

The background of the cover is a photograph of three people standing on a grassy lawn in front of a large, classical-style building with white columns and red brick walls. A large green tree is on the right side of the image. The title 'Georgia Bar Journal' is prominently displayed at the top in a large, white serif font. The 'J' is particularly large and spans across the top left. To the left of the word 'Georgia' is a small blue square logo containing a white scale of justice. Below the title, the issue information 'August 2010 • Volume 16 • Number 1' is printed in a smaller, white sans-serif font. At the bottom of the cover, the name and title of the featured individual are written in a large, white serif font.

Georgia Bar Journal

August 2010 • Volume 16 • Number 1

S. Lester Tate III
48th State Bar President

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

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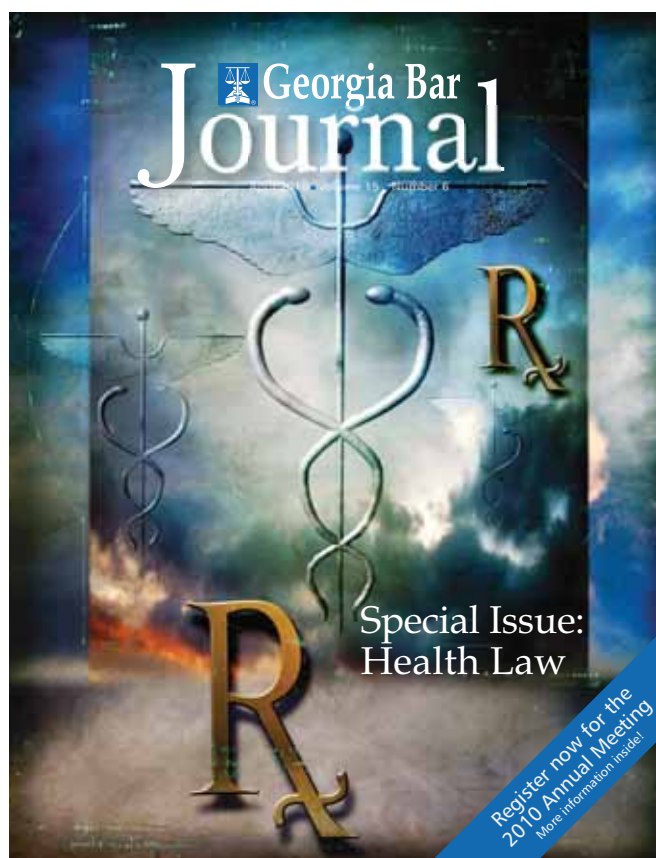
The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (February, April, June, August, October, December) with a special issue in November by the State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303. Copyright State Bar of Georgia 2010. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia and additional mailing offices. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. POSTMASTER: Send address changes to same address.


Health Law Issue of the *Georgia Bar Journal*

Dear Editor-in-Chief,

I am with the Public Health Law Program (PHLP) at the Centers for Disease Control and Prevention. Our office eagerly read the April issue of the *Georgia Bar Journal* focused on health law and were pleased to see several citations to resources developed by PHLP, particularly in reference to legal preparedness for public health emergencies, such as pandemic influenza.

Your readers will find the cited Health Care Providers Pan-Flu checklist and the Frequently Asked Questions documents on our website, alongside many other relevant tools for preparedness that the state of Georgia, as well as localities, may find useful in their planning, including web-based courses on public health emergency law, a compendium of relevant federal law, templates to assess the sufficiency of emergency laws and the capacity to carry out these laws, and an interactive menu for building mutual aid agreements between jurisdictions. We also have several tools on other topics of public health law, including a web-based public health law introductory course and resources for assessing TB control laws. We are constantly updating our site and adding new materials. Our office also distributes the *Public Health Law News* (the *News*) monthly to a readership of over 35,000 people via e-mail and archived issues are available online. The *News*, which is free, highlights recent articles, events and cases that have a public health impact. If any *Georgia Bar Journal* readers are interested, they may subscribe at <http://www2a.cdc.gov/phlp/cphln.asp>.



Again, thank you—we appreciate that our work has been useful in your preparation of the special health issue of the *Georgia Bar Journal*. If our office can ever be of assistance in writing or editing of a public health related piece, or in assisting as faculty for a public health law focused CLE, please don't hesitate to ask. 

Sincerely,
Stacie Kershner, J.D.
Public Health Law Program
Centers for Disease Control and Prevention



If she can't afford an attorney, where does she go for legal assistance?

Ms. Cantrell had lived in her modest mobile home for 17 years when her husband died after three years in a nursing home and a year in hospice, paid for by Medicaid. She received a notice from the Department of Community Health that, under Medicaid's estate recovery program, the department would place an \$8,000 lien on Ms. Cantrell's home, which was worth only about that amount and was all she had. She considered selling her home to pay Medicaid, because she didn't know that Federal law prohibits Medicaid from placing a lien on an estate unless the entire estate is worth more than \$25,000. A GLSP lawyer requested an exemption and saved Ms. Cantrell's home.

Working together we can fulfill the promise of Justice for All.



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by Lester Tate

Life's Lessons from the Football Field

Anyone familiar with “Friday Night Lights” can attest to the significance of high school football in the Texas town depicted in the book, movie and current TV series. It’s a realistic portrayal of how the success or failure of the local team permeates the rest of the community and the day-to-day lives of its citizens.

Of course, those of us who grew up in any of the hundreds of “one-horse” towns across Georgia already knew all about that. For us, going to the game on Friday night wasn’t simply the biggest thing in town; it was the only thing. Especially in rural counties with only one local high school, stadium attendance would often exceed the town’s population when two winning teams were on

the field. By the same token, after a string of losses, the head coach might wake up to see a *for sale* sign in his yard, placed there by overzealous “boosters.”

This was the way life was during my years at Cedartown High School during the late 1970s. Fortunately, I played for the Bulldogs during a heyday period, highlighted by the 1978 season. That year, we were ranked No. 1 in the state in Class AAA during the entire regular season and for two weeks into the state playoffs before finally falling to Dalton, which was led by Jim Arnold, who went on to become an All-American punter at Vanderbilt and two-time Pro Bowl selection for the Detroit Lions.

“As I learned on so many Friday nights back then and in so many courtrooms the past 22 years, the final outcome is not always in your control. What counts is that you gave it the best you had.”

Those were indeed glory days for Cedartown football. Even though none of us went on to the NFL, it is perhaps noteworthy that I was only one of five players from our team who went on to a career in law. Steve Astin (class of ’77), Wright Gammon (my classmate from the class of ’79), Bill Lundy (class of ’77) and his brother Rick Lundy (class of ’80) are all in private practice in Cedartown today. I should also mention that Cedartown

High School produced three other lawyers during those years: state Rep. Rick Crawford (class of '80), Bill Johnson (class of '77) and Ralph Perales (class of '78), (as well as my paralegal, Sandi Wilson (class of '78), who has been my paralegal for more than 16 years.

As we all know, succeeding in college, gaining admission to and graduating from law school and passing the Bar exam requires a disciplined academic regimen. For many of us, it's the hardest thing we've ever done or will ever do. Yet it is absolutely necessary to prepare us for the profession we have chosen—a higher calling, if you will. Academic achievement is mandatory, not elective.


Having said that, however, I can tell you that some of the greatest lessons I ever learned took place before I went to college and law school. They were learned right there on that football field in Cedartown, Ga., sometimes on fall Fridays under the lights and amidst the marching

band's tunes and the home crowd's cheers, but more often in the sweltering heat of preseason camp and its two-a-day workouts, wind sprints and "up/down" drills; the daily practices in pursuit of precision and perfection; and in the locker-room meetings with my coaches and teammates.

If you ask my daughter Grace (who, by the way, will be serving as the student body president at Cartersville High School the same year I am State Bar president) what my hobbies are, she will tell you: sports, politics and suing people. I'm not sure she has the order correct, but even if she does, that's all right with me. It is through sports that I have gained many of the life lessons and values that prepared me to become a lawyer:

- The spirit of competition
- Winning and losing, and how to handle both
- Overcoming obstacles and challenges

- Building lasting relationships
- Practice, practice, practice

Author Susan Casey once said, "Sports remain a great metaphor for life's more difficult lessons. It was through athletics that many of us first came to understand that fear can be tamed; that on a team the whole is more than the sum of its parts; and that the ability to be heroic lies, to a surprising degree, within." Having climbed the State Bar officers' ladder the past three years, I almost feel like I'm back in high school and now am entering my senior year. As I learned on so many Friday nights back then and in so many courtrooms the past 22 years, the final outcome is not always in your control. What counts is that you gave it the best you had. 

Lester Tate is the president of the State Bar of Georgia and can be reached at sltate3@mindspring.com.



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by Cliff Brashier



Board of Governors

Your Voice in Bar Leadership

Like our nation and state, the State Bar of Georgia operates under a representative form of government. Policy decisions are made by the Board of Governors, a 160-member body that holds five regular meetings each year.

A small number of Board members fill seats that are appointed by the State Bar president on an annual basis, but the vast majority are elected at the local level, by their colleagues within a judicial circuit.

The lawyers and judges who are on the Board of Governors provide an invaluable service to all 42,000 members of the Bar. They are your voice on the multitude of issues on which they must make policy decisions each year. Most of these decisions are made by majority vote, but some require a super majority. For the State Bar to take a position on legislation, for example, it takes a 67 percent approval by the Board. The Board of

Governors also elects six of its members to join the eight Bar and YLD officers elected statewide in serving on the Executive Committee, which generally meets monthly and exercises the power of the Board when it is not in session.

Not only do Board members represent a geographic constituency from their judicial circuit, they also bring to the table the unique perspective of their particular practice area. And, in recent years, the Board has become more demographically diverse as well.

Board members attend four to five meetings per year at their own expense. In addition, they frequently volunteer to serve on one or more committees. This is a great commitment of travel time and expense and even greater sacrifice of time away from the law office.

All Bar members owe a debt of gratitude to those who are willing to, first, seek election to the Board of Governors and, if elected, fulfill their duties on behalf of their fellow Georgia lawyers in service to the public and the justice system.

During this year's Annual Meeting at Amelia Island, Fla., our Bar year "changing of the guard" took place.

"Not only do Board members represent a geographic constituency from their judicial circuit, they also bring to the table the unique perspective of their particular area of law practice."

Completing their terms and retiring from the Board of Governors in June were:


- C. Celeste Creswell of Chattanooga, Tenn., Out of State (2 years of service)
- Gregory L. Fullerton of Albany, Dougherty Circuit (18 years of service)
- Laverne Lewis Gaskins of Valdosta, Member-at-Large (2 years of service)
- Walter C. Hartridge of Savannah, Eastern Circuit (34 years of service)
- Larry Bush Hill of LaFayette, Lookout Mountain Circuit (8 years of service)
- Donald W. Huskins of Eatonton, Ocmulgee Circuit (28 years of service)
- W. Pope Langdale III of Valdosta, Southern Circuit (6 years of service)
- Phyllis Miller of Lawrenceville, Gwinnett Circuit (9 years of service)
- William Lee Skinner of Tucker, Stone Mountain Circuit (26 years of service)
- Gregory C. Sowell of Tifton, Tifton Circuit (4 years of service)
- A. Thomas Stubbs of Decatur, Stone Mountain Circuit (8 years of service)
- John J. Tarleton of Tucker, Stone Mountain Circuit (34 years of service)
- William N. Withrow Jr. of Atlanta, Atlanta Circuit (16 years of service)

When you see any of these retiring Board members, please join me in thanking them for their service. Taking their place, the newly elected and appointed Board members who were installed at the Annual Meeting include:

- Sarah B. "Sally" Akins of Savannah, Eastern Circuit
- John Christopher Clark of Macon, Macon Circuit
- Gerald Davidson Jr. of Lawrenceville, Gwinnett Circuit

- Joseph W. Dent of Albany, Dougherty Circuit
- Archibald A. Farrar Jr. of Summerville, Lookout Mountain Circuit
- Gwen Keyes Fleming of Decatur, Stone Mountain Circuit
- Render M. Heard Jr. of Tifton, Tifton Circuit
- Michael D. Hobbs Jr. of Atlanta, Atlanta Circuit
- Marc Howard of Atlanta, Atlanta Circuit
- Chris Huskins of Eatonton, Ocmulgee Circuit
- Dawn M. Jones of Atlanta, Atlanta Circuit
- Christine A. Koehler of Lawrenceville, Member-at-Large
- Devereaux F. McClatchey of Boston, Mass., Out of State
- Jeffery O'Neal Monroe of Macon, Member-at-Large
- Leo E. Reichart of Atlanta, Atlanta Circuit
- Claudia Saari of Decatur, Stone Mountain Circuit
- Gregory T. Talley of Valdosta, Southern Circuit
- Anita Wallace Thomas of Atlanta, Atlanta Circuit
- Katherine K. Wood of Atlanta, Stone Mountain Circuit

Appreciation goes to each of these, too, and the 141 returning members of the Board of Governors for their commitment and sacrifice. You can find your representatives in the Board of Governors directory on the Bar website. Feel free to contact them with your views on any of the issues facing the State Bar. They want to hear from you and appreciate your contributions.

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

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

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by Michael G. Geoffroy

Set Yourself Apart as a Young Lawyer

I recall my first trial experience as a first year associate in a small town firm. A partner walked into my office one morning and said he forgot he

promised a friend of his he would help them out in magistrate court, which in turn meant I now had a trial in magistrate court in two hours against an opposing attorney with no preparation. As I

walked to the courthouse, I wondered how a freshly minted attorney like myself could ever stand a chance against a salty, seasoned practitioner like I the one I was about to face.

When I got to the courthouse and saw my opposing counsel, I politely introduced myself, to which he responded, "Mr. Geoffroy, I don't know what you've got to say about this case, but you better make your words sweet, because I am going to make you eat them." I wanted

to respond by calling him another word for donkey that I had learned in elementary school. Despite this rude introduction to litigation and professional conduct, the case turned out fine and somehow I found a way to compete with more experienced attorneys during my first years of practice.

All young lawyers face this problem: competing for clients and negotiating and arguing against older, more experienced attorneys. As a solo practitioner,

I get the question, "What sets you apart from other attorneys?" When engaged in litigation I often hear from opposing counsel, "I have tried 20 cases like this if I've tried one," or "I have been practicing in this area of the law for 30 years!" When I first graduated, it was a subject I worried about often, but I have since learned why I have more important things to worry about.

"You should never take a case concerning a legal issue you, or someone at your firm, doesn't know or can learn relatively easily and not at your client's expense."

Less experienced young lawyers have a great toolbox of skills to offer clients and challenge opposing counsel. Here are just a few of the things that you can focus on to improve your representation and bring value to your clients.

Technology

Young lawyers should always be willing to try and use new technology in their practice. We all know e-mail, smart phones, online research and video trial presentations have changed the practice over the last decade, but technology continues to enhance the practice. Some lawyers are going to use technology to make them look good and some less fortunate lawyers will get beat to the punch. Take time to check out new technology, and more than just your new Apple iPhone 4. Looking at the sponsors and exhibitors at the State Bar meetings that market specifically to lawyers is a great place to start. As young lawyers, we are more open to explore and try new things and new technology. Use it to benefit your practice.

Accessibility

One of the main complaints I hear from clients and friends about past experiences with a lawyer is that the lawyer was

impossible to get on the phone or otherwise unresponsive. Young lawyers should buck this industry-wide pitfall. Try your best to get back to clients the same day. Set aside 15 minutes after lunch to return phone calls and e-mails. Be accessible to your clients; some of the solution is simply being up front. If you have a weeklong trial and will be incommunicado, then be sure to let your clients know. If you communicate faster by e-mail than by telephone, tell that to the client. The result will be a more satisfied client and a competitive advantage over many of your fellow practitioners.


Networking

Get out from behind your desk and meet people. A YLD meeting is a great place to start (see below for a list of upcoming YLD meetings). A friend and fellow solo practitioner of mine Paige Stanley says to build a network of experts for your practice, whether big firm or small. I have a rolodex full of CPAs, financial planners, fellow lawyers in every practice area, process servers and certified experts including an arborist, a farrier and a professional animal trapper. (Thanks, Trapper Jack!). Having these experts as resources to answer questions for you and your clients will enhance the services you provide. Young

lawyers are in a great position to continue to build their network and improve their practice.

Creativity

So you haven't taken 13 cases on downstream non-navigable waterway riparian rights to a jury—that doesn't make you unfit to practice. You should never take a case concerning a legal issue you, or someone at your firm, doesn't know or can learn relatively easily and not at your client's expense. But within your area of practice, there are new arguments to try and new approaches to negotiation. Ingenuity is an underutilized skill in the practice of law.

These are just four of the many ways young lawyers bring unique skills to their practice. There are many other areas where you can compete and accomplish great things for your clients. I hope this helps inspire you to be bold (feel free to pose as Captain Morgan as you read this). If all else fails, schedule a late meeting like George recommended on Episode 146 of *Seinfeld*, "These old guys, they're up at 4 a.m., by 2:30 they're wiped." 

Michael G. Geoffroy is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at michael@thegeoffroyfirm.com.

2010-11 YLD Meetings

Summer 2010

Aug. 19-22, 2010
Wild Dunes Resort, Charleston, S.C.

Fall 2010

Oct. 8-10, 2010
Foundry Park Inn, Athens, Ga.

Midyear Meeting

January 13-15, 2011
Gaylord Opryland Hotel & Convention Center,
Nashville, Tenn.

Spring 2011

March 31-April 3, 2011
Las Vegas, Nev.

Annual Meeting

June 2-5, 2011
Kingston Plantation, Myrtle Beach, S.C.

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

"A Factor":

Denial of Benefit Claims Under ERISA in the 11th Circuit and Georgia District Courts Two Years After *Metropolitan Life Insurance Company v. Glenn*

by Edward A. Marshall

As previous contributors to the *Journal* have recognized, the Employee Retirement Income Security Act (ERISA) now permeates litigation involving the denial of life, health and disability benefits.¹ Nevertheless, the standards governing benefits claims under ERISA have long confounded and divided federal courts. The U.S. Supreme Court's decision in *Firestone Tire & Rubber Co. v. Bruch*² had left the circuits badly fractured regarding how to address controversies in which a plan administrator, suffering under a conflict of interest (e.g., having a financial stake in the resolution of a claim, such as where the same entity determines eligibility for, and then pays benefits under, a plan), rejected a participant's entitlement to benefits.

In light of those deep divisions and the frequency with which plan administrators are alleged to suffer



under such conflicts, it was with eager anticipation that ERISA practitioners awaited the U.S. Supreme

Court's decision in *Metropolitan Life Insurance Co. v. Glenn*,³ which was expected to put to rest these conflicting approaches and to spell out, with clarity, the standards governing benefit denial controversies.

Unfortunately, *Glenn* did little to bring clarity and definition to the benefit denial analysis. Rather, the Supreme Court eschewed the structured analytical approaches adopted by many circuits, and retreated to the pronouncement in *Firestone* that a plan administrator's conflict of interest was simply "a factor" to be weighed in determining whether the administrator abused its discretion in rejecting a claim.⁴

This article explores the implications of *Glenn* in the 11th Circuit and Georgia district courts approximately two years after the decision was handed down, including its impact on the substantive resolution of claims, the discovery process and the procedural mechanisms that courts in the 11th Circuit have used to resolve challenges to a plan administrator's denial of benefits.

Benefit Denial Claims in the 11th Circuit Pre-*Glenn*

To fully appreciate the impact of *Glenn* on Georgia practitioners, it is necessary first to understand the state of the law in the 11th Circuit pre-*Glenn*.

For those predisposed towards multi-tiered analyses and burden-shifting frameworks, the 11th Circuit's pre-*Glenn* approach to ERISA benefit denial claims left little to be desired. Interpreting *Firestone*, the 11th Circuit had adopted three different tiers of review to resolve benefits litigation—tiers whose application revolved around a plan administrator's discretion to interpret an ERISA plan and the existence *vel non* of a conflict of interest. According to the 11th Circuit, "(1) *de novo* review applie[d] where the plan administrator ha[d] been given no discretion in deciding claims; (2) arbitrary and capricious

review applie[d] where the plan administrator ha[d] discretion in deciding claims and [did] not suffer from a conflict of interest; and (3) heightened arbitrary and capricious review applie[d] where the plan administrator ha[d] discretion but suffer[ed] from a conflict of interest."⁵

In time, the 11th Circuit honed this multi-tiered approach into a six-step decision tree for adjudicating benefit controversies. As articulated in *Williams v. BellSouth Telecommunications, Inc.*,⁶ the analysis progressed as follows:

(1) Apply the *de novo* standard to determine whether the claim administrator's benefits-denial decision is "wrong" (i.e., the court disagrees with the administrator's decision); if it is not, then end the inquiry and affirm the decision.

(2) If the administrator's decision in fact is "*de novo* wrong," then determine whether he was vested with discretion in reviewing claims; if not, end judicial inquiry and reverse the decision.

(3) If the administrator's decision is "*de novo* wrong" and he *was* vested with discretion in reviewing claims, then determine whether "reasonable" grounds supported it (hence, review his decision under the more deferential arbitrary and capricious standard).

(4) If no reasonable grounds exist, then end the inquiry and reverse the administrator's decision; if reasonable grounds do exist, then determine if he operated under a conflict of interest.

(5) If there is no conflict, then end the inquiry and affirm the decision.

