretary, Automobile Protection Corporation; Russell S. Bonds, senior managing counsel—litigation, The Coca-Cola Company James Harris, in-house counsel, United Parcel Service and Tara Adyanthya, associate general counsel, Emory University School of Law. The panelists shared with the attendees their companies’ policies when hiring outside counsel. Hiring attorneys who can successfully interact with diverse employees, stakeholders and contractors is key when selecting outside counsel. Companies benefit from diverse outside counsel as diverse attorneys provide different perspectives on critical issues. The evidence and surveys confirm that the most competitive and profitable companies have the most diverse boards, managers, employees and contractors.

Minority-Owned Law Firms: A Historical Perspective: Past, Present and Future

Sam Woodhouse of The Woodhouse Law Firm moderated



(Left to right) State Bar President Ken Shigley, Atlanta Mayor Kasim Reed, State Bar of Georgia Diversity Executive Director Marian Dockery and Hon. Kimberly Esmond Adams following the Conversation with Mayor Reed.

minority-owned law firm panelists William Hill of Ashe Rafuse & Hill; Jeffrey Tompkins, Thomas, Kennedy, Sampson and Tompkins; Sonjui Kumar of Kumar, Prabhu, Patel and Banerjee; and Tracey Blackwell, Gonzalez Saggio & Harlan, LLP. The panelists gave a historical perspective of the minority-owned law firm. Minority attorneys had no other practice options as majority-owned firms and other entities did not hire minority lawyers in the 1950s. Yet some minority attorneys were not deterred as a select few moved from almost exclusively serving the businesses and residents of their communities to expanding their client base to corporations. The panel agreed that the objective of attorneys working at minority-owned law firms is not only to provide legal services for their communities but to provide corporate representation and connect with in-house counsel who know that outside diverse counsel can deliver the services, not just for one project, but over the next decade. The future for minority-owned firms is that they will be viewed as diverse firms that can

serve the world we live in and not just our neighborhoods.

19th Annual State Bar of Georgia Luncheon

In his welcome address at the luncheon, State Bar President Kenneth L. Shigley shared stories of growing up in a racist Southern town and how things have changed over the years. He agreed that while much progress has been made since he was a boy, there is still much work to be done.

Hon. Bernice Donald, 6th Circuit Court of Appeals, delivered the luncheon’s keynote address. Donald was appointed by President Obama and confirmed by the Senate in September 2011. As the first African-American woman to serve on the 6th Circuit, Donald brings diversity to the Court. She was also the first African-American woman to serve as a judge for the U.S. District Court for the Western District of Tennessee. The story of her humble beginnings in a small Mississippi town reads like a movie script of a young woman who pursued dreams to practice



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(Left to right) Moderator Sam Woodhouse leads Minority-Owned Law Firm panelists Jeffrey Tompkins, Sonjui Kumar, Tracey Blackwell and William Hill.



(Left to right) Hon. M. Yvette Miller, Hon. Dax Lopez, Hon. Ural Glanville and Hon. Anne Barnes during the Judicial Panel.



(Left to right) Corporate panel members include moderator Rick Goess, Equifax; Virginia Wadsworth, APCO; Russell S. Bonds, The Coca-Cola Company; Tara Adyanthya, Emory University School of Law; and James Harris, United Parcel Service.

law and become a judge. Donald is now on the short list for the U.S. Supreme Court. 



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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The Early County Courthouse at Blakely:

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Unlike the many “boom towns” that blossomed all across South Georgia at the beginning of the 20th century, Blakely had roots deep in the 19th century. The town had been established as Early County’s permanent seat of justice in 1825. Chartered in 1818, Early County along with Appling and Irwin was one of the three enormous counties that originally spanned the vast empty reaches of south central and southwestern Georgia. Eleven new counties would later be fashioned, in whole or in part, from Early’s original territory.

Located only nine miles from Howard’s Landing on the Chattahoochee River, Blakely began as cotton’s servant. In 1849, George White described the town as having 25 or 30 families with two stores and two hotels. The first Early County Courthouse had been a “heavy hewn log building” built some time after 1825.

This was replaced by a frame structure in 1836, which in turn gave way to a “Colonial Style” court building in 1857. This vernacular brick building with its ample portico supported by four square columns remained in use until 1904.

Progress had been slow to come to Blakely. The Central of Georgia Railroad began its “Blakely Extension” from Albany to Blakely in 1873, but in the wake of the depression following the Panic of 1873, it would be eight years before rails reached Blakely. By 1890, with her population under 500, Blakely was sputtering. By the turn of the century, when The Central completed the “Blakely Extension” to Dothan, Ala., the town still counted only 800 residents. As the new century began, plans for a new railroad through Blakely emerged, and spirits soared in Early County. The grand jury began to recommend a new courthouse.

Not all of this was the usual railroad-imported New South propaganda. The old courthouse was in bad shape. The *Early County News* related that the building was “all rotten,” and “becoming unsafe.” The grand jury called the old courthouse “thoroughly worn out.” Nonetheless, the rhetoric surrounding the construction of a new court building in Blakely was tinted with a light wash of New South fervor and an outpouring of self-promotion. In January of 1905, the *News* published an architectural rendering of Morgan and Dillon’s proposed design calling it “the handsomest structure

of its kind in Southern Georgia,” and promising that it would “be in keeping with the wealth and prosperity of Early County—the Garden spot of Georgia.”

By 1905, the Romanesque Revival, which had died earlier in the North, was almost dead in Georgia. The last Picturesque courthouse erected in the state would be J. W. Golucke’s 1907 Baker County Courthouse at Newton, which was a copy of earlier designs by that architect. To replace the Picturesque, waves of Classical Revival were washing southward from urban centers in the North. At the source of much of this deluge lay the gleaming white “Florentine Renaissance” buildings of the 1893 Columbian Exposition in Chicago. But by 1904, another orgy of Classical excess was afoot, this time in Saint Louis at the Louisiana Purchase Exposition and World’s Fair where the already Baroque excesses of the Chicago Fair were being pressed to even more Rococo extremes. Georgia had been slow to accept even the simplest forms of the new Classicism, but when the slender columns of Classical revival finally began to rise on Southern squares, Southerners were quick to attach their own symbolism. Such buildings may have stood for American financial and industrial progress in Saint Louis, but in Blakely, Ga., the columns of Morgan and Dillion’s 1904 Early County Courthouse recalled the comfortable columns of the Old South.

John Robert Dillon, an apprentice at the Atlanta architectural firm of Bruce and Morgan, was made a partner in 1903, and upon Bruce’s retirement the next year, the firm became known as Morgan and Dillion. The 1904 Early County Courthouse represented the prestigious firm’s first neoclassical Courthouse. The firm’s founder, Alexander Bruce had led Atlanta’s small architectural community through the Picturesque era. After a brief association with William Parkins, which began in 1879, Bruce had joined forces with Thomas Henry



Photo by Wilber W. Caldwell

The Early County Courthouse at Blakely, built 1904-5. Morgan and Dillon, architects.

Morgan in 1882 to form the firm of Bruce and Morgan. Designing first in the Second Empire mode and later in softly personal voices of the Romanesque and Queen Anne Styles, the firm remained Georgia’s preeminent architectural firm for over two decades. Bruce and Morgan designed 16 courthouses in Georgia between 1882 and 1898. The last two of these, the 1896 Monroe County Courthouse at Forsyth and the 1898 Butts County Courthouse at Jackson, although Romanesque in character, displayed an eclectic mix of classical ornament, which was as much a signal of the rising tide of Neoclassicism in the South as it was a reflection of the Queen Anne Style which sought to combine free composition with Classical detail.

Despite this obvious concession to the Classical Revivals that were sweeping the country in the last years of their partnership, Bruce and Morgan designed no Neoclassical court buildings. As the early years of the new century unfolded, a bumper crop of Classical courthouses had begun to rise on town squares all across the state, and Bruce and Morgan’s once thriving career as courthouse designers took a sudden dip. In the six years previous to 1898 the firm had designed seven Romanesque

court buildings in Georgia, but Bruce and Morgan received no commissions for courthouses between 1898 and 1904. While the firm enhanced its reputation designing many of the South’s first tall buildings in Atlanta during this period, out in the countryside, the old Romanesque forms were falling from favor, and the rage was becoming the columns of the Neoclassical and Georgian Revivals. James W. Golucke, Frank Milburn, T. F. Lockwood, W. F. Denny and others were carefully manipulating these Classical forms to recall the architecture of a bygone era while simultaneously symbolizing the American financial and industrial progress, which so invigorated the rest of the country and so tantalized the American South where it had failed to materialize outside of a few urban centers.

Like most of the state’s early Neoclassical courthouses, Morgan and Dillon’s plan at Blakely featured a cross-like plan with Classical porticoed entrances facing all four sides of the square. The new Early County Courthouse presented a fundamentally Georgian silhouette with its horizontal rectangular massing and brick construction accented with white stone trim. But the new firm’s approach to ornament was a great deal more



Annual Fiction Writing Competition

Deadline January 20, 2012


The editorial board of the Georgia Bar Journal is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the Journal, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact Stephanie J. Wilson, Communications Department, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; 404-527-8792.

Rules for Annual Fiction Writing Competition

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

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the Journal; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted electronically.
5. Articles will be judged without knowledge of the author's identity. The author's name and State Bar ID number should be placed on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, Stephanie J. Wilson, Communications Department, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. The author assumes all risks of delivery by mail. Or submit by email to stephaniew@gabar.org
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.

modern than either Golucke's careful reserve or Frank Milburn's more properly Palladian decoration. Here in Blakely, in place of the grand lanterns typical of Golucke and Milburn's designs, we find a low dome of the most up-to-date Beaux-Arts styling. Also unique to Georgia are columns of a "rusticated order." These had appeared in the American North early in the new century, but were little known in the South. Following Roman models, particularly those commissioned by Caligula in the 1st century A.D., Renaissance examples of this textural detail abound.

Despite its unquestionable architectural quality, the 1905 Early County Courthouse may have tipped the delicate balance away from the Old South and toward Beaux-Arts bombast. In 1912, Blakely finally completed The Blakely Southern Railroad to Jakin. Only two years later, just as the boll weevil crept into Georgia, the new line failed and was abandoned. In the decades to come, Morgan and Dillon's grand Renaissance symbol would represent little more than a grand irony. Its hopeful symbols were perhaps a bit too modern for rural Georgia in 1904, where despite dreams of a new prosperity, the past still lingered, forming an unyielding barrier to progress. 

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

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>  **Donna Musil** was one of eight artists from around the world to be awarded a **Clews Center for the Arts Artist-in-Residency fellowship** to spend a month at the Chateau de La Napoule in the south of France in October 2011. There she worked on her new documentary, "Mean People." Musil is the executive director of the non-profit Brats Without Borders, which promotes the welfare of military children and other "third culture kids," as well as the writer/director of the award-winning documentary, "BRATS: Our Journey Home," about the life and legacies of growing up in a military family.

>   **Hull Barrett, PC**, announced that **Chris Driver** was selected into the **2011-12 Leadership Columbia County class**. Leadership Columbia County was started in 2010 as an affiliate of the Columbia County Chamber of Commerce. The program offers individuals in the community an opportunity to learn more about the history and strong leadership which has shaped Columbia County into a growing community.

F. Michael Taylor was selected to serve on **Leadership North Augusta (LNA) for 2011-12**. LNA is designed to identify, cultivate and develop leaders in the North Augusta area through knowledge of history, community, government, education, health care, recreation and social awareness.