(6) If there is a conflict of interest, then apply heightened arbitrary and capricious review to the decision to affirm or deny it.⁷

As explained by the 11th Circuit, the "hallmark" of the "heightened

arbitrary and capricious" standard of review—implicated by the sixth step in the decision tree—was its burden-shifting requirement.⁸ That is, under the "heightened arbitrary and capricious" standard of review, the plan administrator bore the burden to show that the existence of a conflict *did not* taint its analysis—a burden that, in practice, frequently resulted in judgments adverse to plan administrators laboring under a conflict of interest if the administrator's decision was found to be "wrong" under a *de novo* review.⁹

The Supreme Court's Decision in *Glenn*

In *Glenn*, the Supreme Court reviewed a decision of the 6th Circuit overturning a plan administrator's denial of a plaintiff's claim for long-term disability benefits. There, MetLife acted as the plan administrator for Sears, Roebuck & Company's long-term disability insurance plan, and was given discretion under the plan to determine eligibility for benefits.¹⁰ Nevertheless, it also acted as the insurer of the plan, and this financial interest in the resolution of claims resulted in a conflict of interest.¹¹

The 6th Circuit had considered MetLife's conflict as one factor among many in overturning its denial of benefits to the plaintiff, who suffered from severe dilated cardiomyopathy, a heart condition that resulted in fatigue and shortness of breath.¹² Taking that conflict into account, along with (a) "MetLife's failure to reconcile its own conclusion that [the plaintiff] could work in other jobs with the Social Security Administration's conclusion that she could not;" (b) MetLife's emphasis on medical opinions favorable to its denial of benefits at the expense of other, more detailed treating physician reports; (c) MetLife's failure to provide all of these less favorable treating physician reports to its reviewing experts; and (d) MetLife's

failure to take account of certain evidence suggesting that stress aggravated the plaintiff's condition, the 6th Circuit concluded that MetLife, even under a deferential standard of review, had abused its discretion in rejecting the plaintiff's claim for benefits.¹³ The Supreme Court accepted certiorari to determine, *inter alia*, "'how' any . . . conflict [of interest] should 'be taken into account on judicial review of a discretionary benefit determination.'"¹⁴

Endorsing the 6th Circuit's "combination of factors" approach, the Supreme Court emphasized that judicial review of benefit denials under ERISA must proceed under one of only *two* legal frameworks—*de novo* review where the plan administrator has no discretion to determine eligibility for benefits, and discretionary review where the plan administrator enjoys such discretion.¹⁵ Channeling *Firestone*, the Supreme Court held that the presence of a conflict of interest is but one "factor" to be considered in resolving whether a plan administrator abused its discretion under this latter standard of review.¹⁶ Rejecting the proposition that the presence of such a conflict fundamentally alters the analytical framework, the Court explained that it did not perceive it to be "necessary or desirable for courts to create special burden-of-proof rules, or other special procedural or evidentiary rules, focused narrowly upon the evaluator/payor conflict."¹⁷ According to the Court, "[b]enefits decisions arise in too many contexts, concern too many circumstances, and can relate in too many different ways to conflicts—which themselves vary in kind and in degree of seriousness—for us to come up with a one-size-fits-all procedural system that is likely to promote fair and accurate review."¹⁸ Such procedural rules, it reasoned, "would create further complexity, adding time and expense to a process that may already be too costly for many of those who seek redress."¹⁹

The Court, moreover, explained that the weight to be given the con-

flict in any particular case would vary depending on the particular facts presented.

The conflict of interest at issue . . . should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration. It should prove less important (perhaps to the vanishing point) where the administrator has taken active steps to reduce potential bias and to promote accuracy, for example, by walling off claims administrators from those interested in firm finances, or by imposing management checks that penalize inaccurate decision-making irrespective of whom the inaccuracy benefits.²⁰

Finding that the 6th Circuit's decision was consistent with the principles laid out in its opinion, the Supreme Court affirmed the lower court's decision setting aside MetLife's benefits determination.

Applications of *Glenn* in the 11th Circuit

Glenn and its progeny have fundamentally altered ERISA benefit denial litigation in the 11th Circuit and Georgia district courts in at least three ways. The elimination of the burden-shifting procedure has made it easier for conflicted plan administrators to demonstrate that challenged benefit denials were not arbitrary and capricious, and thus, should be left undisturbed by the courts. The need to more carefully evaluate the impact of a conflict on the claims resolution process has led to broader discovery, at least where a plausible conflict is alleged. Finally, the 11th Circuit has encouraged the use of, and the Georgia dis-

trict courts have increasingly employed, Rule 52 of the Federal Rules of Civil Procedure as an alternative to Rule 56 to resolve benefit denial cases short of a full evidentiary hearing on the merits.

The Substantive Analysis

Doyle

The 11th Circuit's pre-*Glenn* analytical framework embodied precisely the sort of "burden-of-proof rules . . . focused narrowly upon the evaluator/payor conflict" that the Supreme Court criticized in its decision.²¹ Within just three months of *Glenn* being decided, the 11th Circuit recognized this tension between *Glenn* and its previously articulated six-step framework to resolving denial of benefit claims, acknowledging that *Glenn* altered at least the sixth step of the standards set out in *Williams*.²²

Shortly thereafter, in *Doyle v. Liberty Life Assurance Co. of Boston*,²³ the 11th Circuit had its first opportunity to squarely address the implications of *Glenn* in cases involving the denial of benefits by a plan administrator tainted with a conflict of interest. It began by recognizing that "*Glenn* implicitly overrules and conflicts with our precedent requiring courts to review under the heightened [arbitrary and capricious] standard a conflicted administrator's benefits decision."²⁴ Echoing *Glenn*, the court continued by "hold[ing] that the existence of a conflict of interest should merely be a factor for the district court to take into account when determining whether an administrator's decision was arbitrary and capricious."²⁵ More to the point, the *Doyle* court emphasized that, "while the reviewing court must take into account an administrative conflict when determining whether an administrator's decision was arbitrary and capricious, *the burden remains on the plaintiff to show the decision was arbitrary*; it is not the defendant's burden to prove its decision was not tainted by self-interest."²⁶ The conflict is merely one factor to be considered

by the court in making that determination.

The elimination of the burden-shifting requirement, as *Doyle* itself showed, is of more than academic importance. In numerous decisions under the Circuit's previous, six-step approach, plan administrators had struggled to overcome the burden imposed upon them to demonstrate that the relevant conflict did not taint their analysis. Where a conflict was present, a finding by the court that the plan administrator's decision was de novo wrong often created substantial liability exposure. In *Doyle*, however, the plan administrator, Liberty Life, successfully obtained summary judgment on the plaintiff's claim challenging its denial of long-term disability benefits notwithstanding the existence of the conflict of interest.

In light of the Supreme Court's decision in *Glenn*, the burden remained with the plaintiff in *Doyle* to show that Liberty Life's decision

was arbitrary and capricious. Even at the summary judgment stage, and even in view of evidence that the plaintiff suffered from "substantial medical problems," the court in *Doyle* found that it was a burden the plaintiff had failed to carry.²⁷ Two factors weighed heavily in its analysis. First, Liberty Life had granted the plaintiff short-term disability benefits, which, Liberty Life argued, showed that its "decision making processes were not biased."²⁸ Second, going beyond the regulatory requirement that it obtain a report from an unrelated physician consultant as part of the administrative appeals process,²⁹ Liberty Life employed an independent physician to review the plaintiff's medical record during its *initial* determination of her entitlement to benefits.³⁰ Combined, these factors persuaded the 11th Circuit that Liberty Life had not been influenced by the conflict of interest,

and, in the absence of any other evidence to the contrary, the court found Liberty Life's decision not to be arbitrary and capricious.³¹

Practical Implications on the Substantive Resolution of Claims

Although the *Williams* three-tiered, six-step approach to the resolution of benefit denial cases occasionally finds its way back into court opinions,³² the 11th Circuit and the Georgia district courts have remained largely faithful to the standards articulated in *Doyle* since the decision came down in September 2008. In particular, they have repeatedly recognized that the burden-shifting, sixth step of *Williams* no longer applies in cases involving conflicted plan administrators, while leaving the remaining five steps of the pre-*Glenn* framework essentially undisturbed.³³

Of course, *Glenn* itself demonstrates that the "combination of factors" approach can result in liabili-

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ty for conflicted plan administrators, even without procedural devices actually shifting the burden to such administrators to show that the relevant conflict did not impact their analyses. Post-*Glenn* precedent in the 11th Circuit likewise reflects the possibility of such exposure.³⁴ Nevertheless, decisions in the 11th Circuit and the Georgia district courts since *Glenn* have shown that the elimination of the burden-shifting approach under *Williams* has made it easier for conflicted plan administrators to stave off liability. No longer obligated to essentially “prove a negative”—i.e., to establish that the relevant conflict of interest *did not* affect the resolution of the plaintiff’s claim—such administrators have increasingly achieved summary judgment or otherwise succeeded in having their benefit denials upheld under an arbitrary and capricious standard of review.³⁵

A careful examination of precedent reveals that two factors—both present in *Doyle*—have proven especially useful to plan administrators seeking to defend the reasonableness of their benefit denials.

- First, plan administrators able to point to an earlier grant of certain benefits to a claimant, e.g., in the form of short-term disability benefits, have succeeded in persuading the courts that such actions are indicative of a lack of biased claims administration, thus ameliorating the negative implications of any potential conflict. The beneficial effect of such an earlier grant is further increased where the administrator continued to pay out such benefits during an extended claim evaluation and appeals process.³⁶
- Second, proof of a thorough claims review process, especially (though not invariably) involving independent, outside medical professionals, has frequently led courts to conclude that a challenged benefit denial was not arbitrary and capricious.³⁷

Conversely, claimants have succeeded in showing a plan administrator’s decision to be arbitrary and capricious when the administrator is unable to explain its de-emphasis of certain, unfavorable medical opinions in favor of those that support its claim denial.³⁸

Implications for Discovery

As those familiar with benefit denial litigation can readily attest, the parameters of permissible discovery—although variable—tend to be narrowly drawn. In applying *de novo* or arbitrary and capricious standards of review (at least in cases not involving conflicted plan administrators), courts are generally restricted in their resolution of claims to the materials contained in the administrative record.³⁹ That being the case, courts have generally proven reluctant to permit discovery much beyond the administrative record itself, with some courts going so far as to explicitly hold that the typical contours of discovery under Rule 26(b) of the Federal Rules of Civil Procedure simply do not apply to ERISA actions.⁴⁰

Although the district courts have differed in their delineation of the outer boundaries of discovery post-*Glenn*,⁴¹ it is clear that the restrictions on discovery have loosened somewhat following the Supreme Court’s 2008 decision, at least in cases in which the plaintiff alleges the existence of a colorable conflict on the part of the plan administrator.⁴² While continuing to emphasize that “discovery beyond the administrative record must be narrowly tailored[.]”⁴³ Georgia district courts in the wake of *Glenn* have permitted limited discovery into procedures used by an administrator to prevent or mitigate the effect of structural conflicts;⁴⁴ fidelity to documented procedures in the claim review process;⁴⁵ statistical information of claims submitted to the administrator for review;⁴⁶ and policies that encourage or reward the denial of claims for benefits.⁴⁷

Other decisions have more generally endorsed discovery into the facts surrounding an alleged conflict, without explicitly establishing the outer limits of such discovery, at least early in the discovery process.⁴⁸

At this time, the precise contours of discovery post-*Glenn* remain murky, and the scope of permissible discovery will likely remain the subject of considerable debate.

An Alternative to the Hopeless Awkwardness of Motions for Summary Judgment

As one district court aptly observed, application of traditional Rule 56 principles to benefit denial cases pre-*Glenn* often proved “hopelessly awkward.”⁴⁹ Assuming that *any* conflict existed among the opinions contained in the administrative record, it would seem all but impossible to conclude, on a *de novo* standard of review, that no genuine issues of material fact remained concerning the correctness *vel non* of the administrator’s decision. And, whatever opportunities for summary judgment existed for plaintiffs under the 11th Circuit’s pre-*Glenn* “heightened arbitrary and capricious” standard of review, those opportunities diminished when the existence of a conflict became but one of several amorphous “factors” in a multi-factored analysis.

Courts within the 11th Circuit have addressed these shortcomings of Rule 56 in one of two ways (although the differences between the approaches are perhaps more semantic than real). First, some courts have simply held that the realities of benefits litigation require a non-literal application of Rule 56, giving the courts broader discretion to adjudicate disputed claims (and, presumably, resolve competing factual claims) at the summary judgment stage. These courts have concluded that “[s]ummary judgment motions filed in ERISA cases are reviewed slightly differently than summary judgment motions in other cases.”⁵⁰ According to courts

ascribing to this view, a varied interpretation of Rule 56 is appropriate given the unique role occupied by district courts in benefits litigation, in which “the district court sits more as an appellate tribunal than as a trial court. It does not take evidence, but, rather, evaluates the reasonableness of an administrative determination in light of the record compiled before the plan fiduciary.”⁵¹


Perhaps in recognition of how ill-suited Rule 56 had proven in the context of benefits litigation, and how *Glenn* had diminished its utility still further, the 11th Circuit in *Doyle* proposed a second alternative. Rather than attempting to manipulate Rule 56 into a workable procedural device for resolution of benefit claims, the Circuit suggested the alternative use of Rule 52,⁵² at least where the court’s determination centered upon the administrative record. In a footnote, the Circuit explained:

[T]he case for both parties was bottomed on the administrative record. It seems preferable in a case like this for the district court to determine by conference or stipulation whether either party desires to present evidence beyond the administrative record, and if not, take the case under submission and enter findings of fact and conclusions of law. Rule 56 practice seems to be an extra and unnecessary step and one that can result in two appeals rather than one.⁵³

In just the past year, litigants have begun to increasingly adopt the *Doyle* court’s suggestion, invoking Rule 52 as an alternative to Rule 56 to resolve disputed benefit claims.⁵⁴ Indeed, in a recent decision by the U.S. District Court for the Middle District of Georgia, the court appeared to sua sponte apply Rule 52 as an alternative to Rule 56, “treat[ing] the Parties’ Cross-Motions for Summary Judgment as

a Trial on the Papers pursuant to Fed. R. Civ. P. 52(a).”⁵⁵

Conclusion

The full implications of *Glenn* on benefits litigation within the 11th Circuit remain to be seen. Two years after the Supreme Court’s decision, however, it is clear that *Glenn* has made it slightly easier for plan administrators to overcome conflicts of interest and sustain adverse benefits determinations in litigation, while at the same time broadening the scope of permissible discovery that conflicted plan administrators must endure before achieving a resolution on the merits. In addition, *Glenn* has appeared to hasten the courts’ movement away from strict reliance on Rule 56 to resolve benefits claims on the merits, prompting an increasing trend towards invocation of a “modified” Rule 56 procedure or Rule 52 to adjudicate such claims short of a full evidentiary hearing on the merits. 



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Endnotes

1. See Michael J. Hannan III, *What Does ERISA Have to Do with Insurance?*, 14 GA. B.J., June 2009, at 18.
2. 489 U.S. 101 (1989).
3. 128 S. Ct. 2343 (2008).
4. See *id.* at 2350.
5. *Gilley v. Monsanto Co.*, 490 F.3d 848, 856 (11th Cir. 2007).
6. 373 F.3d 1132, 1137-38 (11th Cir. 2004).
7. *Id.* (footnotes omitted).
8. See *Doyle v. Liberty Life Assurance Co. of Boston*, 542 F.3d 1352, 1356 (11th Cir. 2008).
9. See *Brown v. Blue Cross & Blue Shield of Ala., Inc.*, 898 F.2d 1556, 1566-67 (11th Cir. 1990).
10. See *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2346 (2008).
11. *Id.*
12. *Id.*

13. *Id.* at 2347.
14. *Id.*
15. *Id.* at 2347-48.
16. *Id.* at 2350-51.
17. *Id.* at 2351.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. See *White v. Coca-Cola Co.*, 542 F.3d 848, 854 (11th Cir. 2008), *cert. denied*, 129 S. Ct. 1910 (2009).
23. 542 F.3d 1352 (11th Cir. 2008).
24. *Id.* at 1359.
25. *Id.* at 1360.
26. *Id.* at 1360 (emphasis added).
27. *Id.* at 1363.
28. *Id.* at 1361.
29. 29 C.F.R. § 2560.503-1(h)(3) (2001).
30. *Doyle*, 542 F.3d at 1362.
31. Notably, the court in *Doyle* emphasized that “*Glenn*’s holding that a conflict must be taken into account during review of benefit denials applies in *all cases* where a conflict is present, regardless of whether the administrator was influenced by the conflict. In other words, the existence of a conflict of interest alone is sufficient to trigger the obligation to weigh it on judicial review.” *Id.* at 1363 (emphasis added).
32. See, e.g., *Ruple v. Hartford Life & Accident Ins. Co.*, 340 Fed. Appx. 604, 610 (11th Cir. 2009) (not selected for publication); *Gipson v. Admin. Comm. of Delta Air Lines, Inc.*, No. 09-11748, 2009 WL 3437490, at *4 (11th Cir. Oct. 27, 2009).
33. See *Capone v. Aetna Life Ins. Co.*, 592 F.3d 1189, 1196 (11th Cir. 2010) (“[T]he *Williams* methodology remains intact except for the sixth step.”); *Keith v. The Prudential Ins. Co. of Am.*, 347 Fed. Appx. 548 (11th Cir. 2009) (not selected for publication) (“In *Doyle*, we held that the Supreme Court’s decision in [*Glenn*] abrogated the burden-shifting, heightened arbitrary and capricious standard of review that we had previously applied in ERISA benefits cases.”); *Creel v. Wachovia Corp.*, No. 08-10961, 2009 WL 179584, at *6 (11th Cir. Jan. 27, 2009) (“*Glenn* affects only the sixth step in [the *Williams*] scheme by making the existence of a conflict of interest a factor in the ERISA analysis, rather than the impetus for applying a heightened arbitrary and capricious standard Additionally, the burden is on the

plaintiff to show the existence of such a conflict, not on the defendant to disprove its influence.”); Townsend v. Delta Family-Care Disability & Survivorship Plan, 295 Fed. Appx. 971, 975 n.1 (11th Cir. 2008) (not selected for publication) (“*Glenn* addressed only cases where a conflict of interest exists. As there is no conflict of interest here, *Glenn* has not affected our analysis.”) (citations omitted); Nevitt v. Standard Ins. Co., No. 1:08-CV-3641-TWT, 2009 WL 4730316, at *4 (N.D. Ga. Dec. 3, 2009) (discussing impact of *Glenn* on six-step framework articulated in *Williams*); McInvale v. Metro. Life Ins. Co., No. 5:07-CV-459-HL, 2009 WL 2589521, at *5 (M.D. Ga. Aug. 18, 2009) (“[I]f there is a conflict of interest, then the reviewing court must consider the conflict as being a factor in determining whether the plan administrator has acted arbitrarily and capriciously.”); Sanders v. Unum Life Ins. Co. of Am., No. 03:08-CV-03(CDL), 2009 WL 902046, at *9 (M.D. Ga. Mar. 30, 2009) (treating conflict as “a factor” in arbitrary and capricious review); Waschak v. Acuity Brands, Inc. Senior Mgmt. Benefit Plan, No. 1:07-CV-3121-TWT, 2009 WL 103622, at *3 (N.D. Ga. Jan. 14, 2009) (replacing sixth step of *Williams* with requirement that, “[i]f there is a conflict, weigh the conflict using the flexible analysis described by the *Glenn* and *Doyle* courts”); Everson v. Liberty Mut. Assurance Co., No. 1:05-CV-2459-RWS, 2009 WL 73140, at *10 (N.D. Ga. Jan. 2, 2009) (“As a result of the Supreme Court’s decision in *Glenn* and the Eleventh Circuit’s decision in *Doyle*, this Court’s sole inquiry is whether Plaintiff has demonstrated by a preponderance of the evidence that Defendant’s decision to deny benefits was arbitrary and capricious.”); Bell v. Shenandoah Life Ins. Co., 589 F. Supp. 2d 1368, 1373 (M.D. Ga. 2008) (“If [a conflicted plan administrator, vested with discretion, makes a] denial [that] was *de novo* wrong, then the Court must evaluate all of the relevant factors, including whether the administrator was operating under a conflict of interest, to determine whether the administrator’s denial of benefits was arbitrary and capricious.”); McDaniel v. Hartford Life &

Accident Ins. Co., No. 5:07-CV-7(CAR), 2008 WL 4426087, at *13 (M.D. Ga. Sept. 25, 2008) (“In *Doyle*, the court abandoned the burden-shifting analysis of the prior heightened standard and followed the Supreme Court’s ‘combination of factors’ approach[.]”); see also Brannon v. BellSouth Telecomm., Inc., 318 Fed. Appx. 767, 769 n.3 (11th Cir. 2009) (not selected for publication) (*Glenn* does not affect *de novo* analysis); cf. *Creel*, 2009 WL 179584, at *6 n.18 (noting that *Glenn* should also “affect the wording of the third step because there would be a single level of arbitrary and capricious review and thus no need to term it a ‘more deferential’ arbitrary and capricious standard”).

Notably, at least some courts have effectively “skipped” the *de novo* analysis in situations where it was clear that the arbitrary and capricious standard would govern the outcome. See, e.g., *McInvale*, 2009 WL 2589521, at *6 (finding that decision was neither arbitrary nor capricious, and skipping *de novo* review by simply “assum[ing] *arguendo* that Defendant’s decision was *de novo* wrong”); *Everson*, 2009 WL 73140, at *10 (holding that, as a consequence of *Glenn*, “sole inquiry” is whether decision was arbitrary and capricious).

34. See *Werner v. ACE USA*, No. 1:07-CV-0932-BBM, 2008 WL 2917607 (N.D. Ga. July 28, 2008) (granting summary judgment to plaintiff on claim for wrongful denial of benefits against conflicted plan administrator); see also *Adams v. Hartford Life & Accident Ins. Co.*, No. 4:08-CV-53(CDL), 2010 WL 890197, at *9 (M.D. Ga. Mar. 10, 2010) (holding denial of benefits to be arbitrary and capricious); *Nevitt*, 2009 WL 4730316, at *4 (rejecting benefit denial as procedurally unreasonable).
35. See, e.g., *Doyle*, 542 F.3d at 1363 (upholding benefit denial despite conflict); *Keith*, 347 Fed. Appx. 548 (same); *McInvale*, 2009 WL 2589521, at *8 (same); *Green v. Reliance Standard Life Ins. Co.*, No. 408CV068, 2009 WL 1956290, at *8-9 (S.D. Ga. July 7, 2009) (same); *Sanders*, 2009 WL 902046, at *9-10 (same); *Everson*, 2009 WL 73140, at *13 (same); *Bell*, 589 F. Supp. 2d at 1376-77 (same);

McDaniel, 2008 WL 4426087, at *13-14 (same).

36. See *Doyle*, 542 F.3d at 1361; *Everson*, 2009 WL 73140, at *13.
37. See *Keith*, 347 Fed. Appx. 548; *Doyle*, 542 F.3d at 1361-62; *Everson*, 2009 WL 73140, at *13; *Bell*, 589 F. Supp. 2d at 1376-77; see also *Sanders*, 2009 WL 902046, at *9 (crediting thorough review of claim despite fact that professionals relied upon to review file were “in-house” consultants).
38. *Adams*, 2010 WL 890197, at *12 (“Defendant and its hired consultant ignored the most important records in the file and failed to exercise even minimal diligence in following up on arguable inconsistencies in the records. Defendant’s selective reliance upon its consultant’s review of the medical records and failure to give any consideration to the opinions of Plaintiff’s treating physicians, which opinions were favorable to Plaintiff, demonstrate an arbitrariness that resulted in an unreasonable denial of benefits in this case.”); *Werner*, 2008 WL 2917607, at *12-13 (focusing on plan administrator’s failure to consider unhelpful medical opinions in rejecting benefit denial as arbitrary and capricious).
39. See, e.g., *Lee v. BellSouth Telecomms., Inc.*, 318 Fed. Appx. 829, 836 (11th Cir. 2009) (under arbitrary and capricious standard of review, “[t]he district court’s review of the plan administrator’s denial of benefits should be limited to consideration of the material available to the administrator at the time it made its decision”) (citations omitted); *Keith*, 347 Fed. Appx. 548 (holding likewise); *Ruple*, 340 Fed. Appx. at 612 (“where the court determines whether the administrator was wrong under a *de novo* standard, we are limited to the record that was before the administrator when it made its decision”) (internal quotations omitted); *Gipson v. Admin. Comm. of Delta Air Lines, Inc.*, No. 09-11748, 2009 WL 3437490, at *4 (11th Cir. Oct. 27, 2009) (holding likewise). But cf. *Capone v. Aetna Life Ins. Co.*, 592 F.3d 1189, 1196 (11th Cir. 2010) (suggesting that, even in context of *de novo* review, discovery would be permitted on “how the fiduciary reached its decision” and “whether

an administrator fulfilled his or her fiduciary duties"). Where a plan administrator *lacks* discretion to interpret and apply the plan, some decisions have held that, in conducting a de novo review, the court may look beyond the administrative record to "evidence regarding an individual's disability which was in existence at the time the plan administrator's decision was made, even though this evidence was not made available to the administrator." *Bates v. Metro. Life Ins. Co.*, No. 5:08-CV-22(CAR), 2009 WL 2355834, at *2 (M.D. Ga. July 27, 2009) (quoting *Anderson v. Unum Life Ins. Co. of Am.*, 414 F. Supp. 2d 1079, 1100-01 (M.D. Ala. 2006)).

40. See, e.g., *Wells v. Unum Life Ins. Co. of Am.*, 593 F. Supp. 2d 1303, 1305 (N.D. Ga. 2008) ("The applicable ERISA standard of review, rather than the expansive scope of discovery allowed by Federal Rule of Civil Procedure 26(b), governs the scope of discovery in this case.").
41. See *Allen v. Life Ins. Co. of N. Am.*, 267 F.R.D. 407, 411-12 (N.D. Ga. 2009) ("At present, there appears to be a circuit-split on the permissible scope of discovery in an ERISA action where a conflict of interest issue has been raised. . . . The Eleventh Circuit Court of Appeals has not yet weighed in on this matter; however, district courts in the Eleventh Circuit have also split on whether *Glenn* expands the scope of discovery where there is a questions about a plan administrator's conflict of interest.") (citations omitted).
42. See, e.g., *Branch v. Life Ins. Co. of N. Am.*, No. 4:09-CV-12, 2009 WL 3781217, at *3 (M.D. Ga. Nov. 11, 2009) ("The Court finds that *Glenn*, however, broadens the scope of permissible discovery in cases where a conflict of interest allegedly exists[.]").
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.* at *5.
47. *Id.*
48. *Mattox v. Life Ins. Co. of N. Am.*, 625 F. Supp. 2d 1304, 1309-10 (N.D. Ga. 2008); *Adams v. Hartford Life & Accident Ins. Co.*, 589 F. Supp. 2d 1366, 1367 (N.D. Ga. 2008).
49. *Wise v. Hartford Life & Accident Ins. Co.*, 360 F. Supp. 2d 1310, 1321-

22 (N.D. Ga. 2005); see also *id.* at 1321 ("the standard against which the record must be measured in deciding whether summary judgment is proper at this stage of the heightened arbitrary and capricious review remains amorphous").

50. See *Nevitt v. Standard Ins. Co.*, No. 1:08-CV-3641-TWT, 2009 WL 4730316, at *3 (N.D. Ga. Dec. 3, 2009); see also *Bates v. Metro. Life Ins. Co.*, No. 5:08-CV-22(CAR), 2009 WL 2355834, at *1 (M.D. Ga. July 27, 2009); *Green v. Reliance Standard Life Ins. Co.*, No. 408CV068, 2009 WL 1956290, at *3 (S.D. Ga. July 7, 2009).
51. See *Nevitt*, 2009 WL 4730316, at *3.
52. According to FED. R. CIV. P. 52(a)(1):
In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.
53. See *Doyle v. Liberty Life Assurance Co. of Boston*, 542 F.3d 1352, 1363 n.5 (11th Cir. 2008).
54. See *Adams v. Hartford Life & Accident Ins. Co.*, No. 4:08-CV-53(CDL), 2010 WL 890197, at *1 n.1 (M.D. Ga. Mar. 10, 2010) ("When a decision is based on the agreed-upon administrative record, judicial economy favors using findings of fact and conclusions of law under Federal Rule of Civil Procedure 52, not summary judgment under Federal Rule of Civil Procedure 56, to avoid an unnecessary step that could result in two appeals rather than one."); *Miller v. Hartford Life & Acc. Ins. Co.*, No. 1:08-CV-2014-RWS, 2010 WL 1050006, at *6 (N.D. Ga. Mar. 17, 2010); *Sanders v. Unum Life Ins. Co. of Am.*, No. 03:08-CV-03(CDL), 2009 WL 902046, at *1 n.1 (M.D. Ga. Mar. 30, 2009); see also *Bates v. Metro. Life Ins. Co.*, No. 5:08-CV-22(CAR), 2009 WL 2355834, at *1 n.1 (M.D. Ga. July 27, 2009).
55. See *McInvale v. Metro. Life Ins. Co.*, No. 5:07-CV-459-HL, 2009 WL 2589521, at *1 (M.D. Ga. Aug. 18, 2009).

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The Georgia LLC Act Comes of Age

by L. Andrew Immerman and Lee Lyman

The Georgia LLC Act (the Act) has been a runaway success. A series of amendments to the Act in 2009 should ensure that its popularity continues and even increases. Although the amendments cover a wide array of disparate points, an overall theme emerges: that of accommodating the use of the LLC—limited liability company—in situations where corporations used to be the entity of choice, without sacrificing the LLC's distinctive nature and flexibility.

The first Georgia limited liability company was formed in 1994, under legislation passed the previous year.¹ The original Act was amended sporadically over the years. But in view of the explosive growth of LLC law and in the use of Georgia LLCs,² the Partnership and LLC Committee of the State Bar of Georgia's Business Law Section undertook a comprehensive review of the Act beginning in 2007. The consensus of the Committee was that the Act had held up well and that major revisions were not essential. Although the Committee's final legislative proposals were lengthy, they were hardly radical. The package of proposals was endorsed by the State Bar of Georgia, introduced into the Georgia Legislature as H.B. 308, and ultimately enacted effective July 1, 2009 (the 2009 Amendments).³

The 2009 Amendments continue the longstanding "policy of this state with respect to limited liability companies to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."⁴ From the beginning, the guiding principle of the Act has been respect for the agreement of the parties. The flexibility granted to the members by the Act helps account for the Act's continuing vitality.

The parties can put almost anything they want into Georgia operating agreements and rarely need to worry about exceeding the statute's generous grant of flexibility. Accordingly, the Act is intended mostly as a series of default rules, which the parties are free to vary by agreement, although on many points a departure from the LLC default rules requires a written, and not merely oral, agreement.⁵

LLCs Are Not Corporations

In one sense, the growth of the LLC was too rapid. Many businesses—often on the sound advice of tax professionals—adopted LLCs in place of corporations, but without appreciating the significance of the switch.⁶ Unfortunately, in the move from corporations to LLCs, corporate law practitioners and businesspeople too often assume that an LLC is just a corporation that happens to have different initials at the end of its name. If an LLC and a corporation are essentially synonyms, little more is required in adapting to the LLC world than a mechanical substitution of other synonymous terms: "member" or "unitholder" for shareholder; "units" or "membership interests" for stock; "managers" or "governors" for directors; "company" for corporation; and so on.

Despite some similarities to corporations, Georgia LLCs are not constrained by the traditional apparatus of corporate law. There is nothing in the LLC world that is comparable to corporate shares of stock, shareholders, directors or officers—although the LLC operating agreement, as a contract, may employ those terms and may assign some meaning to them. The 2009 Amendments are to a large extent an attempt to clarify the similarities and differences between LLCs and corporations.

Using an LLC Instead of a Corporation

Despite the clear differences between LLCs and corporations, in certain instances it is appropriate for the structure and operations of an LLC to be similar to

those of a corporation. Certain of the 2009 Amendments were designed to reflect that correspondence, as we discuss below.⁷

Limited Liability

It is fundamental to LLC law that LLC members should have protection against unlimited personal liability that is at least as strong as the protection enjoyed by corporate shareholders. Two of the 2009 Amendments are designed to protect that fundamental principle.

The 2009 Amendments clarify that, unless otherwise agreed in writing, members, agents, employees and managers of an LLC are not at risk of unlimited personal liability to other members or to assignees of interests merely by virtue of their status as members, agents, employees and managers.⁸ This protection should have already been abundantly clear, but an out-of-state court decision might have raised needless doubts about it. In *Ederer v. Gursky*,⁹ New York's highest court held that a partner in a New York LLP bears unlimited personal liability to the other partners in the LLP, without regard to personal fault, and apparently without regard to the type of claim that the other partners may be making. If the members of the LLC want to waive liability protection, they may do so,¹⁰ but unlimited personal liability of the members to each other should be the exception and not the rule.

Ederer concerned LLPs rather than LLCs, and, we believe, would have come out differently had the entity been an LLC. Nevertheless, *Ederer* was so troubling that it was important to leave no room for doubt that the rule in *Ederer* is inapplicable to Georgia LLCs. Because the 2009 Amendments concerned only Georgia LLCs, those amendments make no attempt to modify Georgia's LLP provisions.¹¹ As *Ederer* itself pointed out, however, the partners may vary their responsibilities to one another and the partnership through agreement. Georgia LLPs



may want to examine their partnership agreements to see whether there is any possibility that the liability of partners to each other might be greater than intended.

Another one of the 2009 Amendments helps protect members and managers against personal liability on distributions that do not violate Georgia law. This is a subtle but important issue. Section 14-11-407(a) prohibits distributions that render the LLC unable to pay its debts, or that reduce assets below liabilities. The personal liability of a member or manager who wrongfully consents to such a prohibited distribution is not affected by the 2009 Amendments.

Nevertheless, it is possible—indeed, all too easy—for a distribution to violate the provisions of the articles of organization or the operating agreement, while otherwise being entirely permissible under Georgia law. Many operating agreements impose pointless formal requirements—for example, for annual meetings to be held with

advance notice and with a quorum—that are destined from the start to be ignored or forgotten. The Act, however, arguably could have been read as imposing personal liability for a distribution in violation of an LLC's self-imposed limitations. There is no justification for such personal liability. If the members of the LLC agree among themselves to bear personal liability on such a distribution, they of course may include such an agreement in the articles of organization or the operating agreement. Personal liability in those circumstances, however, should not be imposed by statute. LLC members should not have any greater personal liability than shareholders of corporations, and the amendments to section 14-11-408 bring LLC member liability more in line with corporate shareholder liability.

Continuity

Corporations, but not necessarily partnerships, have traditionally been designed to have indefinite

lives. We believe that, these days, an LLC, like a corporation, most often is expected to continue indefinitely. The 2009 Amendments help enable LLCs, much like corporations, to continue in business perpetually if they so choose, without worrying about needless disruptions to their status as ongoing businesses. Of course, it is still the case that an LLC operating agreement can easily provide for limited life if that is what the members want.

Under one of the 2009 Amendments, the personal representative takes over as member on the death or incapacity of the last remaining member by default, instead of that death or disability causing a dissolution of the LLC. Section 14-11-506 has new language stipulating that if there is only one member of an LLC, and that member dies or becomes incapacitated, the executor or other legal representative of the member will become the substitute member of the LLC. Without the change, it is too easy for the death or incapacity of the sole member of an LLC to trigger an unexpected and unwanted dissolution.

Other portions of the 2009 Amendments expressly permit the members of an LLC to waive their right to authorize the company to wind up and dissolve.¹² Like another 2009 Amendment,¹³ these amendments have the effect of facilitating the grant of enforceable rights to nonmembers (third parties). Some lenders require, before providing financing to an LLC, that the company's articles of organization or written operating agreement set forth certain limitations on dissolution. Nonmember managers sometimes also request the right to veto dissolution. The 2009 Amendments should help lenders and other third parties ensure that the LLC members cannot override limitations that the third parties are relying on. Of course, these amendments also have the effect of enhancing the continuity of life of an LLC.

Dissolutions themselves can now be undone within 90 days,

provided that the LLC has not filed a certificate of termination.¹⁴ A 2009 Amendment states that members of the LLC are now permitted in certain instances to amend the articles of organization or operating agreement to undo a dissolution, or, as long as there is at least one member, to continue the existence of the limited liability company after an event of dissolution.

Separate Entity

An LLC is largely the product of the agreement among its members. The LLC is also a separate entity, however, and not *merely* an agreement among the members or an aggregate of its members. Although partnership law has traditionally shown some ambivalence between "entity" and "aggregate"¹⁵ theories, corporate law and LLC law have not wavered in their allegiance to the "entity" camp. In perhaps its most radical departure from partnership law (and from the "aggregate" theory), a Georgia LLC with only one member is in no way defective. Although the validity of a single-member Georgia LLC has been clear for a long time—some would say since the time of the original Act—the 2009 Amendments reorganized and restated the rule.¹⁶

It has always been the rule that the "organizer" of the LLC need not be a member. Section 14-11-101(12), however, arguably carried an unintended implication to the contrary, and accordingly was amended. A partnership, by contrast, cannot be organized without the participation of at least one general partner.

New language in a 2009 Amendment confirms that an LLC is bound by its operating agreement, unless stated otherwise, and is not required to execute its own operating agreement.¹⁷ It has not been common practice in Georgia for an LLC to execute its own operating agreement, although some Georgia lawyers recommend it. But members, and perhaps third parties as well, have a legitimate expectation that the LLC will be

bound generally by its own operating agreement, whether or not the company signs the agreement. The new provision expressly validates the expectation that an operating agreement binds the LLC, while permitting an operating agreement to provide the extent, if any, to which the LLC is not bound.

Other Areas of Conformity to Corporate Code

There are and should be numerous differences between the Georgia Business Corporation Code¹⁸ and the Act. On the other hand, because the two statutory schemes are not always considered in tandem when one or the other of them is amended, some of the differences likely were historical accidents. The Committee did not undertake to review comprehensively the many differences. Nevertheless, a handful of the 2009 Amendments, in addition to some of the provisions noted above, do bring the Corporation Code and LLC Act closer together. For example, the 2009 Amendments clarify that notice under section 14-11-311(2) may be provided by electronic transmission. The Georgia Business Corporation Code provides for electronic notice, and it is appropriate for the Act to do so as well.

As a result of the 2009 Amendments, there is no longer any implication that the certificate of termination is mandatory after an LLC has wound up its business. Section 14-11-610 formerly said that a dissolved LLC "shall" file a certificate of termination with the Secretary of State "when" the LLC has wound up and can truthfully make certain required statements. But there was no time limit for filing the certificate, and it was unclear what liability would be incurred for failure to file the certificate. In practice, some—perhaps many—LLCs fail to file this certificate after winding up. The amendment recognizes that in reality the filing is optional. As a result of the 2009 Amendments, section 14-11-610 now corresponds more closely to its corporate counterpart.¹⁹

"Membership," "LLC Interest" and Third-Party Rights

LLCs continue to function like partnerships in that LLCs tend to keep governance or management rights (associated with "membership") and economic rights as an equity holder ("LLC interest" or "transferable interest") separate. For corporations, both types of rights are generally aspects of "share" ownership. To add to the confusion, LLCs often want to grant enforceable rights to third parties who are neither members nor holders of equity interests. A number of amendments to the Act were intended to clarify the confusing relationship among "membership rights," "LLC interests" and third-party rights.

Section 14-11-504(b) was amended to clarify that when a creditor receives a judgment against a member or an assignee of an LLC interest, the creditor is not thereby granted leave to interfere in the management of the LLC or to take certain other actions that would be disruptive to the company's business. The prior language of the statute was already clear that when a judgment creditor obtains a "charging order" against the member or against an assignee of an interest in an LLC, the judgment creditor has no right to insert itself as a member of the company or otherwise interfere in management.²⁰ Instead, "the judgment creditor has only the rights of an assignee of the limited liability company interest."²¹ Unless otherwise provided in the articles of organization or operating agreement, an assignee—including a creditor that has the rights of an assignee—has no membership rights and no rights to participate in management.²²

The limitation on the rights of a judgment creditor was already reflected in the "pick your partner" principle of the Act. This principle is at the heart of partnership law and has been carried over into the LLC statutes of every state. Under

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this principle, a court cannot force you into partnership with someone you find objectionable; a partnership cannot be required against its will to admit someone as a partner. Similarly, the members of an LLC cannot be required against their will to accept some intruder as a member. Of course, the partnership or LLC can be required, like it or not, to make payments to a third party.

The concern prompting the proposal to amend section 14-11-504(b) was the risk that some open-ended language in that section might be interpreted as negating the “pick your partner” principle. Under section 14-11-504(b), the “remedy conferred by this Code section shall not be deemed exclusive of others which may exist. . . .” We know of no instance in which any court adopted an interpretation at odds with the “pick your partner” principle, and we do not believe that such an interpretation would be correct. Such an interpretation would essentially render meaningless the limitation on judgment creditors set forth in section 14-11-504(a). Nevertheless, because the language of the statute was vague, some Georgia lawyers advised LLC clients to form under the laws of Delaware or another state in which the statute is clear. Many other states, such as Delaware,²³ make the charging order the exclusive remedy. Georgia appears to be unique in its open-ended statement that the charging order is *not* exclusive.²⁴

The amendment was not motivated by any desire to expand the use of Georgia LLCs for protecting individuals’ assets from potential claimants. It is likely that jurisdictions, such as Nevada or Delaware, in which the charging order is expressly stated to be the creditor’s exclusive remedy, will continue to be more attractive for an individual interested in asset protection through an LLC.

It might have been preferable to bring Georgia even more into line with other states. But to minimize

changes to the prior statute, the amendment retains the open-ended structure of this provision and does not prejudge the issue of what other remedies may exist. With the amendment, however, section 14-11-504(b) is less troubling because, whatever other remedies may exist, the “pick your partner” principle clearly is not abrogated. Judgment creditors of members or assignees are prohibited from interfering with the management of the LLC, forcing a dissolution of the company or obtaining a court-ordered foreclosure sale of the interest.

The amendment, like the rest of section 14-11-504, relates only to judgment creditors of members. It has no implications for secured creditors of members. It is clear that a secured creditor that is also a judgment creditor does not lose any of the rights that it has as a secured creditor. The amendment also has no implications for creditors of the LLC.

Several amendments and three new subsections were added to section 14-11-505 to clarify matters related to the admission of members and the nature of a membership interest. The amendment to section 14-11-505(a) attempts to clarify the somewhat perplexing relationship between a “member” and the holder of a “limited liability company interest.” The amendment deletes certain language in section 14-11-505(a) to eliminate a possible implication that the “member” of an LLC must hold a “limited liability company interest.”

“Limited liability company interest,” as defined in section 14-11-101(13), is a technical term. “Limited liability company interest” is not strictly analogous to corporate “share.” Although “limited liability company interest” is sometimes thought to include the full panoply of rights that a member may have in an LLC, the term as defined by the Act has a more limited meaning. “Limited liability company interest” refers only to

the *economic* interest that the member may have as an equity holder—to the member’s share of profits and losses, and the member’s rights to receive distributions. The rights of a member may, and typically do, encompass more than such economic interest, including rights to governance or management or simply the receipt of information. These other rights are not inherently tied to the holding of a “limited liability company interest” in the somewhat narrow sense defined by the statute. If an LLC desires to designate some other stakeholder—such as an employee, creditor or former equity-owner—as a “member,” even though the stakeholder does not have a “limited liability company interest,” the statute should not prohibit the company from doing so.

The amendment incidentally helps clarify the purposes for which an LLC may be formed. The rule has long been that a Georgia LLC may be formed to engage in any “lawful activity.”²⁵ There are “lawful activities” other than business or other for-profit activities, and a natural reading of the rule was that an LLC did not need a profit motive.²⁶ Nevertheless, because it was arguable that a “member” needed to have an LLC interest, there was some concern that an LLC that was formed for purposes other than earning profits (or making distributions) could not have “members” in the strict sense. As noted above, an LLC without members is a confusing concept. If an LLC member need not have an economic interest, however, it is easier to give the rule permitting an LLC to engage in any “lawful activity” its natural reading.²⁷

The changes to section 14-11-101(18) confirm that an operating agreement may provide enforceable rights to a person who is not party to the operating agreement.²⁸ LLCs often find it useful to grant rights to persons (such as lenders, employees or option holders) who are not parties to



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the operating agreement, and the statute should provide assurance that Georgia law authorizes operating agreements to do so.

Issues for Another Day

The 2009 Amendments were intended not to be controversial. Although they stayed clear of some of the more contentious issues that are being debated around the country, those issues are not likely to go away. For instance, future consideration may be given to the possible conflict between LLC law, which permits operating agreements to include enforceable provisions that restrict the rights of the members to pledge or transfer interests in the LLC,²⁹ and certain provisions of UCC Article 9 that favor the alienability of interests, and invalidate many restrictions on assignment.³⁰ 



Andy Immerman is the immediate past chair of the Partnership and LLC Committee of the Business Law Section of the State Bar of Georgia.



Lee Lyman is the current chair of the Partnership and LLC Committee of the Business Law Section of the State Bar of Georgia.

The views expressed in this article are those of the two authors, and we are not speaking for anyone else. We thank all the members of the committee, particularly Chuck Beaudrot, Cass Brewer, Bob Bryant, Rich Hoyt, Kate Martin, Richard Morgan, Larry Ribstein, David Santi, Doug Stein, Bruce Wanamaker and Mike Wasserman.

Endnotes

1. Ga. Act No. 174, 1993 Ga. Laws. 123 (effective Mar. 1, 1994); O.C.G.A. §§ 14-11-100 to -1109. For overviews of the 1993 legislation, see Charles R. Beaudrot, Jr. and Kendall Houghton, *Effective Use of*

Limited Liability Companies in Georgia: An Overview of Their Characteristics and Advantages, 45 MERCER L. REV. 25 (1993); Robert P. Bryant, *Georgia's New Limited Liability Company Act*, GA. BAR J., Winter 1993; and A.B. Cochran, III, *Review of Selected 1993 Georgia Legislation: Corporations, Partnerships and Associations*, 10 GA. ST. U. L. REV. 79 (1993-94).