> **Ray S. Smith III** was reappointed by Gov. Nathan Deal to a third term on the **Stone Mountain Memorial Association's (SMMA) Board**. The SMMA board is the governing body of Stone Mountain Park, which is Georgia's most visited attraction. Smith is a commercial, real estate and probate litigation attorney with a national practice in areas including real estate law, land use matters, commercial law, probate law, business and employment litigation, election law and creditor bankruptcy.

>    **Kilpatrick Townsend & Stockton LLP** announced that managing partner **Wab Kadaba** was elected


to the **Board of Trustees of Fernbank Museum of Natural History**. The mission of Fernbank Museum is to inspire life-long learning of natural history through dynamic programming to encourage a greater appreciation of our planet and its people.

Partner **Rupert M. Barkoff** was elected to the **Board of Directors of ToolBank USA**. Barkoff has provided pro bono counsel to the organization since its inception in 2008, with a focus on strategy for distribution of the ToolBank model into new markets. ToolBank USA enhances the efficiency and success of charitable organizations by creating a network of ToolBanks, which maintain inventories of real tools for borrowing to increase the impact of community service projects.


Associate **Angie Frazier** was named **co-chair of DuPont's Minority Council Network Mentoring and Retention Committee**. In this role she will explore creative ways to foster meaningful mentoring relationships that encourage and enhance professional growth for primary law firm network members.


> **Christine D. Hanley & Associates, P.A.**, received the **Chamber of Commerce of the Palm Beaches 2011 ATHENA Business Award**. This award honors businesses that embody the goals and objectives of the ATHENA Foundation by creating leadership opportunities for women and representing the highest level of business excellence. The award was presented at the Chamber of Commerce of the Palm Beaches 20th Anniversary ATHENA Awards luncheon held at the Palm Beach County Convention Center in September.


>  **Scott Killingsworth**, a partner in **Bryan Cave LLP's** Atlanta office, joined the **Board of Governors of the Center for Ethics and Corporate Responsibility at Georgia State University**. The center, a unit of the J. Mack Robinson College of Business at Georgia State, strives to integrate the best insights of scholars and businesspeople to develop strategies for addressing the complex ethical challenges faced by organizations in today's business environment. Formerly the Southern Institute for Business and Professional Ethics, the center was established in 1993 by leaders in business and education.


>  **Hunton & Williams LLP** announced that labor & employment attorney **Aja N. Diamond** was elected **chair** of the **Young Lawyers Division** and the **chair** of the **Labor & Employment Section** of the **National Bar Association**. Diamond


previously served on the executive board of the Young Lawyers Division as chair-elect. Under her leadership, the division won the National Bar's "Division of the Year" Award and the Labor and Employment Law Section won the "Section of the Year" Award in 2010.

- >  **Neil C. Gordon**, a partner in the bankruptcy, creditors' rights and workout practice group at **Arnall Golden Gregory LLP** in Atlanta, became **president of the National Association of Bankruptcy Trustees (NABT)** in **September**. NABT is one of the major professional organizations in the field of bankruptcy law. Trustee members work to promote the integrity and fair administration of the nation's bankruptcy laws.


- >  **Drew DeMott** was named one of **Metro Valdosta's 4 Under 40**. DeMott, a partner in the law firm of **Moore, Clarke, DuVall & Rodgers, P.C.**, was selected based upon his excellence in the practice of law, his commitment to mentoring young lawyers and his devotion to building strong families and communities.



- >  **Constangy, Brooks & Smith, LLP**, announced that partner **W. Melvin Haas** was reappointed for a third term as **vice chairman** of the **U.S. Chamber of Commerce's Labor Relations Committee**. One of the chamber's largest and most active policy committees, the Labor Relations Committee is responsible for helping to form the U.S. Chamber of Commerce's Labor & Employment agenda.

- >  **Smith Moore Leatherwood LLP** announced that **Barry Herrin** was presented with the **American College of Healthcare Executives' Distinguished Service Award** at the Georgia Association of Healthcare Executives' Chairman's Dinner Program in August. The award acknowledges Herrin's contributions to health care management excellence through volunteer service to the profession.


- >  **Gary E. English**, an attorney with **Tecklenburg & Jenkins, LLC**, in Charleston, was named a **charter member** of **The Francis Drake Admiralty American Inn of Court**. English practices primarily in the areas of admiralty


and maritime, transportation and corporate law, to include matters involving litigation and transactions.

- >  **Carlton Fields** attorney **M. Derek Harris** was appointed **co-chair** of the new **Diversity Initiatives Subcommittee** of the American Bar Association Litigation Section's Commercial & Business Litigation Committee. The primary goal of the Diversity Initiative Subcommittee is to develop strategies for increasing minority representation and participation within the committee and the Litigation Section.


- >   **Hunter Maclean** announced that partner **T. Mills Fleming**, chair of the firm's health care practice group, **authored a chapter** in *Health Care Law Enforcement and Compliance: Leading Lawyers on Understanding Recent Trends in Health Care Enforcement, Updating Compliance Programs and Developing Client Strategies*. Fleming contributed a chapter titled "New Government Scrutiny Demands New Strategies for Health Care Clients," which explores the impact of recent health care laws and regulations on hospitals, health care facilities and medical practitioners.


Partner **David F. Sipple** was invited to be a **charter member** of the **The Francis Drake Admiralty Inn of Court** established by the Charleston School of Law and the Charleston Maritime Law Institute. The purpose of The Sir Francis Drake Inn of Court is to unite experienced admiralty lawyers to exchange information related to maritime law practice and to mentor younger members of the admiralty bar.

- >  **Annette Kerlin McBrayer**, of counsel with **Coleman Talley LLP**, was elected to serve on the **Board of Directors** for the **Georgia Real Estate Fraud and Awareness Coalition**. The organization was formed more than 10 years ago to bring stakeholders together to fight mortgage fraud in Georgia.

- >  **Hon. Charles B. Mikell** is serving as **chief judge** of the **Court of Appeals of Georgia** through Jan. 16, 2012. In a unanimous vote, the judges of the Court of Appeals voted for Chief Judge Ellington to step aside for Mikell to serve as chief judge. Ellington will resume his term


of office as chief judge on Jan. 17, 2012, and serve until the end of 2012 or until another chief judge is elected by the judges of the court. Mikell has served on the Court of Appeals of Georgia since his appointment in May 2000. Prior to his appointment to the Court of Appeals of Georgia he served on the Superior and State Courts of Chatham County.

>  **Hudson, Nicolson & Ray, LLC**, announced that **Edward Hudson** was appointed to the **Columbus-Phenix City Metropolitan Planning Organization Citizen Advisory Committee**. The committee deals with citizen input on state and federal transportation spending. Hudson's practice focuses on residential and commercial real estate.

>  **Donald M. Maciejewski** was inducted as a **fellow** of the **Litigation Counsel of America (LCA)**. LCA is an honorary trial lawyers' society limited to the top one-half of 1 percent of attorneys in the country. Membership is by invitation only and subject to a very strict vetting process based solely on professional accomplishments, reputation in the bar and among the judiciary, ethics and dedication to the practice.

On the Move

In Atlanta

>  **Taylor English Duma LLP** announced the addition of attorney **Don Kohla** to the firm's employee benefits & executive compensation practice group. Kohla's practice has focused primarily on ERISA and ERISA-related matters since ERISA was enacted in 1974. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; taylorengh.com.



Diamond


Humphries


Dehner


Green

Hunton & Williams announced that **Aja N. Diamond** joined the firm as an **associate** in the labor & employment practice team. Previously, Diamond was an attorney with Yoss LLC. **James D. "Josh" Humphries** joined the litigation and intel-


lectual property practice team. **Jeffrey S. Dehner** joined the environmental and administrative law practice team as a **senior attorney**. Previously he was with Hartman Simons & Wood LLP. **T. Brian Green** joined the firm as the new **Atlanta Office Pro Bono Fellow** for 2011-13. The firm is located at 600 Peachtree St. NE, Suite 4100, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.


>  **Weissman, Nowack, Curry & Wilco, P.C.**, announced that **W. Reese Willis III** joined the firm's litigation practice as **of counsel**. Willis' primary area of focus is creditors' rights and regulatory compliance litigation. The firm is located at One Alliance Center, 4th Floor, 500 Lenox Road, Atlanta, GA 30326; 404-926-4530; Fax 404-926-4730; www.wncwlaw.com.

>  The **Georgia Conservancy** announced the promotion of **Beth Blalock** to the position of **general counsel**. In her new role, Blalock is responsible for supporting the conservancy's program areas: advocacy, land conservation, coastal Georgia and sustainable growth. As general counsel, she will also serve as the staff liaison to the legal committee of the Board of Trustees. The Georgia Conservancy is located at 817 W. Peachtree St., Suite 200, Atlanta, GA 30308; 404-876-2900; Fax 404-872-9229; www.georgiaconservancy.org.

>  **Bryan Cave LLP** announced that partner **Jennifer Odom** was appointed **deputy leader** of the firm's **commercial litigation client service group**. She concentrates her practice in the area of civil litigation with a focus on complex commercial and corporate litigation, including banking litigation and trust and estate litigation. The firm is located at One Atlantic Center, Fourteenth Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.bryancave.com.

> **Greenberg Traurig, LLP**, announced that **Erik Rodriguez** joined the firm's Atlanta office as a **shareholder** in the labor & employment practice. Rodriguez represents employers in proceedings before the National Labor Relations Board and defends employment cases in state and federal courts. The firm is located at 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; 678-553-2100; Fax 678-553-2212; www.gtlaw.com.

- >  **Elizabeth K. McKee** joined **Nelson Mullins Riley & Scarborough's** Atlanta office as an **associate**. McKee focuses her practice on immigration law. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.


- >  **David Perryman**, president, founder and CEO of the Georgia-based biotech company Zirus, joined **Ballard Spahr's** intellectual property practice as **of counsel**. Perryman is a member of the firm's patents, life sciences/technology, and transactional finance groups. The firm is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309; 678-420-9300; Fax 678-420-9301; www.ballardspahr.com.

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of six new **associates** to its Atlanta office. **Jeffrey T. Brelowski** joined the intellectual property group, where he handles general business litigation matters and assists corporate and individual clients on matters related to intellectual property and patent prosecution. **Joseph Buller** joined the advocacy department. He focuses his practice in the areas of commercial and real estate litigation. **Kathleen G. Furr** joined the bankruptcy group. **Wendy B. Hart** joined the securities and corporate governance group. **Kathryn J. Hinton** joined advocacy department, where she works on a variety of business-related litigation matters. **Ashley S. Thompson**, who joined the bankruptcy group, focuses her practice on creditors' rights litigation and bankruptcy. The firm is located at Monarch Plaza, Suite 1600, 3414 Peachtree Road NE, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

- >   
Lyman Schmerler Barnes

Carlton Fields announced the addition of three attorneys in its **real estate and finance practice**. **Lee Lyman** and **Marci Schmerler** joined the firm as **shareholders**. **Robert Barnes** joined the firm as **of counsel**. The firm is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 3000, Atlanta, GA 30309; 404-815-3400; Fax 404-815-3415; www.carltonfields.com.

- > **W. Hennen Ehrenclou** and **Kavan Singh Grover** announced the formation of **Ehrenclou & Grover LLC**. Ehrenclou's practice areas include commercial litigation, medical malpractice and business transactions. Grover's practice areas include criminal defense, including DUI and general civil litigation. The firm is located at 3399 Peachtree Road NE, Suite 1220, Atlanta, GA 30326; 404-228-5335; Fax 404-591-7969.