2. Statistics attest to the remarkable rise of the Georgia LLC. In 2009, 54,134 Georgia LLCs were formed – nearly three times the number of Georgia For-Profit Corporations (18,275). These statistics are taken from the frequently-updated web site of the Secretary of State, at <http://www.sos.ga.gov/corporations/>.
3. Ga. Act No. 38, 2009 Ga. Laws 108 (sponsored by Rep. David Ralston, signed by the Governor Apr. 21, 2009, effective July 1, 2009). For a description of the Georgia Bar's full legislative agenda for 2009, see Mark Middleton, *State Bar Active in 2009 General Assembly*, 14 GA. BAR J., June 2009, at 26. Mark Middleton was instrumental in shepherding the 2009 Amendments through the legislature.
4. O.C.G.A. § 14-11-1107(b) (Supp. 2009).
5. See, e.g., *id.* § 14-11-304(a) (2003) (management is vested in the members unless otherwise provided in the articles or organization or a written operating agreement).
6. A powerful and illuminating case for the distinctiveness of LLCs and other unincorporated entities as compared to corporations is presented in a recent book, LARRY E. RIBSTEIN, *THE RISE OF THE UNINCORPORATION* (2009). Some differences between LLCs and corporations are discussed in L. Andrew Immerman, *Is There Any Such Thing as an LLC Unit?*, BUS. ENTITIES, July/Aug. 2009, at 20.
7. Another set of changes that helps to clarify the relationship between LLCs and corporations, and to conform the two types of entities where appropriate, relates to mergers and conversions. See O.C.G.A. §§ 14-11-212(a), -212(b), -212(c), -901(a), 905(a)(7), & -905(a)(8) (Supp. 2009). Such mergers—and even more so, conversions—were a novelty in 1993 but are now routine. See generally Cassady V. Brewer & L. Andrew Immerman, *Georgia Modifies and Expands its Entity Conversion Rules*, PUBOGRAM, July 2006, at 10.
8. O.C.G.A. § 14-11-303(a) (Supp. 2009).
9. 881 N.E.2d 204 (N.Y. 2007), *aff'd* 826 N.Y.S.2d 210 (App. Div. 2006) (interpreting New York Partnership Law § 26(b)). The decision of the Appellate Division arguably was made on much narrower grounds than that of the higher court. The Appellate Division may well have intended to impose personal liability on the partners only up to the value of the assets that the partners took out of the LLP. See L. Andrew Immerman & Lee Lyman, *A Hole in Lawyers' Liability Shield?*, BUS. L. SEC. NEWSL. (ST. BAR OF GA.), Jan. 2009, at 1.
10. See O.C.G.A. § 14-11-303(b) (Supp. 2009).
11. *Id.* §§ 14-8-15(b), 14-8-62 to 14-8-64 (2003). In the authors' view, *Ederer* was incorrectly decided and, even without any amendments to the Georgia statutes, should not be followed in Georgia with respect to any limited liability entity.
12. *Id.* §§ 14-11-602(a)(3), (b)(3) (Supp. 2009).
13. One of the changes to *id.* § 14-11-101(18).
14. *Id.* § 14-11-602(c).
15. Although Georgia partnerships are treated as separate entities in many ways, the Georgia Uniform Partnership Act, based on the UNIFORM PARTNERSHIP ACT (1914) (UPA), lacks the ringing endorsement of "entity" theory that became part of the UNIFORM PARTNERSHIP ACT (1994, amended 1997) (RUPA), § 201.
16. O.C.G.A. §§ 14-11-101(18), -203(e) (Supp. 2009).
17. *Id.* §§ 14-11-101(18), -505. Although the Delaware LLC Act (DEL. CODE ANN. tit. 6, § 18-101(7)) and 2006 Rev. Unif. Ltd. Liab. Co. Act (RULLCA) § 111(a) take the position that the LLC is bound by its own LLC agreement or operating agreement, most states do not have a statutory rule on the issue. Although most practitioners would likely argue that a Georgia LLC surely should be bound by its operating agreement, judicial

authority in other states, in the absence of a statutory rule, is actually mixed. *Compare* Bubbles & Bleach, LLC v. Becker, No. 97C 1320, 1997 WL 285938 (N.D. Ill. May 23, 1997) (LLC was not bound by the arbitration clause in its operating agreement), and *Mission Residential, LLC v. Triple Net Props. LLC*, 654 S.E.2d 888 (Va. 2008) (similar), with *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 293 (Del. 1999) (prior to enactment of Delaware statutory rule on point, LLC held to be a party to its LLC agreement).

18. O.C.G.A. §§ 14-2-101 to -1703 (2003 & Supp. 2009).
19. See *id.* § 14-2-1408(a) (2003) (corporation "may" dissolve by filing a comparable statement with the secretary of state).
20. Some recent commentaries on charging orders include: Alan S. Gassman & Sabrina M. Moravecky, *Charging Orders: The Remedy for Creditors of Debtor Partners*, EST. PLAN., Dec. 2009, at 21; Thomas E. Rutledge, Carter G. Bishop & Thomas Earl Geu,

Foreclosure and Dissolution Rights of a Member's Creditors: No Cause for Alarm, Suffolk U. L. Sch., Legal Studies Research Paper Series, Research Paper 07-18 (May 4, 2007), available at <http://ssrn.com/abstract=948917>.

21. O.C.G.A. § 14-11-504(a) (Supp. 2009).
22. *Id.* § 14-11-504(b). The language of amended O.C.G.A. § 14-11-504(b) was derived in part from N.J. STAT. ANN. § 42:2B-45.
23. DEL. CODE ANN. tit. 6, § 18-703.
24. See Carter G. Bishop, *Fifty State Series: LLC Charging Order Statutes*, Suffolk U. L. Sch., Legal Studies Research Paper Series, Research Paper 10-03 (Jan. 25, 2010), available at <http://ssrn.com/abstract=1542244>; Amy P. Jetel, *50-State Comparison of LLC Legislation*, Am. Bar Ass'n - Sec. of Tax'n & Sec. of Real Prop., Trust and Est. Law 2007 Fall Meeting (Sept. 28, 2007) (available on Westlaw at 2007 ABATAX-CLE 0928002). See also 2006 RULLCA § 503(g).
25. O.C.G.A. § 14-11-201(b) (2003).
26. The LLC rule differs from the partnership rule. O.C.G.A. § 14-8-

6(a) (2003) defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this state, a limited liability partnership" (emphasis added).

27. Some states are explicit that an LLC need not be devoted to profit. See, e.g., N.C. GEN. STAT. § 57C-1-03(3) (LLC may be organized for any lawful purpose or activity, "whether or not such trade, investment, purpose, or activity is carried on for profit").
28. See DEL. CODE ANN. tit. 6, § 18-101(7).
29. See O.C.G.A. §§ 14-11-502, -503 & -1107(b) (2003 & Supp. 2009). But see *RTS Landfill, Inc. v. Appalachian Waste Sys., LLC*, 267 Ga. App. 56, 598 S.E.2d 798 (2004) (reaching the surprising conclusion that a below-market "right of first refusal and purchase option" on LLC interests was unenforceable as an unreasonable restraint on alienation of personal property).
30. See U.C.C. §§ 9-406(d), 9-408.

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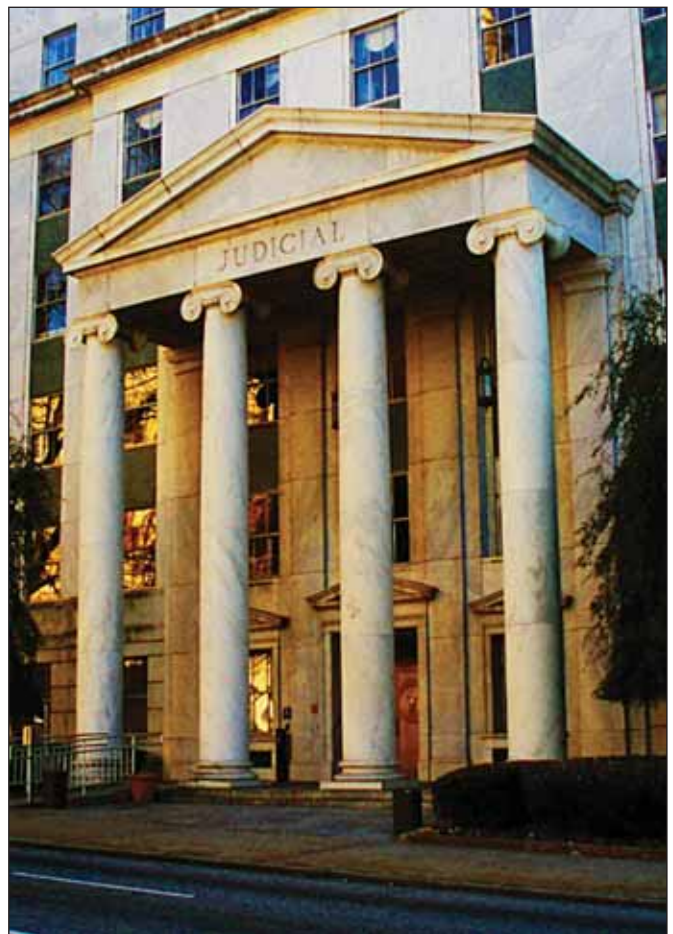
“May It Please the Court”

Tips on Effective Appellate Advocacy from Start to Finish

by Chief Judge M. Yvette Miller

Due to tremendous budget cuts over the last two fiscal years, the Court of Appeals of Georgia has fewer resources available to process approximately 1,330 appeals, applications and motions filed annually. Under Georgia law these cases must be disposed of in compliance with the “two term” rule established by the Georgia Constitution.¹ Today with fewer employees on the payroll and the implementation of furlough days, the court is being asked to do more with less.

The Court of Appeals of Georgia serves the entire state with a population of 9.5 million people, and statistics compiled by the National Center for State Courts reflect that this court is the busiest appellate court in the Southeast in terms of cases per capita and the number of written opinions per judge.² The Court of Appeals of Georgia is funded by the Georgia General Assembly, and funding for the state’s entire judiciary amounts to less than 1 percent of the state budget.



This article is intended to provide helpful advice to appellate practitioners, both new and experienced, regarding how to advocate persuasively for their clients in the increasingly busy Court of Appeals.

Creating the Record in the Trial Court: Begin with the End in Mind

The most important steps toward a successful appeal must be taken in the trial court. Always prepare for and begin each trial with the potential for an appeal in mind. Make timely objections and get a ruling. At every step, consciously create and preserve the record in the trial court because the appellate court generally will only consider issues raised below and information included in the record on appeal.

Briefing the Issues on Appeal

The brief required by the Rules is the appellant's most important tool before the court.³ In the majority of cases filed, the brief is the mechanism that the Court of Appeals will use to determine if an error of law was committed below necessitating reversal or modification of a trial court's judgment. The brief must be accurate and persuasive.

Follow the Court Rules

Follow the court rules! Before you file an appeal, you should read and become familiar with the Rules of Court. Do not forget to sign your filings. This signature requirement will be less significant, however, as the court moves forward with its e-filing initiative which will allow lawyers to file using a conformed signature. Use the appropriate page margins and font size, and adhere to the page limits for the brief: 30 pages for civil cases and 50 pages for criminal cases.⁴ Generally, these page limits will be sufficient, but if you need more space to make your argument, move to file a supplemental brief. Avoid tricks like using a smaller font to circumvent the

page limits. Court personnel deal with these documents regularly and can easily detect deviations from the stated requirements. If you file a document that fails to conform to the rules, you may be ordered to recast the filing⁵ and risk losing credibility with the court. It goes without saying that you should also comply with the applicable deadlines for filing briefs and enumerations of error. Failure to do so may result in dismissal of the appeal.⁶

Clearly Spell Out Your Enumerations of Error

Include the Reference to How Each Enumeration of Error Was Preserved

Include the reference to how each of your enumerations of error was preserved in the proceedings below.⁷ Even if the appellee's brief does not raise the issue, reviewing the proper preservation of error is one of the first tasks that an appellate court will undertake. The Court of Appeals simply has too many cases to expend a great deal of time considering the hypothetical merits of an error that was, in fact, waived below.

Do Not Include Improper Claims of Error

If one of your claims of error was not properly preserved in the prior proceedings, do not include that claim in your brief. Your enumerations of error should include only those claims for which you can make a persuasive argument that the court may consider on appeal.⁸ Including unpreserved enumerations of error will cause your viable arguments to lose credibility.

Make a Single Enumeration of Error for Each Separate Legal Issue

Do not make numerous enumerations concerning a single legal issue.⁹ The "argument and citations to authority" section of your brief is the place for such detail, such as the six ways in which your client's previous counsel was ineffective.

Lead With Your Strongest Argument

Leading with your strongest, most persuasive argument is typically an effective strategy. The judge may be most attentive when he or she begins reading your brief. Therefore, you should avoid unnecessary delay in getting to the real heart of the dispute. You must ensure, however, that your argument is logical. Sometimes logic requires that you present your strongest argument later in your brief or oral argument. For example, the issue of liability should be addressed before discussing the amount of the award.

Remember that the Court Applies Georgia Law

Unless you have a real case of first impression and can rely on persuasive authority from another jurisdiction to suggest the rule that should apply in Georgia, remember that the Georgia appellate courts apply Georgia law. Therefore, one Georgia case is usually better than a litany of cases from foreign jurisdictions. For example, the Court of Appeals recently had a case in which the parties agreed that the case presented a question of first impression in Georgia. Both parties submitted lengthy briefs, but neither dug into the murky Georgia statutes and case law bearing on the issue. Instead, they chose to provide lengthy citations and quotations from other jurisdictions. The function of Georgia appellate courts is to determine what Georgia law is, especially when the law is difficult to decipher. As an appellate advocate, it is your responsibility to provide your best assessment of Georgia law on the question presented.

Preparing for Oral Argument

If you filed a persuasive motion for oral argument that was granted,¹⁰ use this opportunity to address the court on the merits of your case.

Know the Case

You have to know your case! There have been many appeals in which questions asked during oral argument quickly revealed that appellate counsel was not aware of what had transpired during the trial because he or she was first hired at the appellate stage. Please do not let this happen to you. The excuse that you were not the trial attorney is insufficient. Appellate judges rely on appellate lawyers to be familiar with all facts relevant to the case.

You should be thoroughly familiar with the record and transcripts. This is important because you should not refer to information not in the record. If you tried the case, you will probably know additional facts that are not part of the record and therefore cannot be considered on appeal. If the court, however, asks you a question about a fact that is not in the record, you may answer and may want to do so if the fact does not harm your case. The attorney on the opposing side may agree or disagree with your recollection. Be sure to begin by informing the court that the information is not a part of the record, as that will provide the judge with the option to stop you from responding.

Know the Principal Cases

You should know the principal cases discussed in all of the parties' briefs, including the facts, holding, reasoning and dicta in those cases. Some lawyers find that the best method for gaining a thorough understanding of the principal cases is to brief each one in their own words. Although you must know everything about the principal cases, you should also have an alphabetized index of holdings for all cited cases.

Research the Judges on Your Assigned Panel

Learn something about the panel of judges who will hear your argument. Review their opinions to discover their stance on legal issues and their approach to statutory

interpretation. Also, talk to other lawyers, and perhaps former staff attorneys, to discover the judges' idiosyncrasies or preferences. This information could be helpful if used appropriately.

Combat Nervousness with Preparation

Memorize Your Opening and Conclusion

Many appellate advocates are concerned with nervousness. Common causes of nervousness are being at the Court of Appeals in front of esteemed judges, the concern that you will be asked a question for which you are not prepared or, even worse, that you will be confronted with a hypothetical.

The best way to combat nervousness is to be overprepared. Begin by memorizing your opening and conclusion. This will allow you to have a script for the beginning of your oral argument, when you are likely to be the most nervous. The rationale behind preparing your conclusion is to ensure that you end on a strong note and in a clear and concise manner. It is essential, however, that you do not prepare a speech for your entire oral argument, because it will not allow you the freedom and flexibility to address the judge's questions and revert back to your argument in a seamless manner. Simply prepare a bullet point outline of key points because that will serve as a roadmap of the issues that you want to address, while also allowing you the freedom and flexibility to rearrange the order of your argument if necessary.

Practice, Practice, Practice

Practice, practice, practice! The more comfortable you are with your case and arguments, the less likely it is that you will be nervous about your level of preparation. Often, lawyers practice moot court style by observing all court formalities, with two or three other lawyers drilling them with questions in a conference room under

time constraints. Others find it helpful to have brainstorming sessions with other lawyers in which they discuss the case from different angles, anticipate questions that the judges are likely to ask and anticipate arguments that opposing counsel is likely to assert. Anticipating questions that you will be asked and arguments that opposing counsel is likely to assert is beneficial because it allows you to respond quickly and confidently to questions posed by the bench.

Finally, prepare counterarguments to the opposing party's probable arguments. Do not just assume that the opposing party's argument is without merit and is not worthy of rebuttal. Make sure that you articulate why the other party's argument must fail.

Visit the Courtroom

It is an excellent idea to observe oral arguments taking place in the courtroom where you will present your oral argument. If you are unable to attend an actual argument, the next best thing is to visit the courtroom on a day when it is not in use and observe the location of the podium, counsel's table and, if necessary, determine placement of exhibits. Check with the clerk of court to learn how to work any electronic devices or projectors, if necessary. This will help you feel more comfortable on the date of your oral argument.

Presenting Your Oral Argument

Answer the Judge's Question(s)

Listen

The key to answering a judge's question is to listen carefully to the question and make sure that you understand exactly what the judge is asking. This means waiting to hear the end of the question. Do not cut the judge off in the middle of his or her question, assuming what he or she is going to ask.

Welcome Questions from the Court

Do not be upset if judges on your panel ask you questions. It will most likely help you more than you know. Oral argument is intended to be a dialogue with the court, not a speech. Questions from the bench are your opportunity to determine what factors the judges think are important in the case and respond to any concerns.

Rearrange Your Argument if Necessary

Do not say, "I will get to that later." If a judge's question leads to a point that you were planning to make later in the argument, cover the point at the time the question is asked because you have the judge's attention.

Answer "Yes" or "No"

If a judge asks a "yes" or "no" question, the first word out of your mouth should be "yes" or "no." Dancing around the question and

explaining why that question does not apply to your facts wastes time, seems nonresponsive and may annoy the judge. It is important to directly answer the judge's questions because the objective of oral argument is to have a dialogue with the court. It is to your client's benefit for judges to ask you questions about the case and allow you to respond in the light most favorable to your client's position.

KISS: Keep It Short and Simple

Your answers should be concise and to the point. If the judge is not satisfied with your response, he or she will ask a follow-up question.

Request Leave to File a Supplemental Brief if Necessary

Finally, if you do not know the answer to the question, just say, "I do not know," and request leave of court to write a supplemental brief on the matter. The reasoning behind this important rule is that

you do not have time to waste. Every second is precious.

Use Time Wisely

When Time Expires, Stop Talking

When time expires, simply wrap up your point. Failure to do so shows contempt for the court. Use the court's time clock to help you stay on track. On the other hand, do not be so eager to sit down that you stop in mid-sentence. Request permission to complete your thought and quickly conclude. If given permission, restate the high points of your argument and the action that you would like the court to take on your case.

After You Have Made Your Point, Sit Down

Even if your opposing counsel has elected to take twenty minutes, do not feel compelled to use all of your time. Only use the time that you need to make your



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point and address the judges' questions and concerns. Then sit down! Stopping before your time expires is particularly beneficial when the judges appear to agree with your argument.


Make it Clear What You Want the Court to Do

Although it is clearly stated in your brief, you should always reiterate specifically what you want the court to do at the beginning and end of your oral argument. The judges should not have to ask what action you are requesting. At the beginning of your argument you should say, "We ask that the court" Then, again at the end of your argument, say, "For the foregoing reasons, we ask the court to . . . (reverse the decision below and remand, affirm the decision or reverse the decision in part and affirm in part)." There are a variety of options, so clearly state the remedy that you are requesting to alleviate any uncertainty or confusion.

Be Trustworthy

One of the greatest imperatives is that you be trustworthy. If the judges do not find you to be credible, they may question every assertion that you make. Make sure that your citations are to valid or binding precedent and assert the proposition that you claim. Cite to the correct pages of cases, the record or transcript. Shepardize the cases cited in your brief. Do not provide false information or mischaracterize cases to suit your client's position. The Georgia Rules of Professional Conduct require that lawyers disclose directly adverse

legal authority in the jurisdiction to the tribunal, even if opposing counsel does not do so.¹¹ Thus, if there is adverse precedent, disclose it and tell the court why your case is distinguishable or why the court should not follow the prior precedent. It is never a good idea to sacrifice your integrity by misleading the court.

In conclusion, appellate courts function solely to correct errors. If lawyers and judges work together to expedite the appellate process, clients, the legal community and society will benefit. The goal at the Court of Appeals of Georgia is to administer justice fairly and efficiently, as we strive to serve the public. Hopefully, the above practical tips will benefit appellate practitioners with all levels of experience and help them zealously and effectively represent their clients and aid the court in achieving its mission. 



Chief Judge M. Yvette Miller is the first African-American woman to serve as Chief Judge of the Court of Appeals of

Georgia. In October 2008, she was unanimously elected by her fellow judges to serve as chief judge for a two-year term. Miller was appointed to the Court of Appeals by Gov. Roy Barnes in July 1999, when she became the first African-American woman and 65th judge on the court. Prior to serving on the Court of Appeals, Miller began her tenure as an administrative law judge with the State Board of Workers'

Compensation and was appointed by Gov. Zell Miller in 1992 to serve as director and judge of the Appellate Division of the State Board of Workers' Compensation. Four years later, Gov. Miller appointed her to the State Court of Fulton County, where she served until her appointment to the Court of Appeals. Miller received her B.A. degree, *cum laude*, from Mercer University in 1977 and her J.D. degree from Mercer's Walter F. George School of Law in 1980. She also earned an LL.M. degree in litigation from Emory University School of Law in 1988 and an LL.M. degree in Judicial Process from the University of Virginia School of Law in 2004.

Endnotes

1. GA. CONST. art. VI, § IX, ¶ II ("The Supreme Court and the Court of Appeals shall dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term.").
2. Data regarding state appellate court caseloads is available on the website for the National Center for State Courts at www.ncsc.org.
3. GA. CT. APP. R. 23, 24.
4. GA. CT. APP. R. 24(f).
5. GA. CT. APP. R. 1(c).
6. GA. CT. APP. R. 23(a); see *Lambros v. Longiotti*, 189 Ga. App. 837, 378 S.E.2d 416 (1989) (dismissing appeal based on appellant's failure to timely file brief and enumerations of error).
7. O.C.G.A. § 5-6-40; GA. CT. APP. R. 22(a), 25(a).
8. *Id.*
9. *Id.*
10. GA. CT. APP. R. 28(a).
11. GA. RULES OF PROF'L CONDUCT R. 3.3(a)(3).

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The Third Time is Certainly a Charm for the 2010 Annual Meeting

by Jennifer R. Mason

For the third time in as many years, the State Bar's Annual Meeting was held at Amelia Island Plantation, and for the third time, it was a great success. The location, facilities, staff and services were first-class, as has come to be expected by attendees and guests alike. From the casual atmosphere of opening night to the formal Inaugural Gala and all events in between, Bar members, their families and friends were treated to a weekend that had something for everyone.