- >  **Ingrid D. Skidmore** announced the formation of **Skidmore Law Group, LLC**, a firm specializing in criminal defense with expertise in sexual assault and domestic violence cases. The firm is located at 303 Perimeter Center North, Suite 300, Atlanta, GA 30346; 678-690-8619; Fax 404-448-3999; www.skidmorelawgroup.com.

- >  **Todd H. Stanton** announced the opening of **Stanton Law, LLC**. The practice focuses on employer-side employment law, specializing in employment litigation and counseling services for small and medium-sized businesses throughout the Southeast. The firm is located at 1579 Monroe Drive, Suite F206, Atlanta, GA 30324; 404-881-1288; www.stantonlawllc.com.

In Alpharetta

- >   
Yu Carpenter Love

Meriwether & Tharp, LLC, announced the addition of three new **associates**: **Emily Yu**, **Courtney H. Carpenter** and **Robin K. Love**. The firm is located at 11475 Great Oaks Way, Suite 125, Alpharetta, GA 30022; 678-879-9000; Fax 678-879-9001; www.divorcelawyeratlanta.com.

In Brunswick

- >  **Hunter Maclean** announced that **J. Benedict "Ben" Hartman** joined the firm as a **partner** in the trusts and estates practice group and the corporate/tax practice group. Hartman has extensive experience in the areas of estate planning, estate administration, fiduciary litigation, elder law, corporate formation and corporate transactions. The firm is located at 777 Gloucester St., Suite 305, Brunswick, GA 31520; 912-262-5996; Fax 912-279-0586; www.huntermaclean.com.

In Columbus

- > **Page, Scrantom, Sprouse, Tucker & Ford, P.C.**, announced that **Alan G. Snipes** joined the firm as a **partner**. He continues his representation of individuals and corporations in the areas of commercial litigation, complex and class action litigation, personal injury and wrongful death. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.columbusgalaw.com.

In Duluth

- >  **Morris, Manning & Martin** hired **Michelle Valente Lee** as **managing attorney** of the Gwinnett office. She is responsible for running the residential real estate office in Metro Atlanta's Gwinnett County suburbs. Lee is also of counsel in the firm's residential real estate and real estate restructuring practices. The firm is located at 2180 Satellite Blvd., Suite 180, Duluth, GA 30097; 678-987-2800; Fax 678-417-0056; www.mmmllaw.com.


In Macon

- > **Chambless, Higdon, Richardson, Katz & Griggs, LLP**, announced the relocation of the firm. The firm is now located at Highridge Centre, 3920 Arkwright Road, Suite 405, Macon, GA 31210; 478-745-1181; Fax 478-746-9479; www.chrkglaw.com.


In Marietta

- > **Brock, Clay, Calhoun & Rogers, LLC**, announced that **Charles L. "Chuck" Bachman Jr.**, joined the firm as a member of the labor and employment practice group. Bachman counsels companies in employment-related matters, including issues involving the Family and Medical Leave Act, the National Labor Relations Act (including union avoidance), OSHA, the Fair Labor Standards Act, sexual harassment and other federal and state employment laws. The firm is located at 49 Atlanta St., Marietta, GA 30060; 770-422-1776; Fax 770-426-6155; www.brockclay.com.

In Watkinsville

- >  **John F. Beasley Jr.**, formerly a partner with Buckley & Klein, LLP, announced the formation of **JF Beasley, LLC**, specializing in representation of small businesses and individuals in employment law, counseling, litigation, trial advocacy and mediation services. The firm is located at 31 N. Main St., Watkinsville, GA 30677; 706-769-4410; Fax 706-769-4471; jfbeasleylaw.com.

In Jacksonville, Fla.

- >  **Murphy & Anderson, P.A.**, announced that **J. Rice Ferrelle Jr.** became a **partner** with the firm. Ferrelle's primary areas of practice include product liability litigation, business torts, securities and intellectual property litigation and admiralty/maritime law. The firm is located at 50 N. Laura St., Suite 1675, Jacksonville, FL 32202; 904-598-9282; Fax: 904-598-9283; www.murphyandersonlaw.com.

In Sarasota, Fla.

- >  **Band Weintraub, P.L.**, announced that trial attorney **Garrett L. Pendleton** joined the firm. Pendleton leads a broad-based civil litigation department that manages the firm's real estate, complex commercial, business and insurance disputes. The firm is located 1 S. School Ave., Suite 500, Sarasota, FL 34237; 941-917-0505; Fax 941-917-0506; www.bandweintraub.com.

In Washington, D.C.

- > **The United States International Trade Commission (USITC)** announced that **Judge Thomas Bernard Pender** became an **administrative law judge**. Pender manages litigation, presides over evidentiary hearings and makes initial determinations in the agency's investigations involving unfair practices in import trade. The USITC is located at 500 E St. SW, Washington, DC 20436; 202-205-2000; www.usitc.gov.

In Mexico City, Mexico

- > **Greenberg Traurig, LLP**, announced the opening of a new office in **Mexico City**. The office will focus on providing legal services to international clients seeking to enter the Mexican and Latin American markets, as well as those with established businesses in the region. The firm is located at Paseo de la Reforma No. 265 PH1, Colonia Cuauhtémoc, México, D.F. C.P. 06500; +52 55 5029 0000; Fax +52 55 5029 0002; www.gtlaw.com.

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*NYLaw Journal and Legal Intelligencer Polls, 2010; Ct. Law Tribune Poll, 2009; Harvey Research Study, 2010

Bah Humbug! The Ethics of Giving Gifts to Clients

by Paula Frederick

“Can you believe that?” you ask, shaking your head as you hang up the telephone. “Ally Magoo just called to ask why she’s not invited to the firm holiday party!”

“Ally’s lots of fun,” your partner comments, “but I don’t think she has ever referred us any business.”

“Exactly! Does she think the party pays for itself? I told her she could come if she brings a potential client.”

“Great! Maybe she’ll finally get the message,” your partner agrees. “Meanwhile, I’ve been working on the annual Client Appreciation Gifts. I’ve given each client a rating based on the fees they have generated and the referrals they have sent our way. I figure we can do the Falcons suite for our top revenue generators, wine and gourmet cheese baskets for the second tier and Starbucks gift cards for the third. Anybody who has referred under \$5,000 worth of business gets a holiday card telling them we’ve made a charitable donation in their honor.”

“We could throw in a firm T-shirt with the gift cards,” you suggest. “And don’t forget the party invite. It’s priceless!”

What do the Rules of Professional Conduct say about gifts from a lawyer to a client or potential client?

Surprisingly, there are only two places in the rules that even mention the topic. Rule 1.8(e) prohibits a lawyer in a litigation matter from providing the client with financial assistance, other than court costs and expenses of litigation.


More on point for our dilemma is Rule 7.3 (c), which prohibits a lawyer from giving anything of value to a person either to recommend the lawyer’s employment, or as a reward for having made a recommendation resulting in the lawyer’s employment.

So paying for referrals is a no-no. On the other hand, there is nothing wrong with giving a gift to thank a client for his business.



The best way to avoid any appearance that your end-of-the-year gifts are really payment for past or future referrals is to limit the value of the gifts. A *de minimis* token of appreciation is unlikely to be perceived as a bribe for future referrals—it probably wouldn’t work as a bribe anyway!

Georgia has no authority on the subject, but other state bars have opined that parties, holiday cards, food items and inexpensive items are acceptable gifts to thank a client for his business. Expensive gifts are more likely to create a sense of obligation in the recipient, who could believe the gift is *quid pro quo* for referrals.

You may be compared to Scrooge if you cut back on the client appreciation gifts during the holidays. But remember—you’re not being cheap, you’re being ethical. 



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

(Aug. 13, 2011 through Oct. 14, 2011)

by Connie P. Henry

Voluntary Surrender/Disbarments

Stephen Vincent Fitzgerald Jr.

Gainesville, Ga.

Admitted to Bar in 1998

On Sept. 12, 2011, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Stephen Vincent Fitzgerald Jr. (State Bar No. 262298). Fitzgerald failed to account for and deliver proceeds of real estate closings to third parties in the approximate amount of \$455,426.

Geoffrey Allan Evans

Lawrenceville, Ga.

Admitted to Bar in 2003

On Sept. 12, 2011, the Supreme Court of Georgia disbarred attorney Geoffrey Allan Evans (State Bar No. 252095). Having failed to file a Notice of Rejection to a Notice of Discipline based on grievances filed by three unrelated clients, the following facts are admitted by default: In each case the client hired Evans to represent him or her in a legal matter, paying him in advance for fees and expenses. In each case, some or all of the work was not performed in a timely or competent manner. In one case, Evans told his client that he had filed her case, when, in fact, he had not. Evans eventually became wholly unresponsive to his clients, failing to answer their calls or letters and failing to provide them information regarding the status of their cases. Each of the clients terminated Evans' representation, but he failed to return their client files or to refund any unearned fees. Moreover, Evans failed to participate in the disciplinary proceedings.

Edward Carlton Henderson Jr.

Atlanta, Ga.

Admitted to Bar in 1993

On Oct. 3, 2011, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Edward C. Henderson Jr. (State Bar No. 345301). Henderson represented clients in three separate personal injury actions. In each case he received settlement funds on behalf of his clients, but failed to timely pay the portions owing the clients or to pay other expenses. Instead he used the funds for his personal use. With respect to two of the representations, he failed to deposit the funds in his attorney trust account and in one matter he failed to timely comply with a court order directing that he disburse the funds. Additionally, he failed to communicate with his clients about the disbursements. He has since paid the disbursements owing in two of the matters, but he has not finalized disbursements totaling \$28,028 in the other matter, although he has made a partial payment.

Suspensions

Nikki Giovanni Bonner

Atlanta, Ga.

Admitted to Bar in 2004

On Oct. 3, 2011, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Nikki Giovanni Bonner (State Bar No. 141588) and ordered that he be suspended from the practice of law in Georgia for a period of six months.

Bonner represented plaintiffs in a civil matter who previously represented themselves pro se. Prior to

his entry, defense counsel had filed three motions to compel and two that requested sanctions. Bonner failed to get the requested discovery to defense counsel in the time allotted by the court. His clients' pleadings were struck and three attorney's fees awards were entered, the last two against Bonner only. Bonner attempted to appeal but did not have the funds for the supersedeas bond so his notice of appeal was dismissed. Opposing counsel served Bonner with a subpoena for a deposition and request for production to conduct post-judgment discovery regarding his means of satisfying the awards. Bonner stated that he had a court conflict for the deposition date even though he had received a notice that the court date was rescheduled. Bonner said he did not pay attention to the notice and went to court on the original date thinking it was still scheduled. Bonner appeared for the deposition but admits he was over an hour late, that he filed a motion for a protective order after the scheduled time for the deposition even though he knew there were no meritorious grounds, and that during the deposition he refused to answer most of the questions and provided untruthful answers to some. The trial court found Bonner in contempt and incarcerated him until he complied with discovery. Bonner states that he accepts responsibility for his obstruction of opposing counsel's legitimate efforts to obtain relevant evidence and for his dishonesty; that he did not have the funds to pay the judgments and he allowed his fear to impair his judgment; and that he regrets his actions and has learned from his mistakes. In mitigation Bonner reached a settlement with opposing counsel and paid the judgment against him. He has no prior discipline and cooperated with the State Bar. Bonner sent letters of apology to opposing counsel and the court.

Joseph A. Carragher Jr.

Atlanta, Ga.

Admitted to Bar in 1976

On Oct. 3, 2001, the Supreme Court of Georgia suspended attorney Joseph A. Carragher Jr. (State Bar No. 112150) from the practice of law for one year with conditions for reinstatement.

Carragher used his attorney trust account to hold and distribute proceeds earned by his client and long-time family friend and handyman on the sale of a house the client inherited. Carragher represented the client on the sale of the house and deposited a portion of the proceeds paid at the closing into his trust account. He did not immediately distribute the money to the client; instead, he held those funds in his trust account and on two occasions borrowed money from those funds, each time documenting the loans with promissory notes that promised repayment at 18 percent interest. Carragher did not tell his client that he had borrowed the money, but he told the client that the money was returning 18 percent interest. Carragher also deposited earned money into his trust account but wrote checks to his son, the proceeds of which were personal, and one to himself, the proceeds of which were earned fees and fiduciary funds.

After the State Bar notified Carragher that it was investigating a grievance regarding mishandling client property and misuse of his trust account, he opened a non-fiduciary joint account with his client into which he deposited interest monies owed to the client by the purchaser of the inherited house who had executed a purchase money note (which funds Carragher stated were in consideration of an extension of time to pay off the purchase money note). Carragher also received a check in excess of \$50,000 paid to the client in satisfaction of the loan the client gave the purchaser of the house, which Carragher deposited into the joint account, which he apparently set up in anticipation

of the loan pay-off. Carragher took cash out of the joint account several times and deposited it into his personal account, withdrawals he called personal loans memorialized by demand promissory notes, although he did not deliver the notes to the client.

Carragher also drafted loan papers for a loan the client made to Carragher's neighbor and issued a check from the joint account to the neighbor's business. When the neighbor failed to honor the debt, Carragher wrote a demand letter on his client's behalf, asking him to renew the note and make an interest payment. Carragher received three checks totaling over \$66,000 in fiduciary funds, which he deposited into the joint account.

Spreadsheets submitted by Carragher appear to document payments in varying amounts on the client's behalf, which Carragher claims represent repayment of monies he borrowed from the client. Carragher prepared a memorandum memorializing his client's agreement to waive all interest on his remaining debt to the client in consideration of his daughter's continued bookkeeping and monthly accounting services. The memorandum indicates that Carragher paid back all fiduciary funds to the client and hand delivered a check to the client representing a principle and interest payment.

The Court found that Carragher's conduct caused potential injury to his client, but the client was made whole and all sums borrowed were repaid. In mitigation the Court noted that Carragher has practiced law for many years with no past disciplinary problems; that he cooperated with disciplinary authorities, that he was aware of the seriousness of the matter; and that he repaid his client. The Court also noted that the client did not file a complaint against Carragher, appeared satisfied with his services, and that there was no evidence that Carragher engaged in similar transactions with the funds of other clients.

Carragher's reinstatement is conditioned upon his successful participation in the Law Practice Management Program of the State Bar at his expense.

Tara Susann Wofford

Fernandina Beach, Florida

Admitted to Bar in 2003

On Oct. 3, 2011, the Supreme Court of Georgia suspended attorney Tara Susann Wofford (State Bar No. 773004) from the practice of law for three years commencing nunc pro tunc to June 2009, with conditions. In two matters Wofford was hired to represent clients in a personal injury and an automobile collision case. The clients met with a non-lawyer representative of the firm. Someone purporting to be Wofford or operating under her direction, settled the clients' claims without their approval and the clients did not receive any portion of the settlement funds.

In a third matter a client hired Wofford's firm to represent her in an automobile collision case and the client met with a non-lawyer representative of the firm. The client agreed to a settlement with the understanding that a portion of the proceeds would be paid to her chiropractor. The client received her money, but the chiropractor did not. Wofford states that she never met with, spoke with, worked for or had any interchange with these three clients. She states she did not participate in any settlement of their claims and did not arrange for the settlement. Wofford did not receive any of the settlement funds. Wofford states that she did not open the account at RBC Bank in her firm's name in which some of the funds were placed and was unaware of its existence. Wofford worked for a short while after law school and then stayed home with her child. She subsequently opened a solo practice and hired Ly to act as an office manager and interpreter, and allowed him to direct all advertising and marketing for the firm. Two years later, she decided to close her firm and placed her

trust in Ly and others to handle the closing appropriately. She moved to Florida believing that all of her files and business records had been placed in storage. She terminated all firm employees and instructed Ly to close all bank accounts, cancel advertisements and forward her mail to Florida.

Wofford failed to timely respond to the first grievance and subsequent Notice of Investigation, and initially submitted misleading information to the State Bar regarding the same. She mishandled the closing of her law firm and this mismanagement contributed to the misconduct of third parties and to the losses suffered by her clients. She contends she was unaware of the problems giving rise to the grievances and that Ly or someone else assumed her identity and purported to act under her authority. She states that her subsequent attempts to prevent someone from operating her former firm led her to fear for her safety and the safety of her family. Wofford failed to inform her clients that she was closing her law practice and also failed to inform third parties (i.e., hospitals, insurance companies, doctors and other creditors). She failed to ensure that her former clients received their files and that her trust and operating accounts were closed properly.

In aggravation of discipline Wofford initially displayed a bad faith obstruction of the disciplinary proceedings by failing to respond to the Notice of Investigation and by submitting letters falsely suggesting that she had located the clients' files and that someone was addressing their concerns. In mitigation of discipline Wofford has no prior discipline, had no dishonest or selfish motive, was relatively inexperienced in the practice of law, expressed remorse, did not profit or intend to profit from the grieving parties, has been in fear for her safety and her family's safety, and ceased practicing law in June 2009.

Wofford's reinstatement is conditioned upon the finding by a

licensed clinical social worker that she is not impaired and is competent to practice law, and upon a finding by the Review Panel that she is competent to practice law.

Tony C. Jones

Albany, Ga.

Admitted to Bar in 1984

On Oct. 3, 2011, the Supreme Court of Georgia suspended attorney Tony C. Jones (State Bar No. 403935) from the practice of law in Georgia for a period of 18 months with a condition for reinstatement. The following facts are deemed admitted by default.

A client retained Jones to file a contempt action against the client's ex-wife. Jones filed the petition, but thereafter did not take any action on the client's behalf. He failed to communicate with the client; failed to respond to the client's calls and e-mails; failed to provide the client with information about his case despite promising to do so; and failed to tell the client that his ex-wife had filed a counterclaim. Jones continued multiple hearings in the matter without notifying the client. When the court scheduled a hearing in the matter, Jones did not notify the client or attend the hearing on his behalf. The court entered an order dismissing the client's contempt action and finding against him on his ex-wife's counterclaim. Jones did not notify the client about the court's order, and the client did not become aware of it until his wages were garnished. Although Jones was served with a Notice of Investigation, he failed to file a sworn response.

The Court found in aggravation that Jones knowingly failed to perform services thereby causing serious injury to his client in the form of a lost claim and an adverse judgment; that he obstructed the disciplinary proceedings by not responding to the Notice of Investigation; and that he has substantial experience in the practice of law. Jones offered no factors in mitigation of punishment.

Jones must repay his client the full amount of the judgment entered against him as a condition for reinstatement.

Adrienne Regina McFall
Athens, Ga.

Admitted to Bar in 1992

On Oct. 3, 2011, the Supreme Court of Georgia suspended attorney Adrienne Regina McFall (State Bar No. 491035) from the practice of law in Georgia for a period of 18 months with conditions for reinstatement. The following facts are deemed admitted by default.

A client retained McFall to represent her in an employment discrimination matter. The client received a Notice of Right to Sue on May 12, 2009, from the Equal Employment Opportunity Commission. The Notice gave her 90 days to file her lawsuit. McFall did not file the lawsuit, however, and withdrew from representation shortly before the time to file the lawsuit expired. McFall did not refund any fees, did not return the client's file, and did not keep a proper accounting of the funds in her trust account. McFall received an Investigative Panel reprimand in 2007.

Lagrant Anthony
Atlanta, Ga.

Admitted to Bar in 1987

On Oct. 3, 2011, the Supreme Court of Georgia suspended attorney Lagrant Anthony (State Bar No. 020615) from the practice of law in Georgia for a period of 18 months. The following facts are deemed admitted by default:

A client hired Anthony to represent him in a criminal matter. Anthony appeared with his client at the sentencing hearing based on a negotiated guilty plea. The client understood that the sentence would be 10 years to serve five, but he was sentenced to 10 years to serve six. Anthony told his client that he would take action to correct the sentence, but he never returned the client's calls or took any further action on his behalf and he did not return the documents that the client needed to

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

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An Attorney's Attorney

correct the alleged mistake. Anthony received a public reprimand in 1998.

Review Panel Reprimand

Thomas F. Jones
Atlanta, Ga.


Admitted to Bar in 1974

On Oct. 3, 2011, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Thomas F. Jones (State Bar No. 403750) and ordered that he be administered a Review Panel reprimand. Jones was contacted by an individual who was a friend of Jones's father to represent a joint venture between that person and another individual. The joint venture agreement was prepared and signed prior to Jones's involvement. The agreement provided that \$175,000 would be wired to Jones's trust account and that those funds would be used to purchase shares in Manchester Business Enterprises. Jones believed that his role was solely as the escrow agent; his fee was \$3,000, to be paid from the funds wired to his trust account. Per his client's instructions, Jones sent \$81,000 to the representative of the seller of Manchester. Jones eventually learned that a fraud had been perpetuated on the joint venture enterprise. The client requested that Jones file suit against the purported representative of Manchester, which Jones did for a fee of \$4,000. In

filing suit, Jones included himself as one of the party plaintiffs, thinking that was necessary for the Superior Court of Gwinnett County to accept jurisdiction. A default judgment was entered, but it remains uncollected. Jones disbursed the remaining funds in the trust account in accordance with his client's instructions.

In mitigation, the special master found the following factors: Jones had no dishonest or selfish motive; Jones made a full and free disclosure and displayed a cooperative attitude in the disciplinary process; Jones was inexperienced in the practice of law related to joint ventures; Jones was of good character and was remorseful; and a prior disciplinary action seven years ago that resulted in a private reprimand was remote.

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 Aug. 13, 2011, two 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.

Law Office Technology Answers

by Natalie R. Kelly

One of the biggest focus areas of the Bar's Law Practice Management Program is technology. On a daily basis, the department assists members with technology product information and selection. The department makes presentations on specific systems, and even trains members and their staff how to properly use some of the technologies. Technology is important in the lawyer's everyday life and practice, and the help that's needed for using this technology should be easy to find. Here's a list of some useful tips and ways for you to get technology answers.

Where to Get Help

Live Support

- Tech Person/Team—Your IT person or team responds to help with both product and system set up and any post-set up concerns you have with technology. Because this field of professionals is so large, it's always a good idea to get references



and look for support companies that have serviced law firms in the past. Be sure to ask for clear billing

statements and “plain-English” explanations for any support you receive, as this is often a business expense that can be inflated and abused if you don’t have knowledge about the services or processes beforehand. It’s also a good idea to get a written project plan and standard contract before allowing IT teams/persons to undertake any major system work or changes.

- **In-house Person/Expert**—If you are large enough, you probably already have a technology staff person(s) in your office. However, if you are in a smaller firm, you can work toward creating your own tech power user to help with basic technology issues. The in-house servicers are readily accessible and can be a valuable part of the well-run office. If you are a solo or small firm lawyer, look to “train up” key staffers to the level of power users or experts so that you can leverage your own people for tech support. Be sure to budget

for training for your key in-house experts or power users each year.