Opening Night

A warmer than usual evening greeted meeting participants and their families at the opening night event. While feasting on a delicious array of foods, audience members were entertained by VOILÀ, a group of multinational talent performers who put on five performances of magic and illusion, comedy, specialty acts and singing. As always, those who required a little more adventure had the opportunity to experience games such as Giant Hoops, Jacob's Ladder and the Fly Trap Velcro Wall. Attendees were also able to have their pictures taken at the Flip Photo booth. Guests posed for two pictures which were combined in one for a truly unique memory. Those who attended the opening night festivities were able to relax and enjoy time with friends and family before the business of the weekend got underway.

Weekend Business

The meeting was filled with opportunities to conduct business, from the breakfast and lunch meetings held by



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

A view of the pool deck and VOILÀ's synchronized swimmers during the Opening Night Festival.

sections, committees and law schools to the CLE offerings ranging in topics from practicing and prospering in law during a recession to practice management tips. Evening receptions provided attendees the opportunity

to relax after a long day of business in the company of old friends and colleagues before moving on to various dinner events. And no meeting would be complete without the requisite nonbusiness related events such as the annual YLD/LFG 5K Fun Run and the golf and tennis tournaments.

Board Meeting Highlights

Following the presentation of awards at the June 18 plenary session, the Board received a report on Memorials by Bryan M. Cavan, followed by reports on the Investigative Panel by Joe Dent, the Review Panel by Anthony B. Askew, the Formal Advisory Opinion Board by Edward B. Krugman, the Cornerstones of Freedom®/Communications Committee by Bob Kauffman, the Supreme Court of Georgia by Chief Justice Carol Hunstein, the Court of Appeals of Georgia by Chief Judge M. Yvette Miller, the State of the Law by Attorney General Thurbert Baker, the Georgia Senate by Sen. Seth Harp (chair of the House Judiciary Committee) and the Georgia House of Representatives by Rep. Wendall Willard (chair of the House Judiciary Non-Civil Committee.)

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

S. Lester Tate III presided over the 231st Board of Governors meeting on Saturday, June 19.

Highlights of the meeting included:

- YLD President Michael Geoffroy provided a report on the activities of the YLD, including the more than 20 service projects conducted across the state by YLD representatives in conjunction with Law Day, the Leadership Academy graduation ceremony that featured Supreme Court of Georgia Justice David Nahmias

as a guest speaker, a future gubernatorial candidates forum that will be co-hosted with the Gate City Bar Association and the Georgia Association for Women Lawyers and continuing to reach out to law school graduates to let them know what the Bar can do to help those going into private practice. He announced that this year's recipient of the YLD Ross Adams Award was Chuck Driebe, 1963-64 YLD president, and expressed thanks on behalf of the YLD to the Board of Governors for its support of the Public Interest Internship Program. Lastly, he stated that the Georgia Legal Services Program (GLSP) will be the beneficiary of this year's Annual Signature Fundraiser, and pledged to get more young lawyers involved in pro bono work on behalf of the GLSP.

- The Board, by unanimous voice vote, approved the following presidential appointments to the State Disciplinary Board:

Investigative Panel

District 8: Donald W. Huskins (2013)

District 9: Christine Anne Koehler (2013)

District 10: Larry Ira Smith (2013)

Member at Large: Kenneth G. Menendez (2013)

- As required by Article V, Section 8 of the Bylaws, the Board:

- Authorized the president to secure blanket fidelity bonds for the Bar's officers and staff handling State Bar funds.
- Directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, Ga., but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, said depository currently



(Left to right) Hon. Kimberly Esmond Adams, Executive Committee Member Patrise Perkins-Hooker and Joy Fortson enjoy spending time together during the Opening Night Festival.

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

- Designated the employment of an independent auditing firm, to be selected, to audit the financial records of the State Bar for the fiscal year 2009-10.
- Following a presentation by Treasurer Ruffin and President Tate, the Board, by a hand vote of 92 in favor to 22 opposed, approved the 2010-11 State Bar Budget as submitted with the inclusion of a one-year sunset for the State Bar's funding of the BASICS Program.
- Following a report by President Tate concerning the merits of paying off the debt on the State Bar building this year, the Board, by majority voice vote, approved the early payoff. The debt of approximately \$4.5 million will be paid from Bar Center reserves. The original promissory note from SunTrust Bank,

as amended and restated on July 29, 2005, was for \$7.2 million at 5.2 percent annual interest with a term ending on July 29, 2015.

- Following a report by Military Legal Assistance Program Committee Chair Buck Ruffin, the Board took the following action on a proposed resolution urging the U.S. Congress to preserve a legal assistance office to provide legal services to military personnel:
 - By unanimous voice vote, found the subject matter to be within the legitimate purposes of the Bar; and
 - By unanimous voice vote, approved a State Bar of Georgia resolution urging the Congress of the United States of America to appropriate funds to ensure continuity of legal assistance to service members and veterans who have been served by the Legal Assistance Office of the Staff Judge Advocate located at Fort McPherson.
- Following that, Ruffin provided an update on the activities of the Military Legal Assistance Program.
- Following a report by Michael Cates, the Board, by majority voice vote, approved proposed amendments to the Business Case Division in Fulton County Superior Court. The first proposed amendment expands the types of cases over which the Business Court has discretion to hear cases by removing the \$1 million threshold requirement for cases that fall within the specifically enumerated Georgia Code section in Rule 1004, but keeps the \$1 million threshold in place for any other cases that the Business Court believes warrants the attention of the court. The second proposed amendment requires lead counsel for each party to meet in person prior to the ini-

tial case management meeting with the judge to discuss discovery and mediation, among other matters, and requires the parties to submit a proposed case management order to the judge at the initial meeting.

- Following a report by Bob McCormack, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia the following proposed amendments to Rule 1-202(d) – Emeritus Members:
 - (d) Emeritus Members. Any member in good standing of the State Bar of Georgia who shall have attained the age of 70 years and who shall have been admitted to the practice of law for at least 25 years, 5 years of which must be as a member in good standing of the State Bar of Georgia, may retire from the State Bar upon petition to and approval by the Membership Department. Such a retired member shall hold emeritus status. An emeritus member of the State Bar shall not be required to pay dues or annual fees. An emeritus member of the State Bar shall not be privileged to practice law except that an emeritus member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar or a non-profit corporation that delivers legal services to the poor. An emeritus member may be reinstated to active or inactive membership upon application to the Membership Department and payment of non-prorated dues for the year in which the emeritus member returns to active or inactive service.



(Left to right) Randal and Gwendolyn Keyes Fleming at one of the many Gala events.



(Left to right) 2010-11 President Lester Tate accepts the gavel from 2009-10 President Bryan M. Cavan during the business portion of the Inaugural Gala.

- President Tate called to order the General Session of the Annual Meeting of the State Bar of Georgia. Pursuant to Article II, Section 4, of the State Bar Bylaws, at least 50 active members were present at the meeting, thereby constituting a quorum.
- Following a report by Bob McCormack, the following proposed amendments to Rule 1-202 and Bylaw Article 1, Section 7 were approved by unanimous voice vote:

**Bylaw Article I – Section 7.
Emeritus Members**

- In addition to the classes of membership provided in the preceding sections of this Article, the Membership Department may approve or disapprove applications for emeritus member status as provided for in Rule 1-202(d) of the Bar Rules. Applications for emeritus membership shall be on forms prescribed by the Membership Department.
- Emeritus membership shall have the same privileges, rights, duties and responsibilities as active membership, except that emeritus members shall not give legal

advice or otherwise practice law, except as set out in Rule 1-202(d), nominate a member for office or hold office in the State Bar, or vote on any candidate for elected position in or proposal concerning the State Bar.

- Emeritus members may be required to pay section dues at the option of each section of the State Bar.
- At the sole discretion of the Membership Department, a member who has attained the age of 70 years, and who has been admitted to the practice of law for at least 25 years, may be placed in emeritus status in the event the Membership Department is unable to locate or contact the qualifying member and provided there is no pending disciplinary action against the member.
- President Tate reconvened the Board of Governors Meeting of the State Bar of Georgia.
- Executive Committee elections were held with the following results: Robert J. Kauffman, Patrise Perkins-Hooker, Phyllis H. Holmen and N. Harvey Weitz.

- The Board elected Cliff Brashier as executive director for the 2010-11 Bar year.
- The Board approved the appointment of Jennifer Davis to the Chief Justice's Commission on Professionalism for a two-year term.
- The Board approved the appointments of Wade Herring and Patricia Gorham, and the reappointments of Brad McFall and Ben Garner Jr. to the Georgia Legal Services Board of Trustees for two-year terms.
- Following a report by Bob McCormack, the Board approved the creation and bylaws of the Nonprofit Law Section.
- Following a report by Bob McCormack, the Board approved the proposed amended and restated bylaws of the Real Property Law Section as presented.
- The Board approved the proposed 2010-11 Elections Schedule.
- Following a report by President Tate on the proposed revisions to the Rules of Professional Conduct that will be an action item at the Fall Board of Governors meeting, the Board, by unanimous voice



Janet and Scott Watts enjoy themselves during the Supreme Court Reception prior to the Inaugural Gala.



(Left to right) Justice George H. Carley swears in YLD President Michael G. Geoffroy during the YLD Dinner.



Past President Hon. Robert W. Chasteen Jr. and wife Margaret with their grandsons. (Counterclockwise, left to right) Bay Moorman, 7, Mills Moorman, 3, and Ashton Moorman, 9.



Anita Wallace Thomas accepts the Thomas R. Burnside Jr. Excellence in Bar Leadership Award from President Cavan at the Plenary Session.



(Left to right) Susan Reinhardt, Sharon Edenfield and Nancy Bramlett spend time together at the Gala.



Alex Cavan, grandson of Bryan Cavan, president, displays his skills on the Velcro Wall at the Opening Night Festival.



(Left to right) Winners of the 2010 Golf Tournament were Will H. Pickett Jr., Patrick T. O'Connor, Christi and Robert A. Lusk.



(Left to right) Steven and Julie Leibel and Ken and Melissa Hodges relax outside on Eight Flags Patio during the Inaugural Gala.



William P. "Bill" Smith presents the State Bar Employee of the Year Award to Carolyn Williams during the Inaugural Gala.

vote, approved the following procedure:

- Early suggested wording changes must be in writing and received by the State Bar on or before Tuesday, July 20, 2010, for inclusion in the Board's agenda book.
- Brief discussion of the proposed amendments and any early suggested wording changes during the Summer Meeting on Thursday, Aug. 12, 2010.
- Final suggested wording changes must be in writing and received by the State Bar on or before Tuesday, Sept. 21, 2010, for inclusion in the Board's agenda book.
- Action at the Fall Meeting on Saturday, Oct. 16, 2010. (Note: No other wording changes will be in order).
- Immediate Past President Cavan and Tom Boller provided a summary on the State Bar's legislative activities for the 2010 session of the Georgia General Assembly.
- The Board received a copy of the Summary of Actions of the

ABA Board of Governors.

- The Board received a copy of the future meetings schedule.
- Hon. Patsy Porter provided a report on the activities of the Georgia Bar Foundation. Thereafter, she presented the annual James M. Collier Award to Past President A. James Elliott.
- Lauren Barrett provided a report on the activities of the Lawyers Foundation of Georgia.
- Immediate Past President Cavan provided a report on the proposed Spring Street Viaduct Project scheduled to begin the summer of 2011. The project will impact the Bar's parking deck in that only the Marietta Street entrance/exits will be open for tenants and Bar members during the reconstruction of the viaduct, which is expected to take approximately two years.
- The Board received a copy of the minutes of the April 8 and May 13 Executive Committee meetings.
- The Board received a written report from the Consumer

Assistance Program, the Fee Arbitration Program, the Law Practice Management Program, the Law-Related Education Program, the Unlicensed Practice of Law Program and the Transition into Law Practice Program.

- The Board of Governors received a written annual report from the Chief Justice's Commission on Professionalism.
- The Board of Governors received a written annual report on the activities of the Committee on Professionalism.
- The Board received copies of the Conflicts Policies, and copies of the annual audits of the Commission on Continuing Lawyers Competency, Georgia Bar Foundation, Georgia Legal Services Program, Institute of Continuing Legal Education and Lawyers Foundation of Georgia.
- The Board received written annual reports from the following Sections: Appellate Practice, Aviation Law, Bankruptcy, Business Law, Corporate Counsel, Dispute Resolution, Eminent Domain, Employee Benefits, Family Law, Fiduciary Law, General Practice and Trial, Health Law, Intellectual Property, International Law, Labor and Employment Law, Real Property Law, School and College Law, Taxation Law, Technology Law and Workers' Compensation.

Annual Awards

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

Chief Justice Thomas O. Marshall Professionalism Award

The 9th Annual Chief Justice Thomas O. Marshall Professionalism Awards, presented by the Bench and Bar Committee of the State Bar of Georgia, honors one lawyer and

one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the **Hon. Lamar W. Sizemore Jr.**, Superior Court Judge, Macon Judicial Circuit, Macon and **Hardy Gregory Jr.**, Gregory & Forehand, Cordele.

Georgia Association of Criminal Defense Lawyers Awards

The Georgia Association of Criminal Defense Lawyers announced that the 2009 GACDL Indigent Defense Award was presented to **Claudia Saari**.

The GACDL's Rees Smith Lifetime Achievement Award went to **J. Michael Cranford**.

The 2009 COTY Award was presented by GACDL to **L. David Wolfe** and **Robert A. Susor**; **Brian Steel**, **Douglas A. Ramseur**, **Aren K. Adjoian** and **Jeffrey L. Grube**; **Rodney S. Zell** and **Manubir S. Arora**.

GACDL presented 2009 President's Awards to **Hon. Hilton Fuller**, **Scott Key**, **William C. "Bubba" Head** and **Kiran Kilkarni**.

Local and Voluntary Bar Activities Awards

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

The **Award of Merit** is given to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serving their communities. The bar associations are judged according to size.

- 101 to 250 members: **Dougherty Circuit Bar Association**



President Lester Tate with his family at the Presidential Gala. (Left to right) Sam, Opal, Lester and Grace Tate.



(Left to right) Immediate Past YLD President Amy V. Howell, YLD President Michael G. Geoffroy and YLD President-Elect Stephanie J. Kirijan at the Presidential Gala.

- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members of more: **Atlanta Bar Association**

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

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

- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Atlanta Bar Association**

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

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

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

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

- 251 to 500 members: **Georgia Association of Black Women Attorneys**
- 501 or more members: **Atlanta Bar Association**

The **President's Cup Award** is a traveling award that is presented annually to the voluntary bar association with the best overall program. This year's recipient was the **Atlanta Bar Association**.

Pro Bono Awards

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

The H. Sol Clark Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project in 2010 to **Randall L. Hughes** for his tireless dedication to the Health Law Partnership serving the legal needs and well-being of low-income children and their families by addressing the multiple determinants affecting children's health.

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

The 2010 William B. Spann Jr. Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to the **Atlanta Bar Association** for its outstanding investment in, and support for, pro bono legal services for low-income Georgians as well as its support for civil legal aid programs that deliver legal services to the poor and marginalized communities.

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

The 2010 Dan Bradley award was presented by the Access to Justice Committee of the State Bar of Georgia to **Stephen M. Krumm** for outstanding commitment to the delivery of legal services to seniors and exemplary professionalism over the years.

Section Awards

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

- **Section of the Year:**
Business Law Section, Edgar Cleveland Snow Jr., chair
- **Awards of Achievement:**
Corporate Counsel Section, Briley Brisendine Jr., chair
Dispute Resolution Section, John A. Sherrill, chair

Family Law Section, Tina Shadix Roddenbery, chair
Intellectual Property Law Section, Andrew Crain, chair

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members in recognition for their commitment of service to the public, to Bar activities and to civic organizations. Recipients must be at least 50 years old. The 2010 recipients were: **Ray Persons**, Atlanta (defense), **George "Buddy" Darden**, Atlanta, (general practice), **Hon. Hugh Lawson**, Macon (judicial) and **Andrew M. Scherffius**, Atlanta (plaintiff).

Young Lawyers Division Awards

Awards of Achievement for Outstanding Service to the Profession: **Shiriki Cavitt**, **Elizabeth Fite**, **Colin Kelly** and **Meredith Wilson**.

Award of Achievement for Outstanding Service to the Bar: **Marquetta Bryan**, **Sharri Edenfield**, **Jonathan Goins**, **David Moreland**, **Nedal Shawkat**, **Chris Stewart**, **Alex Susor** and **Carl Varnedoe**.

Award of Achievement for Outstanding Service to the Public: **Jennifer Blackburn**, **Tommy Duck**, **George Hamilton**, **Stacie Kershner**, **Leslie Lipson**, **Sumeet Shah** and **Ty Smith**.

Award of Achievement for Outstanding Service to the YLD: **Tippi Burch**, **Melissa Carter**, **Edward McAfee**, **Sherry Neal**, **Janet Scott** and **Kirsten Widner**.

Award of Excellence for Dedication to the YLD: **Sarah Coole**, **Natalie Kelly**, **Jennifer Mason**, **Mike Monahan**, **Derrick Stanley** and **Stephanie Wilson**.

The Distinguished Judicial Service Award was presented to **Justice George H. Carley**.

The Ross Adams Award was presented to **Chuck Driebe**.

The recipient of the YLD Ethics and Professionalism Award was **Carl Varnedoe**.



Tina Shadix Roddenbery, chair, accepts the Family Law Section Award of Achievement from President Cavan during the Plenary Session.



2010-11 President Lester Tate and his mother, Opal, after the swearing-in ceremony.



Platinum brought their high-energy style to the Annual Meeting for the second year in a row.

Passing of the Gavel

Prior to the swearing-in ceremony, 2009-10 President Bryan M. Cavan presented two important Bar awards. The Employee of the Year award was presented to **Carolyn Williams** for her outstanding accomplishment and dedication since being employed at the Bar in 1996. Williams serves as a paralegal for the Office of the General Counsel.

Cavan also presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of Georgia, to **William P. "Bill" Smith** (see page 58.) Smith was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal progression in the state of Georgia."

Following the awards presentation, Justice Robert Benham swore in S. Lester Tate III as the 48th president of the State Bar of Georgia. Tate placed his left hand on the Bible and repeated the following:

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

Once the business portion of the evening was completed, attendees and their guests were able to enjoy the conclusion of another successful meeting with great food and entertainment options. The Convention Center and its rooms had been transformed from bland meeting spaces to

a party-like atmosphere with glowing martini glasses, bottle coasters and lights. The martini bar again featured the State Bar's Doug Ashworth on the piano, tickling the ivories to the delight of the patrons. The scotch and cigar bar drew its expected crowds with people eagerly awaiting their time with the cigar roller. And to no one's surprise, the dance club proved to be the highlight of the evening with band Platinum belting out old and current dance hits for a crowd of all ages. 



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

End of Year Report

by Bryan M. Cavan

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from 2009-10 President Bryan M. Cavan on his year, delivered June 18 at the State Bar’s Annual Meeting.

Good morning. When we gathered here a year ago and I had the honor of being sworn in as president of the State Bar of Georgia, I was full of excitement—and also a bit of apprehension, because I had been told over and over how much work was involved and how hard it would be to get through the year.

But to tell you the truth, my experience as State Bar president has instead been more like going on a year-long vacation . . . with Chevy Chase—or to bring it closer to home—perhaps a year-long vacation with Robert Ingram? Some of you may remember his family trip to France.

Seriously, it did seem like we had one new crisis—or at least a new issue—to deal with in each of the past 365 days. Let me share just a few of the year’s events.

Last summer, I told you at the outset of this venture that we were sailing into uncharted waters due to the economy. I didn’t know how true those words were. Jeff Bramlett’s parting warning to me was that “it comes at you fast.”

I was in office only a few weeks when I attended Chief Justice Carol W. Hunstein’s first Judicial Council meeting. There I learned of the memo she had received just a few days earlier from the governor’s Office of Planning and Budget, advising her of plans to address the predicted loss of revenues in FY 2010. The memo was addressed to “Dear Agency Heads.”

Having worked with the chief justice over the past year, I can tell you with certainty that the other two branches now understand that the judiciary is the third branch of the state’s government, not an agency.

By September, the effect of furloughs and the initial 5 percent budgetary cuts on our courts had national attention. A *Wall Street Journal* article on Sept. 8, 2009, pointed out that the furloughs and cuts in the judiciary’s budget were resulting in a backlog of cases for our courts across the state.

But it wasn’t just judicial funding issues that we were facing this year. In November, I learned that Amelia Island Plantation had filed for bankruptcy. Our incredible Meetings Director Michelle Garner quickly located alternate venues for us to consider for the Annual Meeting and began some preliminary negotiations. I also learned, in the process, that the paragraph we all add to our contracts, “If either party shall become insolvent or shall file for bankruptcy, then the other party may cancel the contract,” is not enforceable in Bankruptcy Court.



2009-10 President Bryan M. Cavan presents his report to the Board of Governors during the Plenary Session at the Annual Meeting.

Remember the PSA on TV and radio called “Lights Out” which we ran in November? Well, in December, I met with a few of our legislators to discuss the video and the impact of furloughs and cuts in the judicial budget.

And then there was the Midyear Meeting during the first week of January 2010. The weatherman didn’t help a lot. Ice and snow covered the metro streets. However, despite the weather, we had a successful meeting with no CLEs or events canceled.

Still reeling from the ice and snow of the previous weeks, I rose to read the headlines in the paper on Jan. 11 that the Legislature was in session. And the marathon legislative session began.

I do want to make it very clear that our legislators and particularly our lawyer-legislators were doing their best to keep the government operating with less and less revenues available.

On March 1, I took off a day from working with the legislative agenda to appear in Bankruptcy Court in Jacksonville—as the

client—to deal with the issues of Amelia Island Plantation’s Chapter 11. We reached an agreement whereby they agreed to assume the contract, assuring us that this event would go as planned—if not better.

April 29 brought *sine die*, the last day of the legislative session, which could not have come soon enough for me. However, it will go down in the books as the longest session in at least 120 years.

As I laid back and lifted my feet up to begin my coast to the finish line—*BAM!!*—as Emeril Lagasse would put it—up pops H.B. 1055 and its copy costs for records on appeal at \$10 per page.

Over the next three weeks, our Supreme Court and our Court of Appeals considered and approved rule changes in both courts addressing the problem for the interim. We owe thanks to our Supreme Court and our Court of Appeals for their interim rule changes to address the issue, at least until the Legislature can address it. Several of our legislators have assured us that they will make an amendment to this provision a priority in January.

I also wish to acknowledge and thank a terrific group of attorneys that stepped forward to address the H.B. 1055 issue by drafting language for rule changes that could have been implemented by the Appellate Courts had the Courts not acted. Members of the appellate practice section, and in particular Chris McFadden, Charles Cork, Paul Kaplan, chair Amy Weil and Mike Terry spent untold hours fashioning language. We also had input from the Prosecuting Attorneys Council, the Criminal Law Section and GACDL on the rule change proposal. Further, Michael Warshauer, president of GTLA, along with a number of dedicated litigators gave selflessly of their time to consider alternative actions through the courts, should such be required.