Telephone Support

- **Vendor Telephone Support**—Companies that provide your products and services will generally have a readily accessible support line. This service can either be at a cost—incident-based or flat rate—or free depending on the product and support model. Many companies will build in phone support where firms sign up for extended service terms or maintain certain support plans with the vendor. Be sure to monitor your agreements and usage for any non-mandatory plans. Also, to assist with making your calls to these support lines more useful, check their online support suggestions first. It’s always good to keep a screen shot of error messages and a log of issues to review with tech support before you give them a call. Also, look for general technical support

services if they indicate knowledge or experience with any products you use. Again, be careful about how you document and choose to work with these vendors.

- **Law Practice Management Program Hotline**—Another place to get telephone assistance is through the Bar’s Law Practice Management Program. Because we are certified on many legal-specific applications and can assist with most general business programs, we regularly assist members with technology questions. This free assistance is available during the department’s regular business hours, and when appropriate, our program may refer you to additional vendors for further assistance.
- **ABA LTRC**—The American Bar Association’s Legal Technology Resource Center provides general support to all lawyers—ABA members or not. You can give this program a call to go over specific technology concerns and to get more informa-

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tion on emerging technologies for lawyers. Their assistance is also free. Find them online at www.lawtechnology.org.

Online Help

- **Vendor Online Support**—Vendors' websites have dedicated technical support areas. From online users' guides to whitepapers, online support is generally available for most products. A website knowledgebase is a great place to get self-help fixes for concerns with products. They often list known issues and workarounds for common problems. With so much support information being made available online, it is always good to look here first for fixes and information. *Tip: Remember to keep a log of issues and error messages and codes you encounter. The log can contain common fixes to issues, and save staff time when an issue is encountered repeatedly in a particular program or product.*
- **General Online Support**—For general technology information and support, try resource providers like www.pcmag.com; www.macworld.com; www.zdnet.com; or www.cnet.com. Make use of their product reviews with rankings and tech fixes. Many of these sites even review online computer support services and highlight online help from sites like www.techguy.org; www.iyogi.net; and www.fixflash.com. Checking out the national newspapers leaders' columns and features on technology can also be helpful. *Tip: You can find fixes directly online via general search engines by simply doing a search for any error messages or codes you come across. Be sure that you confirm that you are able to use any fixes you find this way by checking your firm's policies and procedures for using technology or checking with your IT staff. It may even be better to simply point out the suggested solutions*

you've discovered, and have the IT staff determine if they are appropriate and apply them for you as these can sometimes be originators of viruses or malware.

Where to Learn More

Okay, so you've just won a shiny new tablet, and need to learn more about it so you can translate its sleekness into a working device for your practice. Here are some options—and some even come with CLE credit.

Tradeshows and CLE Program Events


- **ICLE Programs**—ICLE has an Annual Legal Technology Show 'N Tell CLE at the Bar Center, and remotely broadcast to the Bar's South Georgia and Coastal Georgia offices. This event draws crowds of members looking to learn from both local and national legal tech gurus. The topics for this program are cutting-edge and can be counted on to deliver another item for your "must-do" list.
- **ABA TECHSHOW**—ABA TECHSHOW (www.techshow.com) is the premiere legal technology conference presented by the ABA Law Practice Management Section. TECHSHOW showcases hundreds of law office technology exhibitors and about 90 different technology CLE sessions. Held annually in Chicago each spring, this event has so much to offer lawyers and legal professionals interested in technology that it should always make the "must-do" list. *(Note: See ad on page 44 to get a conference discount using the State Bar's Event Promoter code; sample sessions for 2012 include "How to Stay Safe in the Cloud," "A Day in the Life of a Mac Lawyer" and "Tablet Wars." Also, keep an eye out for a very dynamic keynote speaker in 2012.)*
- **LegalTech**—LegalTech is a legal technology conference held each year in New York and Los Angeles and now virtually, too.

The educational programs are very beneficial for large to mid-sized law firms, and provide a place to "play" with newer technology.

- **ILTA**—The International Legal Technology Association conducts an annual conference. were high-end users walk-away with global information and solutions concerning technology in law.

What the State Bar Can Assist With

- **Software Library Visits**—To help members make informed purchasing decisions, the Law Practice Management Program has created a library of software programs that can be demonstrated to members at the Bar Center. The visit can educate on products, and help outline viable technology options before making any purchasing decisions.
- **On-Site Technical Consultations**—The Law Practice Management Program provides on-site consultations at a low cost to Bar members. This popular service exists to help firms get started with technology for practice (case) management, time billing and accounting. Assistance is also available for some general business applications. Contact the program for more information.

Technology is a key part of law practice management, and as such, you should ensure that you are getting the support you need with it. If you have general technology questions or concerns, always feel free to take advantage of the resources outlined here. 



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.

Creditors' Rights and Workers' Compensation Law Sections Demonstrate the Benefits of Giving

by Derrick W. Stanley

The Creditors' Rights section was a recipient of an Award of Achievement at the 2011 State Bar Annual Meeting. The annual award honors outstanding sections for their members' dedication and service to their areas of law practice and for devoting significant hours of volunteer effort to the profession. One of the determining factors for this award was the involvement of the Creditors' Rights section with the Atlanta Volunteer Lawyers Foundation in the creation of the "Dollars for Judgments" program.

The basic premise of the program is for the section to provide volunteers to collect judgments for low-income individuals who have obtained a judgment pro se or with the help of an AVLAF volunteer. Please see the sidebar on page 49 for examples of how this program has been positively impacting the lives of low-income Georgians.

Like the Creditors' Rights section, the Workers' Compensation Law section also goes above and beyond to help those in need through its designated charity, Kids' Chance.

Robert Clyatt, a workers' compensation attorney from Valdosta, founded the first Kids' Chance organi-



zation in 1988. Through his work, he had witnessed the life-shattering impact that a serious workplace injury had on the children of seriously or fatally injured workers, who were now faced with the difficulty of having to fund their own educations.


With the assistance of the Workers' Compensation Law section, Clyatt established and incorporated Kids' Chance of Georgia and began raising money to fund educational scholarships for the children of injured Georgia workers.

Kids' Chance of Georgia began reaching out to other states and encouraged and assisted them in establishing their own Kids' Chance organizations. Thanks to their efforts, 25 states have organized Kids' Chance programs that are actively providing need-based scholarships to the families of seriously injured workers, and new

Kids' Chance organizations are being formed each year.

The Workers' Compensation Law section holds special events throughout the year with the assistance of hundreds of volunteers. These events include partnering with a local hotel bar for monthly happy hours of which 20 percent of the proceeds are donated to Kids' Chance, and a dinner and silent auction held at the annual ICLE Workers' Compensation Law seminar, which netted more than \$35,000 for the scholarship fund this year. These and other events put on by Workers' Compensation

section volunteers have raised money that has helped fund educational assistance to more than 600 children of seriously and fatally injured Georgia workers.

These are only two examples of how sections are going above and beyond to help those in need. To join a section, please go to www.gabar.org/sections for more information. 



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

Collecting Justice

by Michael Lucas

John's landlord—and sometimes employer—boarded up John's apartment, dropped his girlfriend and newborn off at a shelter, and left John on the other side of town under the guise of buying him a meal. John and his family lost most of their belongings as result.

Taking advantage of her vulnerability, Ethel's landlord pressured her to make him her “representative payee”—having her social security checks sent directly to him to cover the rent—and whatever else he decided to take—all while letting Ethel live in a rat infested, nearly uninhabitable home where the power was eventually shut off due to the landlord's nonpayment.

Through Atlanta Volunteer Lawyers Foundation's (AVLF) various programs, we see the evidence of people being taken advantage of first-hand. With the successful launch of the Dollars for Judgments Program—a partnership with the State Bar's Creditors' Rights Section—expert collections attorneys volunteer their time and expertise to complete the pursuit of justice on behalf of AVLF clients who have obtained judgments through AVLF's other programs. Through this new program, there is great potential to positively impact lives and help low-income individuals finally be made whole in ways that have never before been available to them.

As might be expected with defendants who are capable of treating people the way John and Ethel were treated, compliance—satisfaction of the judgment—does not come voluntarily or without a fight. Over the years, so many AVLF cases like John's ended with an impressive judgment that too often went unenforced due to stubborn and evasive defendants and the lack of expertise that a collections attorney can bring to the effort. Plenty of money was collected on behalf of our clients over the years, but far too many clients—just as their faith in the system was starting to be

repaired—have had to face the frustrating realization that there is nowhere to “cash in” their judgment and that the defendant had gotten away with beating them down once again. The Creditors' Rights Section and the Dollars for Judgments Program promise to change all of that.

The program has already been a success by many standards. Just over 20 clients' cases have been accepted by section volunteer attorneys, representing approximately \$200,000 in judgments. Volunteers are presently hard at work collecting for their clients. The Creditors' Rights Section received the State Bar of Georgia's Award of Achievement—given out at the Bar's 2011 Annual Meeting—and AVLF was asked to present a workshop on the program at the American Bar Association and National Legal Aid and Defender Association's annual Equal Justice Conference. We are all proud of these accomplishments, but the real success will come as these skilled volunteers begin to collect for these clients. Not every case will result in satisfaction of the judgment—as, by definition, these are cases with stubborn bad actors as defendants—but every time a collection attorney takes on the cause one of our clients, the program has the potential to drastically change the quality of justice our low-income clients receive, and positively affect their faith in the justice system and our profession.

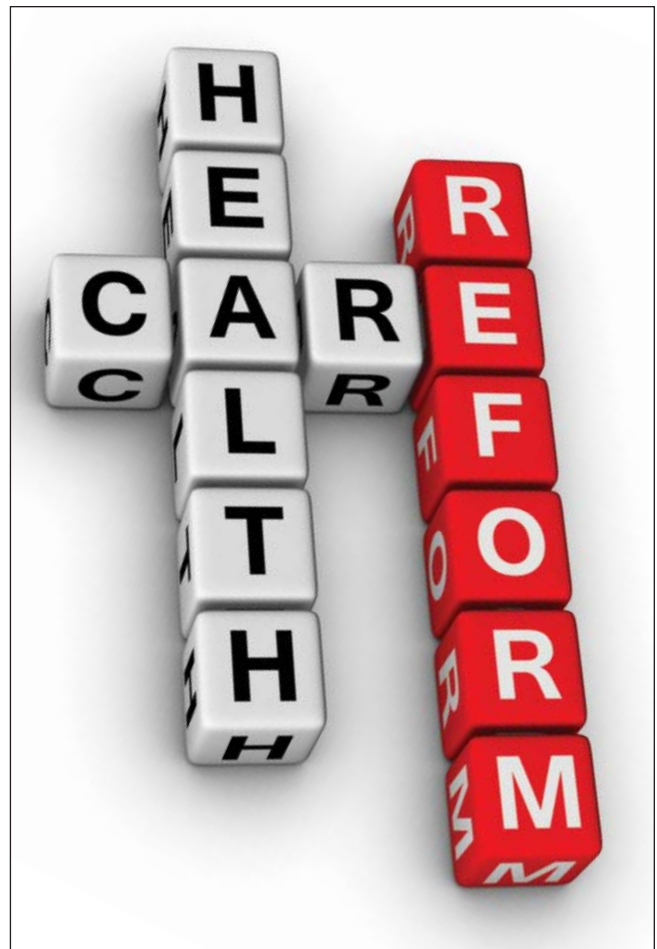
To ensure that the program continues to be a success—and that clients like John, Ethel and AVLF's hundreds of other clients annually truly obtain justice—we need more attorneys with collections experience to answer the call. We are working every day to improve the experience and support for our volunteers; we welcome and value your input and as well as your service. If you would like to get involved or simply learn more, please contact me at mlucas@avlf.org.

What Is Happening in Health Care Reform?

by Earl C. Trefry Jr.

We all know that change is coming to the health care industry, but more precisely change is coming to the way people access health care. Although the most sweeping changes to health insurance do not arrive until 2014, many important provisions of the health care reform legislation have already taken effect. There is growing uncertainty regarding how each state will interpret the federal legislation and which states will be prepared for implementation in 2014. Some states have not even begun setting up their health care exchanges which are a primary part of the plan to give people access to health insurance.

A key provision already in effect is the Medical Loss Ratio (MLR) provision. This section of the law requires a minimum percentage of each premium dollar be applied to pay "claims and expenses that improve health care quality." Agent compensation has been designated as administrative costs rather than health care improvement costs. As a result, commission payments affect insurance carrier loss ratios causing many



carriers to either reduce or eliminate commission payments for agents. To cope with lower income levels, agents are being forced to realign their agencies and many that have sold and serviced health insurance in


the past are no longer doing so. When you combine the reduction of agents with the constant updates to the reform legislation by regulators, you have a situation that makes it very difficult for consumers to get clear and current answers to their questions.

For many law firms, health insurance is their second highest expense after payroll. Managing the costs is very difficult and recent changes to health care legislation have only made that process more complicated. Health care reform brought a long list of items for employers to consider as they provide health insurance benefits for employees. Questions such as whether or not to maintain "grandfathered" status and what disclosures and notifications need to be sent to employees are just a few of the questions that lawyers are asking about their coverage. As we move closer to 2014, when some plans will no longer be allowed, employers will be faced with even more difficult decisions when balancing cost and benefit.

The State Bar of Georgia Member Benefits Committee and the State Bar of Georgia's recommended broker, BPC Financial, are committed to helping attorneys with their health insurance needs. BPC Financial continues to work to find beneficial options available in the marketplace. Concepts involving Multiple Employer Welfare Arrangements (MEWA), individual policies with concessions and association group plans are all continuously investigated in an effort to find good solutions for lawyers and their firms. All of these options have the potential to provide members savings for health insurance.

Currently, one option designed to offer value for small employers and individual members is a program called HealthPlan Advantage. HealthPlan Advantage uses the concept of spreading risk between multiple carriers to lower the overall premium. The ability

to spread the risk is accomplished because of the use of an exclusive GAP group insurance plan that was developed by BPC Financial. The final product offers benefits that are equal or better than many current plan benefits, but very often offer a lower premium. HealthPlan Advantage also utilizes a program called Consult-A-Doc. This benefit allows members and their employees to access physicians through a toll free line to receive care for many day to day ailments. For a \$10 copay, you will speak to a licensed physician in Georgia who in many cases will diagnosis your problem, recommend options for treatment and, if appropriate, send a prescription to your pharmacy. The service is available 24 hours a day, seven days a week. The Consult-A-Doc service is included in the HPA package.

If you would like to learn more about the program offered by the State Bar of Georgia's recommended broker, please contact BPC Financial at 1-800-282-8626. You can also visit them online at www.memberbenefits.com/SBOG. 



Earl C. Trefry Jr., president of BPC Financial, began his career in the insurance industry shortly after receiving his B.S.

degree in Business Administration from the University of Florida in 1972. He later acquired his CLU designation in 1983 from the American College. Trefry is a 37-year qualifying member of the Million Dollar Round Table (MDRT) and an 11-year member of the Top of the Table. He is a frequent guest speaker at industry associations and has also written many articles published in insurance publications and journals. Trefry has previously served on several insurance company's advisory councils and is the recipient of more than 45 insurance company production awards.

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Checklists for Powerful, Efficient Legal Writing

by Jennifer Murphy Romig

Writing can be deeply satisfying but also equally frustrating. Writers may struggle with getting started, creating an effective outline, avoiding common errors or a combination of challenges. In the legal context, lawyers may wish for their writing to be more powerful and efficient, but not know what to change or how to implement changes.

One solution that speaks to each phase of the writing process and every writing situation is this: a checklist. Actually, the solution is not just one single checklist, but the method of using checklists throughout the writing process as well as in broader conversations about effective legal writing.

First, it is important to define what a checklist is—and what makes a good one. There are actually three distinct variations on effective checklists, as outlined in the inspiration for this column, Atul Gawande's book *The Checklist Manifesto: How to Get Things Right* (Metropolitan Books 2009). The most classic type of checklist is a "read-do." This type of checklist is a list of mandatory steps to "read" and then "do" in sequence to complete a task. Another familiar checklist is the "do-confirm." You "do"



the task in your own way, and then "confirm" that it was done correctly by using the checklist.

A third kind of checklist is based on process rather than substantive steps, and is most useful for professionals working in teams. Process-based checklists force team members to communicate and brainstorm problems and solutions at specified points during the team project. For example, in building a large multistory building, team members such as architects, construction managers, pipefitters and others must stop and confer at specific points in the process before moving on to the next phase of construction.

What all good checklists have in common is that they must be “simple, brief and to the point.”¹ Checklists that are too lengthy or confusing will not generate good results and are likely to be simply disregarded in practice.

For lawyers attempting to write, and to write well, checklists are valuable at the beginning, middle and end of the writing process. Teams of legal writers beginning a project, especially a long, complex or high-stakes project, can benefit from using a process-based checklist of short check-ins at various points throughout the project. For counsel and local counsel working together, such check-ins would promote timely discussion of various issues such as how a particular strategy might succeed—or flop—in the local court environment. For senior lawyers delegating to junior lawyers, such check-ins could help minimize unnecessary rewriting time due to a project’s veering off in the wrong direction.

For solo lawyers as well as those writing in teams, the substantive “read-do” and “do-confirm” checklists are equally promising at the beginning of a writing project. A template for a document is really a “read-do” checklist of components to include, such as the following outline of a demand letter:

- Choice of appropriate recipient, depending on strategy;
- Introduction signaling purpose of letter;

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- Body including exposition, legal authority and argument, tailored for the situation; and
- Concise demand in closing.²

These types of checklists may seem fairly simple, but they can remind the writer of the expected parts of such a document, and can make the writing process more efficient by helping the writer break down a writing project into smaller pieces.

Checklists can also be helpful for brainstorming the content of a legal argument in any type of legal analysis or argument. My favorite checklist-style source on this point is Wilson Huhn’s book *The Five Types of Legal Argument* (Carolina Academic Press 2002). These five arguments include arguments from (1) statutory text, (2) statutory intent, (3) precedent, (4) tradition and (5) policy. Within each type of argument, Huhn details further arguments to consider, such as lists—one might even say checklists—of statutory arguments and counter-arguments. By testing a draft against the classic list of arguments, a writer can ensure a thorough set of affirmative arguments. Such checklists could also better prepare the writer to anticipate counter-arguments.

At the end of a writing project, checklists can help both lawyers working alone and those working in teams. Checklists are particularly valuable in catching errors—what Gawande calls “the stupid stuff.” A “do-confirm” checklist


could help the writer to write a draft, then confirm that certain editing errors are not present. These types of checklists can be found in legal writing textbooks³, legal writing CLE materials⁴ and free online sources.⁵

To improve your writing in general—separate and apart from any one project—consider creating your own personalized writing checklist. General editing checklists in books and online can be a good starting point but should be tailored to address your own strengths and weaknesses. If you only use passive voice when it fits the situation, then your checklist does not need an item for removing inappropriate passive voice.⁶ If you have always been told your sentences are overloaded, then add an item for breaking up long sentences. Creating a writing checklist like this, and talking about it with experienced lawyers, can be an excellent opportunity for lawyers at all seniority levels to discuss legal writing issues in a constructive, non-critical way.

These personalized writing checklists can help good writers who want to become great. A “good to great” checklist might include smoothly connecting the beginning of each sentence to preceding material, using grammatical “shape” to reinforce the content, and ending each paragraph and section on a persuasive note.⁷ Or, to enhance the demand-letter checklist described above, a writer seeking to become more advanced

might use a checklist of cognitive considerations under exploration in current legal writing scholarship such as the following⁸:

- Does the letter set the appropriate initial impression, since initial biases are hard to overcome?
- If appropriate, does the letter use a “foot in the door” strategy to seek the audience’s agreement with an initial small request, potentially opening the door to larger requests?
- Does the letter take into account potential reader backlash due to anger or perceived unfairness?

There is an obvious overlap between checklists for writing and checklists for lawyering more generally. For example, as a new lawyer I benefited greatly from a checklist of potentially applicable affirmative defenses to consider in drafting an answer. This checklist was a help both to competent lawyering and to drafting the answer efficiently. This column does not mean to suggest that the checklist concept is valuable only for improving legal writing; checklists can in fact enhance lawyers’ professional performance across the board. 

The author thanks Bard Brockman and David Ross for their comments on drafts of this column. Romig has written a longer exploration of checklists in legal writing, The Legal Writer’s Checklist Manifesto: Book Review, 8 Legal Comm’n & Rhetoric: JALWD 93 (2011), available at <http://ssrn.com/abstract=1932973>.



Jennifer Murphy Romig is the special guest columnist for this installment of Writing Matters. She is an instructor of

legal writing, research and advocacy at Emory University School of Law. She also serves as a writing coach and consultant for lawyers, summer associates and paralegals.

Endnotes

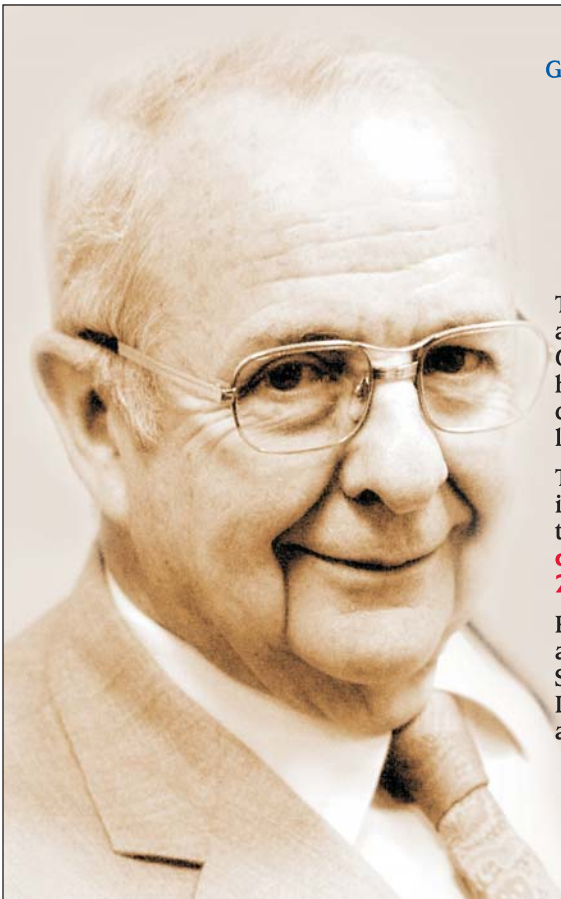
1. *Id.* at 34.
2. See generally Bret Rappaport, *A Shot Across the Bow: How to Write an Effective Demand Letter*, 5 J. ALWD 32 (2008), available at <http://ssrn.com/abstract=1268436>.
3. E.g., Linda Holdeman Edwards, *Legal Writing: Process, Analysis, and Organization* 231 (5th ed 2010) (“Checklist for Language and Usage Errors”).