It was a challenging year, and we were able to put out most of the fires swiftly and completely, and bring the rest down to a manageable level . . . thanks to the amazingly talented staff at the Bar Center, under the wise and steady counsel of Cliff Brashier. He possesses incredible institutional memory to guide us and is devoted in his service to our members across the state.

Thanks to our Bar staff and our Board of Governors, we have been able to deliver on what I said a year ago was my top priority for 2009-10: to ensure that those who follow me as president have a financially healthy Bar to work with in future years.

As I have repeated many times over the past 12 months, these were indeed uncharted waters we were sailing in regard to the economy. But today I can assure you that the State Bar of Georgia is as financially healthy as it has ever been, and that is something in which we can all take great pride.

As you know, this year’s overriding issue and greatest challenge for the Bar has been the state budget and its impact on Georgia’s court system. From the beginning of this Bar year last July, we knew what a fight we would have on our hands

As I prepare now to hand the gavel over to Lester Tate tomorrow with all best wishes for the great year I know he will have, I am more amazed than ever by the tireless dedication, extraordinary leadership and exemplary service displayed by my fellow lawyers across the great state of Georgia.

because of the unprecedented revenue problem the state was facing.

Early on, under the direction of the Advisory Committee on Legislation, chaired by Dwight Davis, I joined our legislative advocacy team in meetings with Gov. Perdue, Lt. Gov. Cagle and his staff and the leadership of the House of Representatives (first the old regime and then the new) and the Senate to make our case to protect judicial funding.

As each month passed, the revenue picture worsened. Chief Justice Hunstein and Chief Judge Miller saw the problems ahead and personally enlisted the Bar's support in making the public aware of the consequences of an underfunded judiciary, and we kicked it up a notch.

The Communications /Cornerstones of Freedom® Committee, chaired by Bob Kaufman, worked with Grey Advertising to develop a new broadcast public service announcement, which went on the air in November. It was a more hard-hitting piece, intended to spell out in stark terms to the public the ways that judicial funding cuts can affect their lives.

Not all of our members were happy with the PSA's language, and not all of our legislators were happy that the State Bar would even broadcast such a message. But the ad got their attention, and it got the public's attention. After its first run in November, a survey by Schapiro Research indicated 44 percent of Georgians had seen the ad—a very high number in only a few weeks of airtime—and 99 percent of them got the main message, that without need-

ed funding, our courts cannot operate effectively.

Throughout the legislative session, we tried to keep our members informed on the budget crisis, and you responded in a big way. More than 1000 members utilized our Legislative Action Network to make personal contact with their representative or senator and take a stand for judicial funding.

In the final month of the session, Chief Justice Hunstein and I took a barnstorming tour of the state, meeting with the editorial boards of several of Georgia's major daily newspapers. We were joined in most of the meetings by a superior court judge in each community, who could bolster our message by reporting on the effects of funding cuts from a local perspective.

The response from the editors was tremendous. We received positive news and editorial coverage or were able to place op-ed columns in a number of newspapers, including the *Atlanta Journal-Constitution*, *Macon Telegraph*, *Marietta Daily Journal*, *Savannah Morning News*, *Brunswick News*, *Rome News-Tribune* and *Waycross Journal-Herald* just to name a few.

In the final analysis, the fiscal year budget for 2011, which Gov. Perdue recently signed, might not fund the judicial branch at an ideal level, but it certainly turned out a lot better than we had feared. It could have been much worse. Our courts will be able to meet their constitutional responsibilities under this budget, and I believe the State Bar's efforts toward that end had a positive effect on the process.

A year ago, I told you not to expect a "Bryan Cavan Legacy

Program," and that instead, we would focus on enhancing and supporting our existing programs to improve and expand their reach. Thanks to your efforts, the efforts of the committee chairs and their committees, we have made substantial progress in a number of areas.

Our Law-Related Education Committee, chaired by Hon. Debra Bernes, saw a huge increase in participation in the "Journey Through Justice" program at the Bar Center, informing Georgia's young people about our court system and legal profession. This year, LRE hosted 150 "Journey Through Justice" tours involving more than 8,400 public school, private school and home school students from at least 18 Georgia counties. I also want to thank several of our local bar associations—including DeKalb and Henry counties and the Dougherty Circuit—that rallied to the cause this year, providing at least partial funding or assistance for school groups from their communities to make the trip to Atlanta for this important educational program. I urge all local bar associations to consider doing the same for student groups from your hometowns. It's another way we can make a difference on the public education front. We also took Journey Through Justice "on the road" to bring the program directly to the schools.

Our Long Range Planning Committee, chaired by Hon. Lamar Sizemore and its subcommittee chaired by Jill Pryor, presented us long overdue policies on conflicts, confidentiality, whistleblowers and document handling and retention, which this Board readily approved.

Our Conversations with Bar Leaders were a big success again this year. This is a great opportunity for us to hear from local bar leaders in all parts of the state on ways we can work together to do a better job of serving our members and the public. It was very exciting to participate in these conferences and hear new and fresh ideas. Our meeting in Tifton led directly to talks with our landlord and the addition of another large conference room, which is being built out. I want to thank everyone who participated in these conversations this year.

Our Executive Committee held meetings in Tallulah Falls, Thomasville and Newnan, and had joint luncheons with the local bar associations and receptions for the lawyers, judges and state representatives and senators.

Our Bar Center in Atlanta and our satellite offices are providing us the ability to offer more and more to our members across the state. Our Coastal Georgia Office in Savannah enjoyed a very successful first full year of operation. Similarly, our South Georgia Office in Tifton is in great demand. Thank you to Linda Edwards and Bonnie Cella for their superb management of our satellite offices.

Because of demand, we are adding space to the South Georgia Office in Tifton, as I noted earlier, and also adding a new auditorium and conference room at the Bar Center in Atlanta. It should be noted that 70 percent of our ICLE training is conducted at the Bar Center, bringing a great savings to our lawyers.

Our Military Legal Assistance Committee, chaired by Buck Ruffin, made significant progress in getting that program up and running this year, highlighted by the hiring of Norman Zoller as the coordinating attorney. At a time when our country is making increased commitments of men and women in uniform both at home and abroad, the State Bar wants to do all we can to help our military personnel with any unmet legal needs.

Our Statewide Judicial Evaluation Committee, chaired by Patti Gorham, was very successful in providing information on judicial candidates to assist the Judicial Nomination Commission in its deliberations and recommendations to the governor for judicial appointments.

Our Lawyer Assistance Program, chaired by Robert Thompson, and our Law Practice Management Program, run by Natalie Kelly, have continued to reach out to our unemployed attorneys. The Lunch and Learn sessions providing tips on how to retool your practice or to set up your own practice were recorded and are available for those wishing to view them. Confidential counseling is available for our attorneys, not only for alcohol or chemical dependence, but for those struggling with the impact of unemployment and related economic strain.

Our Member Benefits Committee, chaired by Hon. Gordon Zeese, "rolled out" the BPC Financial Brokerage program to assist our lawyers in obtaining health, medical and dental insurance policies. We also renewed our contract with Casemaker with upgrades to service. Our new membership database has been implemented and most of the "bugs" common to new software implementation have been resolved.

One of the greatest pleasures I have had while serving in this position is the opportunity to witness and/or receive first-hand accounts of the good work our fellow lawyers and judges are performing in their communities all around state. As you know, we have a practice of recognizing Bar members for good works in their communities through a news release or letter from the State Bar president to the editor of their local newspapers. I am proud to report that this year we have had more than 100 such articles appearing in more than 50 publications, with a total circulation of almost 3.2 million readers. The

message is loud and clear: Georgia lawyers are enlisted in the service not only of our clients, but of the public good as well.


Before I close, I wish to thank my firm, Miller & Martin, and my partners, for their support, which has permitted me to accept the privilege of serving this year.

I also wish to thank my wife Cheryl. Without her love and support, this would not have been possible.

I have left a few matters for Lester:

- Judicial Budget Crisis II
- Spring Street Viaduct Closing
- 365 other surprises to come

As I prepare now to hand the gavel over to Lester Tate tomorrow with all best wishes for the great year I know he will have, I am more amazed than ever by the tireless dedication, extraordinary leadership and exemplary service displayed by my fellow lawyers across the great state of Georgia.

I wish to close this morning by thanking you again for the tremendous honor and pleasure of serving as your president this year, for all the courtesies you have extended to me when I have traveled into your communities and, mostly, for all you do in service to the State Bar of Georgia. 



Bryan M. Cavan is the immediate past president of the State Bar of Georgia and can be reached at bcavan@millermartin.com.

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Tate's 2010-11 Bar Program

by Lester Tate

The following is excerpted from Lester Tate's presidential speech at the 2010 Annual Meeting in Amelia Island.

Good morning. I want to start by thanking each and every one of you for the privilege of serving as your State Bar president for 2010-11. I am especially honored to be accepting the gavel from my friend Bryan Cavan, who has served us so ably and admirably during a year of unprecedented challenges. Bryan has done an amazing job of steering this ship through some turbulent waters. I believe the State Bar today is now stronger than ever, thanks to the leadership of Bryan and his recent predecessors.

As I begin my presidency, I hope that you will indulge me for a moment as I reflect on my journey to the podium here today, not because it relates to me, but because it relates to what I believe about where we as a Bar are today and where we should be going.



Photo by Sarah I. Coole

2010-11 Bar President Lester Tate prepares to address Bar members, family, friends and guests during the business portion of the Presidential Gala.

I believe the State Bar of Georgia has two main purposes:

- We promote the cause of justice for all Georgians and all Americans; and
- We work to preserve the integrity of our profession.

This is a heartfelt conviction on my part spurred by two things: my personal heritage and my lineage in the practice of law, or the lack thereof.

My father never went to college. He never had the opportunity. He was plenty smart, but in his day there was no HOPE Scholarship or other type of financial aid that would provide him a chance for higher learning.

My dad started working in the cotton mill in Cedartown, Ga., when he was 15 years old after his father, who was a policeman at the mill, died. My father worked there until he was 54 and the mill closed. So I know what the rough-and-tumble of daily life for a basic working family is all about. And I know about the need for justice in the material world.

At the same time, I have been very fortunate to practice with my law partner Morgan Akin, whose family members have been lawyers in this state dating back to 1836. Morgan's great-grandfather argued the first reported case before the Supreme Court of Georgia in 1843 and his uncle, John W. Akin was president of the Georgia Bar Association in 1898.

It's very humbling for me to know that while I am president of the State Bar, my law office in Cartersville is the exact same office that John W. Akin occupied when he served as president of the Georgia Bar Association more than a century ago.

So I have those twin lineages, one of which emphasizes to me the importance of promoting the cause of justice for all, and the other one the importance of protecting the integrity of the profession and how important it is that we carry on those same ideas.

I am 48 years old and also the 48th president of the unified Bar. It is amazing to think of how far our justice system and our legal profession have come.

Many of you are familiar with Gov. John Marshall Slaton, who in 1915, after an extensive review of the evidence, commuted the sentence of Leo Frank from death to life imprisonment. His decision was so unpopular that Slaton and his wife were driven from the state for 10 years. But Slaton returned and resumed the practice of law. And in 1928-29, he received an unusual honor. He was elected as president of the Georgia Bar Association.

Of his unpopular decision, though, Gov. Slaton said that he would rather have been "plowing in a field" in "obscurity" than to have "failed to do what I thought to be right."

To me, that is emblematic of what it means to be a Georgia lawyer. For Georgia lawyers, it is *always* the right time to do the right thing.

That's why in the 1940s the Georgia Bar Association, through its Board of Governors, led the way for women to serve on juries.

That's why in the 1960s lawyers like Donald Hollowell led the fight to end the abomination of segregation.

What has been so humbling to me, though, is not simply our glorious history, but what I have seen firsthand about our power to affect justice. Several years ago, I had a wrongful death case referred to me by a fellow member of the Board of Governors.

The wife of a young, African-American concrete truck driver was driving on a state road when she came to an intersection where a stop sign had been down in a ditch for weeks. Not realizing the danger, she was struck by a pickup truck and died while a passing stranger held her hand.

Her husband was distraught. He was working two jobs, and she had been working one, just to make ends meet. Now he has a son to raise alone. What's he going to do? How will he pay the bills; how will he

raise his son? One of the first things he thought about, though, was that the Department of Transportation should have had that stop sign up.

Finally, someone tells him he needs a lawyer. When we got the case, we filed suit on his behalf. I went to Meriwether County, tried the case and got a \$1.3 million verdict. When the jury returned its verdict, my client broke into tears. We packed up all our files and papers and carried them out to the car. He sat there and cried. We told the clerks and the bailiffs goodbye. He sat there and cried.

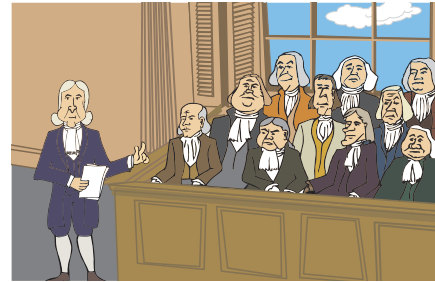
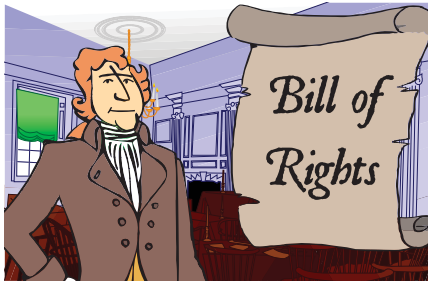
Now, I am pretty sure that there aren't any more stop signs lying in the ditch in Meriwether County these days. Word of the verdict spread and I think the DOT probably pays closer attention to stop signs than they ever did before.

But when you think about the Department of Transportation, it is part of the executive branch of government. It is headed by the governor widely and rightly regarded as the most powerful man in the state. The department itself is run by a commissioner and a board, whose members are elected by the legislature and these are some of the most powerful people in the state. How is it that this concrete truck driver who has lost his wife was going to get that sign put back up, that the road was properly maintained when some of the most powerful people in the state who ran this agency couldn't do so?

But this was one guy who had a lawyer he knew was on his side. This was one guy who had access to the courts because the Constitution guarantees that . . . this one guy who I watched crying like a baby at counsel table was suddenly the most powerful man in the state of Georgia.

I don't think there are many other countries on the face of the earth where somebody of his standing has that kind of power. It's unique to American democracy and is absolutely one of the most wonderful facets of our government and our country.

Trial By Jury: What's the Big Deal?



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

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

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

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



Accordingly, our challenge now is to protect that system for all future generations.

And with that charge in mind, I'd like to talk about some of the issues the legal profession and the justice system are facing and give you a preview of some of the ways I hope the State Bar will address those issues over the next 12 months.

Judicial Funding

As you know, the Georgia General Assembly recently approved and Gov. Perdue signed a state budget for fiscal year 2011 that reduces overall funding to the judicial branch of government by more than 6 percent. This comes on the heels of cuts totaling more than 14 percent in fiscal years 2009 and 2010.

I don't have to tell you how much more difficult it is for our courts to carry out their constitutionally mandated functions under these conditions. Staff reductions, furloughs and the elimination of funding for equipment, supplies and training have become a way of life in our courts' prosecutors' and public defenders' offices.

Meanwhile, caseloads have continued to rise, resulting in criminal and civil calendar backlogs. Justice is being delayed, and that is justice denied.

We as a Bar must continue to promote legislation and policies that make sure our courthouse doors stay open. We must make sure we continue to have judges who are well-qualified, well-trained and well-paid for the jobs that they do, we must make sure that our citizens have access to lawyers who will provide them with zealous advocacy. And we must make sure we continue to have citizen jurors to ensure that everyone gets a fair trial in this state whether it's a big company or an individual.

Accordingly, we have to generate widespread, grassroots support both inside and outside our profession. The State Bar has commissioned a study by the Washington Economic Group, which did a similar study in Florida, to explore the

I am very proud of my heritage and the heritage of our profession. I am very proud of our court system and of where we are as a State Bar.

impact that cuts to judicial funding have on our state's economy.

Our report will soon be made available to us, and we will begin to use this information to bolster our case to show that lawyers and judges are not the only Georgians who are impacted by budget cuts. We must join forces with the business community and spread the message that we need to have a properly funded and functioning justice system for the good of the economy and our efforts to attract new business and jobs to our state.

To make our case, we are going to continue our TV ads on the judicial funding issue as needed. In the past, we have had Bar leaders who said we don't want to do anything to make the legislature mad. But I have been elected to represent 42,000 Georgia lawyers and judges. We want to work with our legislators in a cooperative manner, but we also know there are certain (and fortunately very few) members who have sworn they will oppose the Bar's position on any issue.

For example, this situation contributed to the much-needed Evidence Code legislation failing to pass the Senate in the final days of the 2010 session. At least one senator was quoted as saying that he would oppose any bill supported by the State Bar of Georgia. When we encounter mindless opposition of this sort, I will not hesitate to stand up and strike back.

As John F. Kennedy said, I will "support any friend and oppose any foe." If that means running hard-hitting, geographically targeted ads directed toward individual legislators who are using their positions of power to harm our justice system out of spite, then I will ask you to consider doing just

that. The public needs to be aware of what's taking place on these issues and the resulting problems and consequences.

I encourage each of you to meet with and talk to these leaders and like me, support our friends and oppose our enemies.

We need your continued support and your participation as we build on this grassroots movement in the coming year.

Filing Fee Increases

On top of the budget cuts, legislation was also approved that would increase court filing fees by \$125. In superior courts, all of that increase will go to the state's general fund. Not one penny expressly dedicated to the courts. In state courts, \$50 will go back to the counties where the fees are generated and \$75 will go to the state's general fund, even though the state budget does not pay for state courts at all.

The *Macon Telegraph* opined on the fee increase issue:

"Such a deal. Taxpayers fund the judicial system and then are charged extra to use it. Other states handle the issue differently. In Florida, those fines and fees go into a judicial trust fund, a much better way of handling the money. As in many cases, our legislators are delving into an issue few know anything about; only about 15 percent of the General Assembly are lawyers."

In these unprecedented hard times, I understand that all areas of government must make sacrifices, and our courts have certainly done their part. But user fees are intend-

ed to pay for the services from which they are generated. If they don't pay for the services used, they are, plain and simple, a tax. I intend to lead the Bar in a direction where we demand accountability on these fee increases with the bulk of the revenue going to fund the judiciary. You cannot balance the budget on the back of the judicial system while denying adequate funds for justice.

If it takes a constitutional amendment to dedicate a fair portion of the income from the fees, fine and forfeitures generated in our court system to a judicial trust fund, as is the case in other states, then I believe the State Bar should support such a proposal.

I realize this has been a polarizing issue at the state capitol dating back to the creation of our present indigent defense system, and I am committed to building sufficient support for appropriate restrictions, even if it takes a constitutional amendment. It is well within the purview of the Bar to *insist* that our courts receive adequate funding, when it is represented to those seeking justice that their filing fees are going toward that purpose.

We need to raise the standard of truth and accountability, and I intend to task our Committee on the Judiciary with studying this issue, considering our options and making a recommendation prior to the next legislative session.

Bar Center Debt Retirement

I have a number of other goals and plans for this Bar year that I would like to share with you in my remaining time. The first of these is paying off the debt on our Bar Center, a matter that I have placed on your agenda today as "job one."

Why is this important? I grew up in the Baptist church, where we often sang the hymn "Come Thou Fount of Every Blessing," which has the word "Ebenezer" in it. I used to wonder what an Ebenezer was, and I learned it is a

stone or monument that says "we have come this far." (1 Samuel 7:12) For the lawyers and judges throughout this state, I believe the Bar Center is our "Ebenezer." It is a functional monument to where we come from and what we stand for just like our state's capitol or governor's mansion.

The State Bar actually embarked on this journey in the 1970s, trying—and failing—to find a permanent home that was both suitable and affordable. We tried again in 1995 and 1996—looking at about 40 different sites—but with the same results.

Finally, in 1997, good fortune came our way when the Federal Reserve building was put on the market. The purchase price on the Bar Center was \$9,004,000.

The Bar now has the funds to retire this debt—five years ahead of schedule—because we are in superior financial shape, thanks to some very good stewardship over the years. Taking this action will significantly strengthen our financial flexibility in future years.

I hope you will approve this proposal today, so that when we meet again in August, we can have a grand celebration—burning the note on the Bar Center and paying tribute to the people whose vision and hard work brought us to this milestone.

Law-Related Education

I believe we have some very good State Bar programs that we should continue to support and make sure they work better than ever before. An example is our Law-Related Education program and the "Journey Through Justice" tour for school groups at the Bar Center. My own kids are now 20 and 17 years old and getting ready to vote for the first time. It seems like only yesterday that I joined them on their field trip to places like the Bar Center.

That's where our future lies, in educating our students about the importance of our judicial branch. We recently received a \$500,000 grant from the Commission on

Continuing Lawyer Competency, which I chaired, and I hope to use that to build out an additional room for the "Journey Through Justice" school tours and expand that program.

If we focus on what we do well, and do it better than we've ever done it before, I am convinced that our State Bar will see real success in the coming year.

Closing

Thank you for bearing with me this morning and hearing a few of the plans I would like to carry out in the coming year. At the same time, I know our greatest tests probably won't come from trying to accomplish these specific goals, but from the unexpected issues that will undoubtedly arise during the course of this year.

What unknown obstacles will we have to clear? What attacks on our system of justice will we suffer?

I can't answer those questions today, but I can tell you what approach I plan to take.

I like to say that I am "just a country lawyer." And I confess to having taken some ridicule for what some consider an overly self deprecating and somewhat sentimental statement. Cartersville is not the country anymore, some of my friends tell me. Atticus Finch and Jake Brigance are *fictional* characters, say others.

But being a *country* lawyer is sort of like *country* music. It is more a state of mind, than a statement of geography. And I think being a country lawyer is *anything but self deprecating*.

More than 60 years ago, U.S. Supreme Court Justice Robert H. Jackson wrote an article in the *ABA Journal* headlined "The County-Seat Lawyer." I would like to close by quoting a portion of that article today because I hope it reflects the values I bring to these unknown challenges.

"Once enlisted for a client," Jackson wrote the country lawyer "took his obligation seriously. He gave every power and


resource to the cause. He identified himself with the client's cause fully, sometimes too fully. He would fight the adverse party . . . every hostile witness, . . . public sentiment, . . . any obstacle to his client's success. He never quit. . . . if he lost out in the end, he joined the client at the tavern in damning the judge . . . the last rite in closing an unsuccessful case. But he loved his profession, he had a real sense of dedication to the administration of justice, he held his head high as a lawyer, he rendered and exacted courtesy, honor and straightforwardness at the Bar. He respected the judicial office deeply, demanded the highest standards of competence . . . and dignity, despised all political use or trifling with judicial power. The law to him was like a religion, and its practice was more than a means of support; it was a mission. He was not always popular in his communi-

ty, but he was respected. Unpopular minorities and individuals often found him their only mediator and advocate. He was too independent to court the populace—he thought of himself as a leader and lawgiver, not as a mouthpiece. He 'lived well, worked hard and died poor.' Often, said Jackson, his name was in a generation or two forgotten.