4. E.g., Bryan A. Garner, *Advanced Legal Writing & Editing: A LawProse Seminar* (Revised Edition 2000) (checklist of writing advice and specific editing suggestions found on the inside front cover).
5. E.g., University of Wisconsin, *The Writer’s Handbook: An Editing Checklist*, available at <http://writing.wisc.edu/Handbook/CommonErrors.html> (last accessed September 23, 2011); Ross Guberman, *Judge Painter: The Most Common Errors I See*, available at <http://www.legalwritingpro.com/articles/F52-just-say-no.php> (last accessed September 30, 2011).
6. Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 10.27 (2d ed. 2002) (outlining appropriate and inappropriate situations for passive-voice verbs).
7. Joseph Williams’ *Style: Ten Lessons in Clarity and Grace* (8th ed., Longman 2005) provides a template for such a checklist, conveniently located on the inside front cover. See also Stephen V. Armstrong & Timothy P. Terrell, *Thinking Like a Writer: A Lawyer’s Guide to Effective Writing and Editing* 409–15 (2d ed., P.L.I. 2003) (summing up principles and techniques of 400-page book in seven-page chart).
8. See Carrie Sperling, *Priming Legal Negotiations Through Written Demands*, 60 Catholic L. Rev. 107 (2010), available at <http://ssrn.com/abstract=1661145>.

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Professionalism Today

by Avarita L. Hanson

The Chief Justice's Commission on Professionalism (the Commission) is the entity that addresses all aspects of professionalism through continuing legal education programs and other activities. The Commission was established on March 15, 1989, by the Supreme Court of Georgia. As the first such entity in the nation, the Commission is comprised of 22 members who represent segments of the State Bar of Georgia and the public.¹ The Commission's chair is the Chief Justice or their designee.

The members reflect the profession's four main constituencies: practitioners, judges, law schools and the public. They represent the federal, supreme, appellate, superior and state courts, prosecutors and defense attorneys, in-house counsel and government attorneys and the general bar. Two members represent the public. This unique membership mix affords the Commission the opportunity to stay current



Chief Justice Carol W. Hunstein, chair, Chief Justice's Commission on Professionalism

on all aspects of professionalism, as well as consider new avenues for addressing needs. It is carefully structured to ensure that all responsible parties are at the table, take responsibility for addressing challenges and issues, and have a voice in the decision process. The Commission reflects the diversity of the Bar in the individual characteristics of its members and the practice environments represented and provides a forum where these constituencies can come together on a regular basis.

What is professionalism?

Today, as we look at a landscape for law practice and judicial service, professionalism core concepts include competence, civility, pro bono service, community service, commitment to access to justice, diversity, law office management and others. Georgia's continuing legal education (CLE) requirements afford every active attorney the opportunity to stay abreast of professionalism concepts in general and as applied to their areas of practice through the CLE programs. Professional relationships matter as we seek to employ proper and productive interactions with clients, colleagues, the public, the judiciary and the legal system.²

Who are today's Commission members?

Five of the Commission seats are filled by members of the judiciary. Chief Justice Carol W. Hunstein of the Supreme Court of Georgia chairs the Commission. Hon. M. Yvette Miller represents the Court of Appeals of Georgia. Hon. William C. O'Kelley, senior judge, U.S. District Court for the Northern District of Georgia, represents the federal trial bench. Hon. Kathlene F. Gosselin, Hall County Superior Court, represents the Council of Superior Court Judges. Hon. Janis C. Gordon, DeKalb County State Court, represents the Council of State Court Judges.

Chief Justice's Commission on Professionalism Members

Hon. Carol W. Hunstein, chair, Atlanta

Prof. Frank S. Alexander, Atlanta

Prof. Clark D. Cunningham, Atlanta

Jennifer M. Davis, Atlanta*

Associate Dean A. James Elliott, Atlanta

C. Joy Lampley Fortson, Atlanta

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Hon. Kathlene F. Gosselin, Gainesville

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Vivian Rippy Ingersoll, Atlanta*

Dawn M. Jones, Atlanta

Stephanie Joy Kirijan, Atlanta

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Dean Richardson R. Lynn, Atlanta

Hon. M. Yvette Miller, Atlanta

Hon. William C. O'Kelley, Atlanta

Daniel J. Porter, Lawrenceville

Thomas G. Sampson, Atlanta

Claudia S. Saari, Decatur

Kenneth L. Shigley, Atlanta

**Denotes nonlawyer*

Georgia's law schools are also represented on the Commission, bridging the relationship between aspiring attorneys, educators and practitioners. Atlanta's John Marshall Law School is represented by Dean Richardson R. Lynn. Prof. Frank S. Alexander, represents Emory Law School. Prof. Matthew I. Hall, assistant professor

of law, represents the University of Georgia School of Law. Prof. Patrick E. Longan represents the Walter F. George School of Law at Mercer University. Prof. Clark Cunningham represents Georgia State University College of Law.

Many members of the Commission are representatives of the State Bar of Georgia lead-

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ership and general membership. The president of the State Bar of Georgia and the president of the Young Lawyers Division serve ex-officio during their tenure, connecting the Commission to current and future leaders. These positions are now filled respectively by Kenneth L. Shigley and Stephanie Joy Kirijan. Attorneys representing the State Bar membership include: Joseph H. Fowler, Hartley, Rowe & Fowler, Douglasville; Dawn M. Jones, King & Spalding, Atlanta; and A. James Elliott, Commission founder and associate dean and professor at Emory Law School.

The Supreme Court of Georgia appoints members to represent the bar and practice areas. These members include: Thomas G. Sampson, Thomas, Kennedy, Sampson & Tompkins, LLP, Atlanta; Claudia S. Saari, DeKalb County Public Defenders Office, representing criminal defense attorneys; Daniel J. Porter, district attorney of Gwinnett County, representing prosecuting attorneys; Catherine M. Hilton, general counsel of UPS Capital Corporation, representing in-house counsel; and C. Joy Lampley Fortson, with the office of general counsel of the U.S. Department of Homeland Security, representing government attorneys.


Public members include Jennifer M. Davis, executive director of the Georgia Defense Lawyers Association and Vivian R. Ingersoll, volunteer. Public members provide a link to the client and community and offer their own insights into lawyer professionalism and the needs and concerns of the public.

What do Commission members do?

Members inform and guide the programs and activities of the Commission. They bring new ideas and issues to the floor for discussion and development. The Commission works with entities such as the State Bar's Transition Into Law Practice Program, Law Practice Management and Consumer Assistance Programs. Ongoing Commission programs include: CLE programs; the Justice Robert Benham Community Service Awards (in partnership with the State Bar of Georgia); the Law School Orientations on Professionalism (in partnership with the State Bar's Committee on Professionalism); and Convocations on Professionalism.

The Commission meets three times a year and is supported by Executive Director Avarita L. Hanson; Assistant Director Terie Latala; Administrative

Assistant Nneka Harris-Daniel; and Commission interns.

We salute the 2011-12 members of the Chief Justice's Commission on Professionalism and thank them for their service on this judicially created entity with a proven record of promoting professionalism among lawyers benefitting Georgia attorneys and the public. Georgia lawyers are invited to share their ideas for programs and activities with the Commission and can easily do so by contacting the Chief Justice's Commission on Professionalism, 104 Marietta St. NW, Suite 620, Atlanta, GA 30303, professionalism@cjcpga.org, 404-225-5040. 



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

Ahanson@cjcpga.org.

Endnotes

1. Rules and Regulations for the Organization and Government of the State Bar of Georgia, Part IX, Rule 9-102, Professionalism.
2. Chief Justice's Commission on Professionalism, A Lawyer's Creed and Aspirational Statement on Professionalism.

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B. Michael Byrd

Savannah, Ga.
Mercer University Walter F.
George School of Law (1979)
Admitted 1979
Died November 2010

Vicki Elizabeth Carter

Athens, Ga.
University of Georgia School of
Law (1978)
Admitted 1978
Died April 2011

Barbara Batey Chakales

Roswell, Ga.
Georgia State University College
of Law (1995)
Admitted 1995
Died October 2011

Clarence H. Clay Jr.

Macon, Ga.
University of Georgia School
of Law (1949)
Admitted 1949
Died October 2011

Mark Sutton Etheridge

Atlanta, Ga.
University of Georgia School
of Law (1999)
Admitted 1999
Died October 2011

John E. Faulk

Melbourne, Fla.
Emory University School of Law
(1957)
Admitted 1957
Died September 2011

Lavinia Brown George

Forest Park, Ga.
Admitted 1951
Died October 2011

Alfred S. Holbrook Jr.

Atlanta, Ga.
Emory University School of Law
(1961)
Admitted 1962
Died September 2009

Carol Surrel Jones

Acworth, Ga.
Ohio State University College
of Law (1984)
Admitted 1988
Died August 2010

Phillip N. Lavender

Duluth, Ga.
Atlanta's John Marshall Law
School (1973)
Admitted 1973
Died October 2011

Thomas C. Lawler III

Lawrenceville, Ga.
Atlanta's John Marshall Law
School (1979)
Admitted 1979
Died November 2011

Henry B. Levi

Atlanta, Ga.
University of Texas School of Law
(1978)
Admitted 1978
Died October 2011

Robert L. Marchman III

Fort Valley, Ga.
Harvard Law School (1950)
Admitted 1950
Died October 2011

Erwin Mitchell

Dalton, Ga.
University of Georgia School
of Law (1948)
Admitted 1948
Died September 2011

J. Ben Moore

Marietta, Ga.
Woodrow Wilson College of Law
(1949)
Admitted 1949
Died November 2011

William A. Nevin Jr.

Austin, Texas
University of Georgia School
of Law (1950)
Admitted 1950
Died July 2010

Albert Sidney Parker

Marietta, Ga.
Emory University School of Law
(1958)
Admitted 1958
Died October 2011

Marvin Pechter

Atlanta, Ga.
Woodrow Wilson College of Law
(1961)
Admitted 1964
Died November 2011

Jill Olivia Radwin

Atlanta, Ga.
University of Alabama School
of Law (1992)
Admitted 1993
Died September 2011

Sidney L. Raskin
Savannah, Ga.
University of Georgia School
of Law (1938)
Admitted 1938
Died September 2011

Donald L. Rickertsen
Birmingham, Ala.
University of Chicago Law School
(1973)
Admitted 1973
Died September 2011

Stewart H. Roed
Kennesaw, Ga.
Woodrow Wilson College of Law
(1984)
Admitted 1985
Died November 2011

Tarey Bessette Schell
Fayetteville, Ga.
Georgia State University College
of Law (1990)
Admitted 1990
Died September 2011

John G. Skinner
Atlanta, Ga.
George Washington University
Law School (1967)
Admitted 1968
Died September 2011

John R. Strother Jr.
Atlanta, Ga.
Emory University School of Law
(1958)
Admitted 1958
Died September 2011

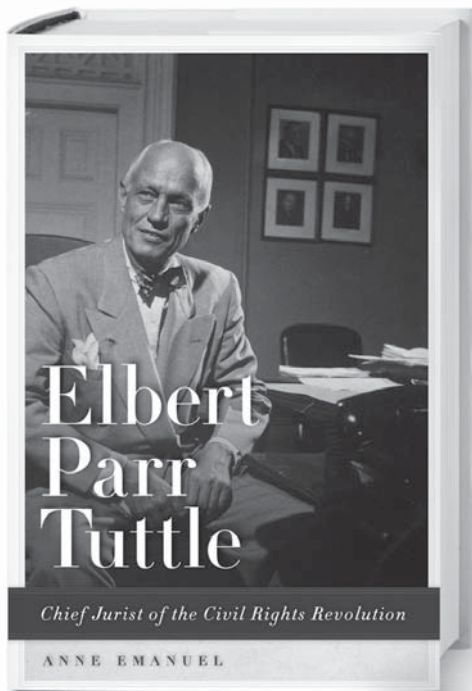
John E. Talmadge
Atlanta, Ga.
University of Georgia School
of Law (1963)
Admitted 1962
Died October 2011

Pamela L. Tremayne
Atlanta, Ga.
Emory University School of Law
(1983)
Admitted 1983
Died October 2011

Annette Elaine Triplett-Beasley
Snellville, Ga.
Mississippi College School of Law
(1998)
Admitted 2004
Died October 2011

Jere F. White Jr.
Birmingham, Ala.
Samford University Cumberland
School of Law (1980)
Admitted 1980
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Health Care Fraud
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DEC 15 Atlanta Bar Association
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Teleseminar
1 CLE

DEC 16 ICLE
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2 CLE

DEC 16 Atlanta Bar Association
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Live webcast
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DEC 20	Atlanta Bar Association <i>Asset Protection Strategies for Real Estate</i> Teleseminar 1 CLE	JAN 19	ICLE <i>Section 1983 Litigation</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
DEC 21	Atlanta Bar Association <i>Tax Efficient Methods for Getting Money Out of a Business</i> Teleseminar 1 CLE	JAN 19	ICLE <i>So Little Time, So Much Paper</i> Atlanta, Ga. See www.iclega.org for location 3 CLE
JAN 4	Atlanta Bar Association <i>Drafting & Negotiating Corporate Agreements</i> Live webcast 6 CLE	JAN 20	ICLE <i>Jury Trial</i> Statewide Live Broadcast See www.iclega.org for location 6 CLE
JAN 11	Atlanta Bar Association <i>Secured Transactions</i> Live webcast 6 CLE	JAN 20	ICLE <i>Employment Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 12	ICLE <i>Winning Settlement Strategies</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 20	ICLE <i>Speaking to Win</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 12	ICLE <i>Landlord and Tenant</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 24	Atlanta Bar Association <i>The Leader Within</i> 3 CLE
JAN 12	ICLE <i>Impeach Justice Douglas – Video Replay</i> Atlanta, Ga. See www.iclega.org for location 3 CLE	JAN 25	ICLE <i>Foreign Corrupt Practices Act</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
JAN 13	ICLE <i>Winning Before Trial</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	JAN 26	ICLE <i>Family Immigration Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE

December-March

JAN 26 ICLE
Jury Trial
Statewide Rebroadcast
See www.iclega.org for location
6 CLE

JAN 27 ICLE
Recent Development
Statewide Rebroadcast
See www.iclega.org for location
6 CLE

JAN 27 ICLE
White Collar Crime
Atlanta, Ga.
See www.iclega.org for location
6 CLE

JAN 29-FEB 1 ICLE
Update on Georgia Law
Beaver Creek, Colo.
See www.iclega.org for location
12 CLE

FEB 9 Atlanta Bar Association
ERISA Fiduciary Basics
Live webcast
6 CLE

FEB 10 Atlanta Bar Association
Family Law
6 CLE

FEB 13 Atlanta Bar Association
Managing Wage & Hour Risks
Live webcast
6 CLE

FEB 22 Atlanta Bar Association
Ethics for Corporate Counsel
Live webcast
3 CLE

FEB 24 Atlanta Bar Association
Advanced Workers' Compensation
6 CLE

MAR 1 Atlanta Bar Association
Basic Immigration Law
Live webcast
6 CLE

MAR 5 Atlanta Bar Association
Representing Immigrant Victims of Human Trafficking
Part of Pro Bono March Madness
3 CLE

MAR 5 Atlanta Bar Association
Remedies for Undocumented Children & Families
Part of Pro Bono March Madness
4 CLE

MAR 7 Atlanta Bar Association
Grandparent/Relative Caregiver Project
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3 CLE

MAR 12 Atlanta Bar Association
Wills & Advance Directives Project
Part of Pro Bono March Madness
3.5 CLE

MAR 12 Atlanta Bar Association
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MAR 12 Atlanta Bar Association
Education Advocacy for Children with Special Needs
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MAR 19 Atlanta Bar Association
The Saturday Lawyer Program
 Part of Pro Bono March Madness
 7 CLE

MAR 19 Atlanta Bar Association
Guardian ad Litem
 Part of Pro Bono March Madness
 7 CLE

MAR 19 Atlanta Bar Association
One Child, One Lawyer
 Part of Pro Bono March Madness
 6 CLE

MAR 21 Atlanta Bar Association
Heir Property in Georgia
 Part of Pro Bono March Madness
 3 CLE

MAR 21 Atlanta Bar Association
Les Misérables Meets Collateral
Consequences
 Part of Pro Bono March Madness
 1 CLE

MAR 26 Atlanta Bar Association
The Asylum Project
 Part of Pro Bono March Madness
 4 CLE

MAR 26 Atlanta Bar Association
Employment Law for Pro Bono
Organizations
 Part of Pro Bono March Madness
 3 CLE

MAR 27 Atlanta Bar Association
Representing Survivors of Intimate
Partner Violence
 Part of Pro Bono March Madness
 3.5 CLE

MAR 27 Atlanta Bar Association
Bankruptcy Reaffirmation Project
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 2 CLE

MAR 29 Atlanta Bar Association
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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. References to the Rules of the State Bar of Georgia may be updated in the filed version of this Notice should a newer edition of the *State Bar Directory and Handbook* be issued prior to filing. 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 2012-1 MOTION TO AMEND THE RULES AND REGULATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization 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:

Proposed Amendment to Part IV, Chapter 1, Georgia Rules of Professional Conduct, Rule 1.10

It is proposed that Rule 1.10 of the Georgia Rules of Professional Conduct regarding Imputed Disqualification: General Rule be amended by inserting the section underlined as follows:

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has infor-

mation protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7: Conflict of Interest: General Rule.

(d) A lawyer representing a client of a public defender office shall not be disqualified under this rule because of the representation by the office of another client in the same or a substantially related matter unless there is a conflict as defined by Rules 1.7, 1.8(f) or 1.9.

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

Comment

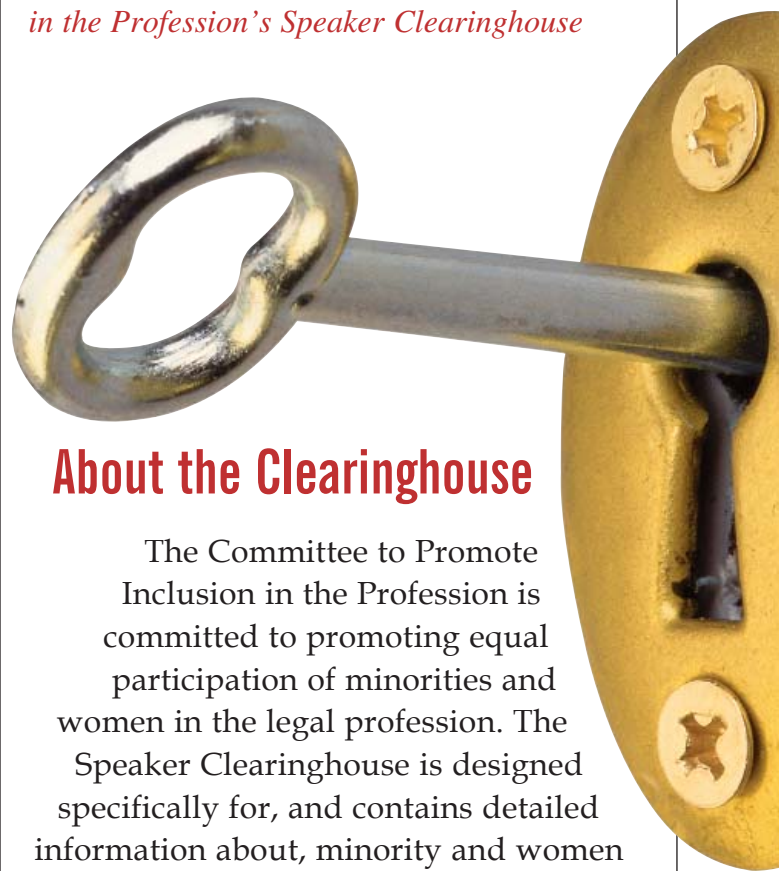
Definition of "Firm"

[1] For purposes of these Rules, the term "firm" includes lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.

[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise

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State Bar of Georgia

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Consumer Assistance Program

The purpose of the Consumer Assistance Program (CAP) is to serve the public and members of the Bar. Individuals contact CAP with questions or issues about legal situations, seeking information and referrals, complaints about attorneys and communication problems between clients and their attorneys. Most situation can be resolved informally by CAP's providing information and referrals to the public or, as a courtesy, contacting the attorney. CAP's actions foster better communications between clients and attorneys in a non-disciplinary and confidential manner, 404-527-8759.

Lawyer Assistance Program

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concerning an unincorporated association and its local affiliates.

[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

[4] Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b): Successive Government and Private Employment; where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1): Successive Government and Private Employment. The individual lawyer involved is bound by the Rules generally, including Rules 1.6: Confidentiality of Information, 1.7: Conflict of Interest: General Rule and 1.9: Conflict of Interest: Former Client.

[5] Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in Rules 1.6: Confidentiality of Information, 1.9: Conflict of Interest: Former Client, and 1.11: Successive Government and Private Employment. However, if the more extensive disqualification in Rule 1.10: Imputed Disqualification were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10: Imputed Disqualification were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11: Successive Government and Private Employment.

Principles of Imputed Disqualification

[6] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation

of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b): Conflict of Interest: Former Client, and 1.10(b): Imputed Disqualification: General Rule.

[7] Rule 1.10(b): Imputed Disqualification operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7: Conflict of Interest. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client.

If the proposed amendment to the Rule are adopted, the new Rule 1.10: Imputed Disqualification: General Rule would read as follows:

RULE 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7: Conflict of Interest: General Rule.

(d) A lawyer representing a client of a public defender office shall not be disqualified under this rule because of the representation by the office of another client in the same or a substantially related matter unless there is a conflict as defined by Rules 1.7, 1.8(f) or 1.9.

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

Comment

Definition of "Firm"

[1] For purposes of these Rules, the term "firm" includes lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.

[2] With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[3] Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with

each other can depend on the particular rule that is involved, and on the specific facts of the situation.

[4] Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b): Successive Government and Private Employment; where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1): Successive Government and Private Employment. The individual lawyer involved is bound by the Rules generally, including Rules 1.6: Confidentiality of Information, 1.7: Conflict of Interest: General Rule and 1.9: Conflict of Interest: Former Client.

[5] Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences and, therefore, to the protections provided in Rules 1.6: Confidentiality of Information, 1.9: Conflict of Interest: Former Client, and 1.11: Successive Government and Private Employment. However, if the more extensive disqualification in Rule 1.10: Imputed Disqualification were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations and, thus, has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10: Imputed Disqualification were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11: Successive Government and Private Employment.

Principles of Imputed Disqualification

[6] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b): Conflict of Interest: Former Client, and 1.10(b): Imputed Disqualification: General Rule.

[7] Rule 1.10(b): Imputed Disqualification operates to permit a law firm, under certain circumstances, to represent a person with interests

directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7: Conflict of Interest. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client.

SO MOVED, this _____ day of _____, 2011

Counsel for the State Bar of Georgia

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