And then Jackson closed with this note, "It was from his brotherhood that America has drawn its statesmen and its judges. A free and self-governing Republic stands as a monument for the little known and unremembered as well as for the famous men of our profession."

As of today, I am now "enlisted" in our cause and proud to consider you and the other 42,000 members of the State Bar of Georgia my clients for the next year. My pledge is to work on your behalf every day with the devotion, spirit and values of a country lawyer.

I am very proud of my heritage and the heritage of our profession. I am very proud of our court system and of where we are as a State Bar. But this is no time to relax. We must work more diligently than ever to promote the cause of justice and protect the integrity of the legal profession. We still have miles to go before we sleep, and I look forward to making that journey with you.

Thank you again for allowing me the honor of serving you, and thank you for all you do to promote the cause of justice and preserve the integrity of our profession in your communities and throughout the great state of Georgia. May God bless you, our profession and our state. 



Lester Tate is the president of the State Bar of Georgia and can be reached at slstate3@mindspring.com.

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Something Good and Honorable

by Linton Johnson

The Polk County Courthouse stands only two blocks from the house where Lester Tate was raised. But life in the Cedartown mill village was so far removed from a career in the legal profession, the local justice hall might as well have been on the moon.

The new president of the State Bar of Georgia is the first member of his family to go to college. The thought of earning a law degree and passing a Bar exam was especially far-fetched.

"We didn't even have a lawyer," Tate recalls, "much less have one in the family."

Even as a young child, though, it did not occur to Tate that he would follow the career path of his father, who worked in a local factory for 36 years. He did have thoughts of becoming a policeman, like his late grandfather.

"I liked the law," he said. "My grandmother was very persistent in telling me that I needed to go to college. I knew the law was a respected profession. The lawyers I knew growing up were men who were respected in the town, and they helped people in their times of need."

One of those Cedartown lawyers was Tate's Sunday School teacher during his teenage years, and he might have been the first to notice that Tate had at least one of the requisite skills for the practice. "He told me I would argue with a sign board ... with all the letters washed off."

After graduating from Cedartown High School, it was off to Georgia Tech for Tate.

"My parents thought if you were smart, you were supposed to go to Georgia Tech," he said. "What they didn't know is that you had to be good in math, which I was not."

An industrial management major, Tate also happened to take some business law classes.

"I liked classes that involved a lot of writing and reading," he said, "and we also had mock trials of labor arbitration cases. Several students would try the case, and the rest of the class would write decisions on an award."

In one of those cases, Tate represented the labor union. After the trial, Tate went to the professor and asked him who won. He was informed that his side couldn't have won; it was a weak case, and the professor had ruled against the union in arbitration. But Tate urged him to poll the class, which he did, and about half raised their hands in favor of the union.

"I felt really good about that, getting half the class on what was a sorry case," Tate said. "But what I really enjoyed was trying the whole case, examining witnesses, making arguments."

He graduated from Georgia Tech in 1982, after only 3.5 years, but did not immediately proceed to law school. A passion for politics and government led to internships—first with former state Rep. Lauren “Bubba” McDonald, who was then chairman of the House Appropriations Committee and is now chairman of the Georgia Public Service Commission. At the end of the 1983 Georgia legislative session, Tate went to the nation’s capital for an internship in the office of U.S. Sen. Sam Nunn.

“I got up to Washington and really liked it, so I decided to stay for a while,” Tate said. He served for nearly two years as press secretary for U.S. Rep. George “Buddy” Darden. Working closely with Darden, who had been a prosecutor and trial lawyer in Cobb County before his election to Congress, helped seal the deal for Tate on his career choice.

Shortly after Tate’s acceptance to the University of South Carolina School of Law, his father was diagnosed with cancer. For a brief time, he thought about not going to law school, knowing he might soon have to help pay the bills back home. But he did go, and the summer after his second year of law school, he worked two internships with Atlanta firms and took a night class at Georgia State University in order to stay on track to graduate early. At the time, law students could take the Bar exam during their third year.

“On Oct. 31, 1987, I found out that I had passed the Bar,” Tate said. “My dad died that Thanksgiving week, and I graduated in December.” He went to work with the Savell & Williams firm in Atlanta for two years, followed by a year at what was then Goodman McGuffey Aust & Lindsey.

“I had always thought about going back to Cedartown,” Tate said. “But when I worked in Atlanta, I was living in Acworth. I became familiar with Cartersville, which was nearby. It seemed a lot like Cedartown, but it was on the

interstate highway and very convenient to get to Atlanta. In 1991, one of my clients, Oglethorpe Power, was building a project in Rome. I decided I would just go to Cartersville and hang out a shingle. Fortunately, Oglethorpe stayed with me as a client.”

Tate also took in plaintiff’s cases during those early years in Cartersville, and over time his practice shifted in that direction. He was renting office space from Morgan Akin, whose family had been practicing law in Cartersville for more than 150 years.

“After five years, we merged our practices, which is a great thing for me,” Tate said. “Morgan really likes doing the things I don’t like, pleading and writing briefs, and vice versa. Most of what I do is trying cases, taking depositions and arguing motions and appeals. It’s a really good match for us.”

The trial practice at Akin & Tate, P.C., now includes plaintiff’s personal injury cases, criminal defense and commercial litigation. The new Bar president is widely recognized as one of the state’s top trial lawyers. Tate has been listed among “Georgia’s Legal Elite” in *Georgia Trend* magazine and “Super Lawyers” in *Atlanta* magazine. He was inducted into the American Board of Trial Advocates, one of the nation’s most prestigious groups of trial lawyers, with the rank of “advocate.” He has argued dozens of times in Georgia’s state and federal appellate courts.

He is also a fellow of the American Bar Association and Lawyers Foundation of Georgia, as well as a member of the Georgia Trial Lawyers Association, the Georgia Association of Criminal Defense Lawyers and the American Association of Justice.

Tate was first elected to the State Bar’s Board of Governors in 1996, at the age of 34. “I loved it immediately,” he said. “It satisfied my interest in politics, but it was related to the practice of law, which I love dearly as a profes-

sion. In my 23 years as a lawyer, I have probably only missed one annual meeting. It’s a great way to meet other lawyers and have an impact on the profession.”

In 2002, Tate served as chair of the General Practice and Trial Law Section. “Jimmy Parker of Cedartown, who served in the state Senate and as president of GTLA at the same time, got me interested in the General Practice and Trial Law Section. It’s the largest section of the State Bar, a group of people who serve the Atticus Finch wannabes like me.”

That was followed by his appointment by the Supreme Court of Georgia to the State Disciplinary Board’s Investigative Panel, where he served as vice chairman and chairman. He is past president of the Federal Defender Program and past chairman of the Georgia Commission on Continuing Lawyer Competency.

Tate was elected to the Executive Committee of the State Bar and served as treasurer from 2007 to 2009. “In the Bar, once you show you have an interest in getting involved, there is no shortage of people who will put you to work. But there is nothing I have enjoyed more than serving on that 160-member Board of Governors, with its depth and breadth of talented people, the top lawyers from around the state. If you have a question about another area of practice or a judge in another town, there is always someone who is willing and able to help you.”

As a Cedartown native, Tate follows in the footsteps of George E. Mundy, who served as State Bar president in 2000-01. Additionally, Tate’s Cartersville law office was occupied by John W. Akin when he was president of the Georgia Bar Association in 1898.

Outside the courtroom and when the Bar meetings have ended, Tate’s favorite title is “dad.” Since his divorce 10 years ago, Tate has raised his two children as a single father. Sam, 20, is a student at Georgia Highlands College, and Grace, 17, is a senior



Photo by Cindy Harter

President Lester Tate overlooking Cartersville.

and this year's student body president at Cartersville High School.

When the kids were younger, his mother, Opal Tate, would drive the 35 miles from Cedartown to Cartersville, daily, to help out. "My daughter likens it to the 'Andy Griffith Show,' with my mother serving as Aunt Bea," Tate said. "She still comes over three or four days a week to make sure we're OK."

"I really love family life, being a dad. I was very fortunate to have been able to chaperone field trips to Washington and coach baseball and soccer for both kids. It gave me an opportunity to get to know other parents, folks who are not lawyers."


Tate is active in the Cartersville community. He served as chairman of the Bartow County United Way campaign in 1995 and coached the Woodland High School Mock Trial Program, for which he received the 1999-2000 Woodland High School

Community Volunteer Award. In 2009, the New Frontiers of Bartow County presented him with the Friends of the Frontiers Award. He continues to serve as volunteer legal counsel for Advocates for Bartow's Children.

Tate embarks on his presidential year with the belief that the State Bar has two purposes: to promote the cause of justice and to preserve the integrity of the legal profession. "Although I didn't come from a family of lawyers, I ultimately aspired to be a lawyer because I thought it was something good and honorable and could have an impact on what goes on in your community. And the best way to combat those who try to tear down the legal profession is to get involved in the State Bar."

He attributes his ascension from the Cedartown mill village to his election as president of a Bar now exceeding 42,000 members to "hundreds and hundreds of peo-

ple who have helped me along the way," starting with his grandmother, "who always pushed me to get an education. She was a very influential figure in my life from a young age. She always taught me that if you get paid for a job based on what you know instead of what you do, then an education is something no one can take away."

Then there is Buddy Darden, the former congressman and Tate's longtime mentor. "Working with Buddy," he said, "I learned about how to deal with people and how to help them solve problems. Really and truly, that's what lawyers should do." 



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

Former General Counsel of State Bar Receives Distinguished Service Award

by Derrick W. Stanley

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

The 2010 recipient, William P. "Bill" Smith III, was honored with this most prestigious award during the Bar's Annual Meeting at Amelia Island, Fla., on June 19.

The award was presented at the Inaugural Gala where attendees gave a standing ovation as he was presented his resolution. "The State Bar of Georgia specifically attributes our reputation as having one of the most respected lawyer disciplinary programs in the United States to the diligent effort and innovative and progressive leadership of Bill Smith," said State Bar President Bryan M. Cavan in making the presentation. "His outstanding and faithful service as a trial lawyer, Bar leader at the local, state and national levels, community servant and for 25 years as general counsel of the State Bar is a credit to the profession and an inspiration to all Georgia lawyers."

Smith is a graduate of Emory University Law School and was admitted to the State Bar in 1965. He worked as a sole practitioner and with the Decatur firm of Zion, Smith, Tarleton & Siskin, P.C., before joining the State

Bar as general counsel. He served on the Board of Governors and Executive Committee of the State Bar and is a past president of the Decatur-DeKalb Bar Association. In 1996-97, he served as president of the National Organization of Bar Counsel.

Among the many innovations and changes introduced under the leadership of Smith, the State Bar of Georgia pioneered the concept of a Grievance Counsel to streamline the disciplinary process and speed up the review of consumer grievances and instituted a lawyer "helpline" for members of the State Bar who are faced with dilemmas or questions involving ethics issues. He also conducted an active outreach program, lectured extensively throughout Georgia and the nation on various professional responsibility topics such as conflicts of interest, lawyer marketing and fees, and is renowned for his ability to give ethics advice that is concise and practical but also is always based on his expansive understanding of the rules of professional responsibility.

Throughout the course of his service as general counsel, Smith advocated in his home state many of the progressive ideals and reforms promulgated by the Center for Professional Responsibility and the American Bar Association, including a successful campaign for adoption of the ABA Model Rules of Professional Conduct by the Supreme Court of Georgia in 2000. He has also devoted many years to supporting ABA efforts to advance lawyer regulation, serving as the liaison between the National



Photo by Sarah I. Coole


(Left to right) 2009-10 President Bryan M. Cavan presents William P. "Bill" Smith with the 2010 Distinguished Service Award for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

Organization of Bar Counsel and the ABA Commission on Multijurisdictional Practice, as a principal author of the "Common Sense Proposal for MJP Reform" regarding ABA Model Rule 5.5, as the NOBC delegate to the Commission on Evaluation of the Rules of Professional Conduct, as an active and valuable participant throughout the Ethics 2000 drafting and legislative process, as a member of the Standing Committee on Professional Discipline, as chair of the NOBC International Cooperation & Affairs Committee and having responsibility for informing lawyer regulators about the General Agreement on Trade in Services treaty and negotiations involving the Office of the U.S. Trade representative.

Since serving as president of NOBC, Smith has dedicated himself to teaching the membership about topics as diverse as professionalism, professional responsibility

guidelines, disciplinary counsel office management and international treaties that may affect lawyer discipline and for the past several years has moderated a "Lawyer Regulation Roundtable" at every NOBC session.

The legal community and the citizens of Georgia owe a debt of gratitude to Smith for his tireless service to the profession, the justice system and the State Bar of Georgia for more than 45 years.

The State Bar of Georgia expresses its gratitude and appreciation to Smith for his career commitments to legal ethics, disciplinary enforcement and lawyer professionalism, all of which represent the greatest service the State Bar can offer to the public. 



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

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FREE PICKUP

State Bar of Georgia Diversity High School Pipeline Program Completes its Third Year

by Marian Cover Dockery

The State Bar of Georgia Diversity Program, in partnership with Atlanta's John Marshall Law School and The Leadership Institute for Women of Color Attorneys, Inc. (LIWOCA), launched the third High School Pipeline Program from June 1 – 11, hosting 16 high school students from all over the metro Atlanta area. The program objective is to attract young people who are interested in pursuing a career in law, and was designed to teach critical skills that students will need to pursue a higher education. John Marshall provided classroom space, copying and other administrative support for the program and LIWOCA contributed to the funding and scholarships for graduating seniors and competition winners.

At 8 o'clock each morning, students convened at John Marshall for breakfast sponsored by Arnall Golden Gregory LLP. Classes began at 8:30, with grammar and



Photos by Marian Cover Dockery

Attorney Katy Forseth speaks to the Pipeline students at Baker Donelson during a lunch session.

writing taught by teachers Keelah Jackson, Hapeville Charter Middle School and Matt Clair of the Teach for America program. These courses were supplemented by



Winners of the 2010 written and oral competition. (Front row, left to right) Marian Cover Dockery, program director; Keelah Jackson, Pipeline teacher; Chelsea Parker, 2nd place, Kourtney Outlaw, 3rd place, Henderson Johnson II, honorable mention, Danielle Hayes, 1st place and Faith Morris, honorable mention. (Back row, left to right) James Johnson, of counsel, Sutherland and Matt Clair, Pipeline teacher.

a daily speech class focusing on current event topics and taught by volunteer attorneys: Kevin Wilson, clerk, Supreme Court of Georgia; Trishanda Treadwell, associate, Parker Hudson, Rainer & Dobbs LLP; Femi Obadina, Genny Zhu, Adriana Midenci and Sean Libby, associates, Elarbee Thompson Sapp & Wilson LLP; Frederick Dawkins, partner, Freeman Mathis Gary, LLP; Martine Cumbermack, senior attorney, and Jennifer Guerra, associate, Swift Currie McGhee & Hiers LLP; and Marian Cover Dockery, partner, Dockery Mills LLC.

The students attended luncheons hosted by member firms and corporations of the State Bar of Georgia Diversity Program. The attorneys provided mentoring and discussed different topics, such as dining room etiquette, Facebook etiquette and use of technology in the workplace, how to select the best college, credit 101 and the new credit laws and interviewing skills with the students each day.

During their visit to DLA Piper, students benefited from a tour of the firm and presentations from law firm support staff to expose them to additional work opportunities in the legal field or in a law firm office. Alston & Bird LLP hosted a one-on-one mentoring session that provided the students with an opportunity to find and keep a mentor throughout their school career. The students also had the privilege of seeing the fighter jets at Lockheed with a PowerPoint presentation by staff attorneys showcasing some of the most powerful jets on the planet. Students also toured the Lockheed plant and saw the mechanics assembling the planes.

Following the daily luncheons, students returned to John Marshall and heard from various speakers including Willie Lovett, director Fulton County Office of the Child Attorney, who discussed legal careers in public service; Claristine Pinckney, diversity

coordinator, Alston & Bird LLP, who presented a workshop on interviewing and resume writing skills; and Caitlin Merlo, a nutrition expert of the Center for Disease Control and Prevention who presented valuable points on good nutrition and food choices to the students.

The program concluded with an oral and written competition hosted by Sutherland before a panel of volunteer judges in the firm's courtroom. This year's judges were James Johnson, of-counsel, Sutherland; Wendy A. Choi, partner, Kilpatrick Stockton LLP; James McDonald, partner and Doug Bennett, senior counsel, Swift Currie McGhee & Hiers LLP; and Glen Fagan, associate, Constangy, Brooks & Smith, LLP.

The winners of this year's competition are Danielle Hayes, 1st place; Chelsea Parks, 2nd place; Kourtney Outlaw, 3rd place; and Henderson Johnson II and Faith Morris, honorable mention.



Let CAP Lend a Helping Hand!

What is the Consumer Assistance Program?

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

Does CAP assist attorneys as well as consumers?

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

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

What doesn't CAP do?

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

Are CAP calls confidential?


Everything CAP deals with is confidential, except:

1. Where the information clearly shows that the lawyer has misappropriated funds, engaged in criminal conduct, or intends to engage in criminal conduct in the future;
2. Where the caller files a grievance and the lawyer involved wants CAP to share some information with the Office of the General Counsel; or
3. A court compels the production of the information.

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

**Call the State Bar's Consumer Assistance Program
at 404-527-8759 or 800-334-6865 or visit www.gabar.org/cap.**

Each competition winner received a monetary award and the two graduating seniors, Brianna Bogan who will attend the University of Georgia and Chelseay Parks, who will attend Vanderbilt University, each received stipends of \$500 to help them with their college expenses. Both Bogan and Parks participated in the Pipeline Program for three years.

Many thanks to the law firms, corporations and attorneys for their continued support of the Pipeline Program: Adorno & Yoss; Alston & Bird LLP; Arnall Golden Gregory LLP; Baker Donelson Bearman Caldwell & Berkowitz, PC; Casey Gilson, P.C.; Constangy, Brooks & Smith, LLP; DLA Piper; Elarbee, Thompson, Sapp & Wilson, LLP; Equifax; Freeman Mathis & Gary, LLP; Supreme Court of Georgia; Kilpatrick Stockton LLP; Lockheed Martin-Marietta; Nelson Mullins Riley & Scarborough LLP; Parker, Hudson, Rainer & Dobbs LLP; Sutherland; Swift, Currie, McGhee & Hiers LLP; Troutman Sanders LLP; and Turner Broadcasting System, Inc. 



Marian Cover Dockery is a member of Dockery Mills LLC 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.



Alston & Bird LLP partners, associates and summer associates provided one-on-one mentoring to the Pipeline students.



Pipeline students at Marietta's Lockheed Plant. (Back row, left to right) Dianna Xu, Kristen Miller-Patton, Terrence McKenzie, Kourtney Outlaw, Faith Morris, Dwayne Daniel Jr., Nicole Martin, Trey Williams, Elizabeth Jean and Lanerica Rogers. (Front row, left to right) Brianna Bogan, Beatrice Jean-Mary, Henderson Johnson II, Chelseay Parks and Danielle Hayes.



The State Bar of Georgia
Diversity Program
presents the
18th Annual CLE and Luncheon
Sept. 29, 2010
Bar Center
Make plans now to join us.
Check www.gabar.org in the coming weeks
for details and registration information.

Kudos

>



Henn



Dial



Sweeney



Alexander



Jones



Hooker



Estrin

Kilpatrick Stockton announced that **Charlie Henn** was named a **2010 International Law**

Office Client Choice Award winner. Henn is the exclusive winner of the Intellectual Property category for the United States. The awards recognize those law firms and partners around the world that stand apart for the excellent client care they provide and the quality of their service.

Partners **Rupert Barkoff** and **Chris Bussert** were named *Franchise Times* **2010 Legal Eagles**, representing the top 131 franchise attorneys in the United States and Canada. Barkoff has been listed in this prestigious ranking every year since 2004, the first year *Franchise Times* published *Legal Eagles*.

Partner **Audra Dial** was elevated to **president** of the **Junior League of Atlanta**. Founded in 1916, the Junior League of Atlanta has more than 3,800 members. Its mission is to promote voluntarism, develop the potential of women and improve the community through the effective action and leadership of trained volunteers.

Partner **Neal Sweeney** was sworn in by Supreme Court of Georgia Chief Justice Carol Hunstein as **chair** of the **Atlanta Bar Association Construction Law Section**.

Partner **Miles Alexander** was a co-recipient of **The Selig Distinguished Service Award** presented by the American Jewish Committee Atlanta. Alexander shared the honor with his wife and son. Recipients of this prestigious award reflect the Seligs' dedication, commitment and generosity to the enhancement of the Atlanta community.

Associate **Alicia Grahn Jones** was sworn in as **vice president of public affairs** on the 2010-11 Board of the **Georgia Association for Women Lawyers**.

Partner **Wendy Choi** and associate **Cate Hart** were elected to serve on the 2010-11 **Board of Directors** for the **Intellectual Property Section** of the Atlanta Bar Association.

Intellectual Property associate **Charles Hooker** received the prestigious **Kerry Harike Joedecke Atlanta Young Lawyer of the Year Award** from the Atlanta Bar Association. Hooker was honored with the award for serving as chair of the Atlanta Council of Younger Lawyers (ACYL) Associate's Campaign for Legal Services. In addition to his award, Hooker was selected to serve on the Atlanta Bar Association's **Reputation and Public Trust Committee** and on the **Board of the ACYL Section** of the Atlanta Bar Association.

Intellectual Property associate **Lauren Estrin** was chosen from more than 200 applicants to be a member of the **L.E.A.D. Atlanta Class of 2011**. L.E.A.D. is an initiative of Leadership Atlanta designed to equip young professionals with key leadership skills and knowledge early in their professional and community service careers.

Partner **Greg Cinnamon** was selected to serve as **chair** of the **International Law Section** of the **State Bar of Georgia** and as **president** of the **University of Louisville School of Law Alumni Council**.


> **James W. "Beau" Hays** of Atlanta-based commercial and construction law firm Hays & Potter was selected as **president-elect** of the **2010-11 Board of Governors** of the **Commercial Law League of America (CLLA)**. The new board was elected during the 80th annual CLLA Spring Meeting, which was held in Chicago.

> **Rob Swartwood** was named to Congressman Phil Gingrey's **Military Academy Nomination Board**. Swartwood graduated top of his class from the U.S. Military Academy at West Point, followed by active duty in Afghanistan and Iraq as a captain. He now practices in the corporate and transactional practice at Brock, Clay, Calhoun & Rogers, LLC.


> Atlanta attorney **Mason W. Stephenson**, a partner in **King & Spalding's** real estate practice, was the 2010 recipient of the State Bar of Georgia's **George A. Pindar award**, presented annually by the Bar's Real Property Law Section to a lawyer whose lifetime contribution has been significant to the real estate bar. Stephenson received the award at ceremonies at the 32nd annual Real Property Law Institute in Destin, Fla.

> Oconee County attorney **Daniel Haygood** was installed as **president** and Mitchell County attorney **Robert Richardson** was installed as **president-elect** of the **County Attorneys Section** of the Association County Commissioners of Georgia (ACCG) for

2010-11. Established in 1914 with 19 charter members, ACCG is the consensus building, training, service and legislative advocacy organization of Georgia's 159 county governments. ACCG brings counties statewide together on matters of public policy that have special impact on local governments.

- >  **The Carter Center** named **John F. "Sandy" Smith** to its **Board of Councilors**. The Carter Center was founded in 1982 by President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. The Board of Councilors is a leadership advisory group that helps foster a broader understanding of the center's mission. Smith is a corporate and securities attorney with Womble Carlyle Sandridge & Rice, PLLC.


- >  **David Gevertz**, vice chair of **Baker Donelson's** labor & employment group, was named a **Rising Star** and one of 10 employment attorneys under 40 in the United States to watch by *Law 360*, a national newswire for business lawyers. Gevertz, a shareholder in the firm's Atlanta office, concentrates his practice on defending large- and medium-sized organizations accused of violating local, state and federal discrimination, wage and hour, privacy, drug testing and benefits laws.


- >  **Hull Barrett, PC**, announced that Augusta attorney **Davis A. Dunaway** was selected as Augusta Metro Chamber of Commerce's **2010 Top 10 in 10 Young Professionals to Watch**. Davis practices in general civil litigation practice, with an emphasis in real estate and construction litigation and insurance defense.

- >  **Brian D. Burgoon** was elected to the **Board of Directors** of the **University of Florida Alumni Association**. In addition, Burgoon was re-elected to the **Florida Bar Board of Governors**. Burgoon has represented the out-of-state attorneys on the Board of Governors since 2000. Burgoon is a sole practitioner with The Burgoon Law Firm, LLC, in Atlanta, and focuses his practice on commercial litigation, civil litigation and personal injury.

- > **The Georgia State University Athletic Association Board of Trustees** named **Gregory R. Crochet** as the new **chairman of the board**. Crochet, a partner in the Atlanta office of Kutak Rock LLP, focuses his practice on commercial and dispute resolution, particularly in the areas of banking, financial, securities, real estate and employment disputes.


- > **The Legal Aid Clinic Team** in Ballard Spahr's Atlanta office was a recipient of **Ballard Spahr's 2010 Pro Bono Award**. The team organized and staffed a clinic to provide residents of the Living Room, Inc., with living wills and advanced directives. Living Room, Inc., is a nonprofit organization that helps find affordable housing for low-income individuals living with HIV or AIDS. The team included **J. Scott Anderson, Joseph P. Anderson III, Cecilia M. Andrews, Bruce Becker, Charley Brown, David A. Cornett, Winston T. Folmar, Robin L. Gentry, John G. Graves, Kevin W. Hathcock, J. Gibson Lanier, Scott Marty, Rebecca C. E. McFadyen, Mary Anthony Merchant and D. Brian Shortell**. The Legal Aid Clinic Team designated its donation to be divided between Atlanta Legal Aid Society and Living Room, Inc.

- >  **Court of Appeals of Georgia Judge Debra Bernes** was honored by **The Atlanta Region of the University of Florida College of Law Alumni Council**. At an alumni reception held in April, Dean Robert Jerry presented Bernes with a bronze gator in recognition of her outstanding service to the legal profession.


- >  **Antavius Weems**, managing partner of **The Weems Firm, PC**, was announced as one of IMPACT and the National Bar Association's **"Nation's Best Advocates: 40 Lawyers Under 40"** to recognize talented individuals within the African-American legal community who have achieved prominence and distinction. Nominees demonstrate a strong commitment to empowering, uplifting and advocating within the legal community, and were selected based on their achievement, innovation, vision, leadership and legal community involvement.

- > **King & Spalding** received a second **Law Firm Diversity Recognition Award** from **Chevron Corporation** for its commitment to promoting diversity in the legal field. Award recipients were selected by Chevron's Law Function Diversity

Council and approved by the company's Law Function Executive Committee. As part of the award, the Chevron Law Department donated \$5,000 to a charitable organization of each honoree's choosing. King & Spalding designated the Houston Urban Debate League and the Minority Corporate Counsel Association's Lloyd M. Johnson Jr. Scholarship Program as recipients of its Chevron contribution, which the firm doubled with a \$5,000 contribution of its own.

- >  **Gilbert B. Laden, Gilbert B. Laden, P.C.**, was selected as a **2010 Alabama Super Lawyer** by *Law & Politics*. Laden's practice focuses on representing disabled individuals who are seeking Social Security disability benefits.

He is certified as a specialist in Social Security Disability Law by the National Board of Social Security Disability Advocacy and is a sustaining member of the National Organization of Social Security Claimants' Representatives.

- >  **Constangy, Brooks & Smith, LLP**, announced that partner **W. Melvin Haas** was reappointed as **vice chairman** of the **U.S. Chamber of Commerce's Labor Relations Committee**. He was first appointed to the position in 2009. Haas was also elected **executive vice president** of the **Georgia Defense Lawyers Association** and was named by *Human Resource Executive* magazine to its list of **"Top 10 Labor Attorneys in the United States."** In addition, he is included in the overall list of the **"Top 100 Most Powerful Employment Attorneys."**


- >  **Christine D. Hanley**, principal of **Christine D. Hanley & Associates, P.A.**, was selected and recognized by her peers as a **2010 Florida Super Lawyer** and was chosen as one of the **Florida Legal Elite** for 2010. Hanley also received the 2010 Small Business Person of the Year Award from The Chamber of Commerce of the Palm Beaches. This award is given to an outstanding business owner or operator whose company has excelled in management, growth, use of innovation and community contribution. In addition, Christine D. Hanley & Associates, P.A., received the **Legal Aid Society of Palm Beach County's Pro Bono Firm Award** for 2010 for the firm's commitment to pro bono service in Palm Beach County providing over 550 pro bono hours over the past year.

- > **Roger K. Quillen**, chairman and managing partner of **Fisher & Phillips LLP**, was named to **"The Top 100 Most Powerful Employment Attorneys"** by *Human Resources Executive* magazine. The magazine compiled the list of influential employment attorneys on the basis of curriculum-vitae analyses, evaluations by clients and peers and reporting by the staff of *Lawdragon*, a Los Angeles-based news and networking site for lawyers and clients.

On the Move

In Atlanta

- > **Jim Leonard** joined **Barnes & Thornburg LLP's** Atlanta office as a **partner** in the firm's litigation department. Formerly of Kilpatrick Stockton LLP, Leonard advises clients on insurance recovery and litigation issues. The firm is located at 3343 Peachtree Road NE, Suite 1150, Atlanta, GA 30326; 404-846-1693; Fax 404-264-4033; www.btlaw.com.

- >  **Mickey Ross**, formerly with King & Spalding, joined **Taylor English Duma LLP** as a member of the firm's litigation and dispute resolution group. The firm is located at 1600 Parkwood Circle, Suite 400, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenchinese.com.

- > **Beth Howard** joined **The Finley Firm, P.C.**, as an **associate**. Her practice focuses on civil litigation and workers' compensation. The firm is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; www.thefinleyfirm.com.

- > **Robert G. Wellon** announced that his office has moved. The firm is now located at 1230 Peachtree St. NE, Suite 1900, Atlanta, GA 30309; 404-942-3505; Fax 404-942-3705; www.wellonfamilylaw.com.

- > **Morris, Manning & Martin, LLP**, welcomed five attorneys to its Atlanta practice. **Of counsel Melissa A. Baratian** rejoined the real estate development & finance practice, **associate Bettina T. Drake** joined the real estate capital markets practice, **associates Catherine E. Morgen** and **Theodore E. Woodward** joined the real estate development & finance practice and **Jonathan A. Waldman** joined the corporate & commercial litigation practice. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of **Mark A. Barber, Robert N. Johnson, Michael W. Horst** and **Masae Okura** to its Atlanta office. Barber joined as a shareholder and member of the transportation and business litigation groups. Johnson joined as a shareholder in the immigration group of the labor & employment department. Horst joined as an associate and member of the transportation group. Okura joined as an associate and provides immigration counseling to multinational companies. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

>



Turner



Barbaree



Moeller



Scott

Ogletree, Deakins, Nash, Smoak & Stewart P.C. announced that **Daniel Turner, Tracey Barbaree** and **Beth Moeller** joined the firm as **shareholders**, and **Justin Scott** joined as an **associate**. All were formerly with Ashe, Rafuse & Hill, LLP. The firm is located at 191 Peachtree St. NE, Suite 4800 Atlanta, GA 30303; 404-881-1300; Fax 404-870-1732; www.ogletreedeakins.com.

>



The three-member Management Committee at **Fisher & Phillips LLP** re-elected **Roger K. Quillen** to serve as the group's **chairman** and the firm's **managing partner**. Quillen has served on the management committee continuously since 1997 and has been the firm's chairman and managing partner since 1999. The firm is located at 945 E. Paces Ferry Road, 1500 Resurgens Plaza, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; www.laborlawyers.com.

- > **Holland & Knight** announced that **Seth Cohen** joined the firm's Atlanta office as a **partner** in the firm's corporate mergers & acquisitions practice group. Cohen also co-chairs Holland & Knight's Atlanta Corporate/M&A Team. The firm is located at 1201 W. Peachtree St., One Atlantic Center, Suite 2000, Atlanta, GA 30309; 404-817-8500; Fax 404-881-0470; www.hklaw.com.

- > **Duane Morris LLP** named **Joseph Ciucci** to its 47-member **partners board**. Ciucci practices in the

areas of traditional labor law, employment litigation and employee relations matters. The firm is located at 1180 W. Peachtree St. NW, Suite 700, Atlanta, GA 30309; 404-253-6900; Fax 404-253-6901; www.duanemorris.com.

>



Boyd Collar Nolen & Tuggle announced that **Dawn R. Smith** joined the firm as **of counsel**. Immediately prior to joining the firm, Smith served as deputy director of the Atlanta Volunteer Lawyers Foundation. The firm is located at 3330 Cumberland Blvd., 100 City View, Suite 999, Atlanta, GA 30339; 770-953-4300; Fax 770-953-4700; www.bcntlaw.com.

>



Jeffrey Brickman announced the opening of **Jeffrey H. Brickman, LLC**, where he will continue to specialize in state and federal criminal defense. Brickman continues to serve as an adjunct professor at Emory University School of Law where he teaches criminal litigation. Prior to opening his own practice, Brickman most recently served as a partner at Ballard Spahr, LLP, in Atlanta. Prior to that, he served as both an assistant district attorney and district attorney in DeKalb County, and as an assistant U.S. attorney for the Northern District of Georgia. The firm is located at 511 E. Paces Ferry Road NE, Atlanta, GA 30305; 678-420-9382; Fax 404-879-9704.

- > **The Morgan Law Firm P.C.** announced its relocation. The trial boutique concentrates on business torts, including employment and intellectual property law. The firm is now located at 260 Peachtree St. NW, Suite 1601, Atlanta, GA 30303; 404-496-5430; www.morganlawpcc.com.


In Evans

- > **Hull Barrett, PC**, announced the opening of a third office in Evans, Ga., to better serve the needs of Columbia County and West Augusta. The office is located at 7004 Evans Town Center Blvd., Suite 300, Evans, GA 30809; 706-722-4481; Fax 706-650-0925; www.hullbarrett.com.

In Macon

- > **Frank H. Childs Jr., Craig M. Childs** and **William H. Noland**, partners in the law firm of Groover & Childs, announce that the firm's name has changed to **Childs & Noland**. The firm's practice is focused on trials and litigation, including personal injury and wrongful death, divorce and family law, crimi-

nal defense and governmental law. The firm is located at 165 First St., Macon, GA 31201; 478-745-4712; Fax 478-745-7373; www.childsandnoland.com.

>  **Chambless Higdon Richardson Katz & Griggs, LLP**, announced the addition of **Christi E. Horne** as an **associate**. Horne practices in the area of general civil litigation. The firm is located at 577 Walnut St., Suite 200, Macon, GA 31201; 478-745-1181; Fax 478-746-9479; www.chrklaw.com.



Grindle


Carroll

Thompson

Underwood

James, Bates, Pope & Spivey, LLP, announced that **David Grindle** joined the firm as **of counsel**, and **Ashley P. Carroll**, **Will Thompson** and **Carol Underwood** joined the firm as **associates**. Grindle's practice areas include business & commercial litigation, employment law and bankruptcy law. Carroll's practice areas include real estate, banking & financial institutions and public and affordable housing. Thompson practices in the areas of estate and asset protection planning, taxation law and business law. Underwood practices in the areas of insurance, business & commercial litigation and employment law. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jbplaw.com.

In Norcross

>  **Rubin Lublin Suarez Serrano, LLC**, a real estate default law firm, announced that **Kevin R. Fisher** joined the firm as an **associate** working within the litigation department. The firm is located at 3740 Davinci Court, Suite 100, Norcross, GA 30092; 770-246-3300; www.rubinklublin.com.

In Savannah

>  **HunterMaclean** announced that **Christy Jordan**, a health care regulatory and compliance lawyer, recently joined the firm as **of counsel** and a member of the firm's corporate law practice group. Jordan will serve clients in both the Brunswick and Savannah office. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

> **Ellis Painter Ratterree & Adams LLP** announced the opening of its **mediation & arbitration facilities** which will allow the firm to continue to serve the community in the resolution of disputes involving personal injury, construction, maritime, business, banking, trusts and estates and other civil matters. The facilities are located at 2 E. Bryan St., Suite 900, Savannah, GA; 912-233-9700; Fax 912-233-2281; www.epra-law.com.

In Toccoa

>  Sanders, Smith & Ranck, P.C., announced that **Russell W. Smith** was appointed **chief judge of the Mountain Judicial Circuit** and was sworn in by Gov. Sonny Perdue in April. The firm will continue its general civil practice as **Sanders & Ranck, P.C.**, with partners Janney E. Sanders and Brian C. Ranck. The firm also announced that **Matthew D. Skilling**, formerly with Moore, Clarke, Duvall and Rodgers, P.C., joined the firm as an **associate**. The firm is located at 597 Big A Road, Toccoa, GA 30577; 706-886-7533; Fax 706-886-0617; www.sanderssmithpc.com.

In Washington, D.C.

> **Fisher & Phillips LLP** announced the opening of a new office in Washington, D.C. The office is located at 1875 I St. NW, Suite 500, Washington, DC 20006; 202-429-3707; Fax 202-429-3709; www.laborlawyers.com.

If you have information
you want to share in the
Bench & Bar Section of
the *Georgia Bar Journal*,
contact Stephanie Wilson
at stephaniew@gabar.org.

2010 Chambers USA

Each year, Chambers USA publishes a list of the top law firms and attorneys across the United States. It determines the rankings through thousands of in-depth interviews with randomly selected attorneys, clients and businesses.*

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

Thomas William Baker
David Gevertz
Nedom A. Haley
Robert N. Johnson
Linda A. Klein
Michael J. Powell

Constangy, Brooks & Smith, LLP

Bill Clifton
W. Melvin Haas III
William K. Principe
Neil H. Wasser

Duane Morris LLP

Joseph A. Ciucci
Terry P. Finnerty
Matthew C. Gaudet
L. Norwood "Woody" Jameson

Fisher & Phillips LLP

Sarah J. Hawk
Tex McIver
Ann Margaret Pointer
Thomas P. Rebel
Douglas R. Sullenberger
John E. Thompson
Kim Kiel Thompson

Ford & Harrison LLP

Joycelyn L. Fleming
Patricia G. Griffith
David C. Hagaman
Thomas J. Kassin
John L. Monroe Jr.
Frederick L. Warren

JAMS

John. W. Hinchey

McGuireWoods LLP

Gordon R. Alphonso
Mark L. Keenan
Curtis L. Mack
Richard L. Menson

Morris, Manning & Martin, LLP

Charles "Chuck" R. Beaudrot
Fredrick C.C. Boyd III
Jeanna A. Brannon
Cassady V. Brewer
David W. Cranshaw
Jason D'Cruz
Frank W. DeBorde
John Fry
Thomas Gryboski
Bryan G. Harrison
John P. MacNaughton

Michele P. Madison
John G. "Sonny" Morris
Robert C. Threlkeld
Tim Tingkang Xia

Nelson Mullins Riley & Scarborough LLP

Jeffrey C. Baxter
Richard B. Herzog Jr.
Michael E. Hollingsworth II
Stanley S. Jones Jr.
Rebekah N. Plowman
David P. Winkle

Smith Moore Leatherwood LLP

William H. Boling
Barry S. Herrin
Tobin N. Watt

**This is not a complete list of all State Bar of Georgia members included in the publication. The information was compiled from Bench & Bar submissions from the law firms above for the August Georgia Bar Journal.*

Jim Elliott Receives James M. Collier Award

by Len Horton



Georgia Bar Foundation President Hon. Patsy Y. Porter presented the 7th annual James M. Collier award to A. James Elliott, professor and associate dean of the Emory University School of Law, at the State Bar of Georgia Annual Meeting on Saturday, June 19.

The award recognizes an individual who has done extraordinary work to assist the Georgia Bar Foundation in accomplishing its mission. It is named for James M. Collier, a

Dawson lawyer who found extraordinary ways to expand the Georgia Bar Foundation's ability to assist law-related organizations helping needful people throughout the state.

According to Porter, "Jim Elliott played a crucial role in converting IOLTA in Georgia from a voluntary program to a comprehensive program. The difference between what our cumulative IOLTA revenues are and what they would have been without Jim's efforts is extraordinary. Len Horton, our executive director, estimates that instead of approaching \$100 million, which we are now, we would be closer to about \$35 million without Jim's efforts to convince the Supreme Court of Georgia."

With the growing support of then Justice Harold Clarke and other State Bar leaders including Cubbedge Snow, Doug Stewart and Bob Brinson, who gave speeches in which he lauded IOLTA as the "painless way to give," the leadership of the judiciary was seen as crucial to the expanded success of IOLTA in Georgia. Clarke, Snow, Stewart and Brinson, nudged along by Jim Elliott and Gene Mac Winburn, became a powerful team of advocates for comprehensive IOLTA to our Court.

Porter continued, "As soon as our Court realized the significant impact that comprehensive IOLTA could have on the ability of the Georgia Bar Foundation to support Atlanta Legal Aid, Georgia Legal Services and scores of other law-related organizations throughout the state, it set a date for oral argument on the issue and shortly after that hearing decided to mandate lawyer participation. The difference has been incredible."

The truth is that it would not have happened for more than a decade if even by now without the dynamic, tenacious, insistent James Elliott.

In addition to Elliott's charm and persuasiveness in convincing the Court and Georgia's community of concerned lawyers of the need for mandating participation, Elliott made himself available as a consultant to the executive director in scores of situations where legal and other advice was needed. So often did he volunteer his support that he became virtually another staff person of the Georgia Bar Foundation.

Just Sign Here

by Paula Frederick

“ ‘ve opened a file for the Brewster matter,” your super-efficient new assistant Gilda announces as she enters your office. “His appointment is at 2:30.”

“He’s been sued for divorce, right?” you ask, taking the file from Gilda.

“Yep,” she confirms. “Take a look at the documents I’ve printed out. If they are OK, I will go over them with him when he gets here. I’ll have him fill out an intake form so I can finalize the conflicts check, then I’ll have him sign a retainer agreement and a verification form to attach to the Answer when we file it.”

“Verification form?” you ask. “We haven’t even drafted the Answer. How can we ask Brewster to swear to a document that doesn’t exist yet?”

“We did it all the time at my old job,” Gilda explains. “It’s really just an accommodation for the client. If he signs today he won’t have to come back in when we’ve finalized the Answer. He lives in Buford! He’ll be happy that he doesn’t have to make a second trip downtown.”

“That sounds great in theory,” you admit. “But you’re forgetting that the verification has to be notarized.”

“Not a problem,” Gilda announces. “I’m a notary! I’ll just sign and stamp it, and date it for the day we file the Answer. We can send Mr. Brewster a file-stamped copy.”

“Hmmmm . . . you make it sound so easy. . . but isn’t that against the law?”


“Oh, don’t be such a fuddy-duddy! What could go wrong?” Gilda replies.

Plenty.

The Bar regularly receives grievances that could have been prevented by simple adherence to the law governing notaries. The problems take many forms—a lawyer may require that staff notarize documents before they are signed, or date documents for a different day than the signing occurred. Things do go wrong, even with these seemingly harmless shortcuts.



Just ask the lawyer/notary whose witness died unexpectedly two days *before* the date he supposedly made a sworn affidavit!

Lawyers, of all people, should understand the potential for fraud from allowing shortcuts in the notary process. Take the process seriously, and never ask your notary employees to break the rules! 



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

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Discipline Summaries

(April 16, 2010 through June 14, 2010)

by Connie P. Henry

Voluntary Surrender/Disbarments

Jeffrey Brooks Kent

Marietta, Ga.

Admitted to Bar in 1993

On April 19, 2010, the Supreme Court of Georgia disbarred Jeffrey Brooks Kent (State Bar No. 415155). The following facts are admitted by default: A client hired Kent to collect a \$592,000 debt. Kent filed a complaint but failed to serve the corporate defendant, which resulted in the case being dismissed against the defendant. Kent failed to file a proposed scheduling/discovery order by the court's deadline and then stipulated to the dismissal of the case without his client's consent. Kent failed to communicate with his client during the representation, and after he was terminated, he failed to refund the fee or send the file to his client's new counsel as requested. Although Kent was served with the Notice of Investigation and acknowledged service, he did not submit a response and did not cooperate with the investigation.

Marcus Stan Ballew

Tifton, Ga.

Admitted to Bar in 1976

On April 19, 2010, the Supreme Court of Georgia disbarred Marcus Stan Ballew (State Bar No. 035750). A client retained Ballew to represent her and her children in connection with a 2001 automobile accident. The client testified that Ballew did not tell her about the \$14,000 settlement, about which she was unaware until 2007; the client also does not recall Ballew telling her about settlement offers for her children before 2006 or 2007. Ballew settled his client's claim for \$14,000 and received a check in August 2003, but he did not provide the client with an

accounting reflecting distribution of that money. Ballew settled the children's claims for \$17,500 and endorsed the settlement checks by signing the client's name. Ballew's former employee testified that she recalled discussing settlement offers with the client. The former employee testified that the client knew about and approved the children's settlement offers.

The Special Master found that the former employee lacked credibility. The Special Master found that Ballew made payments to his client over the years, which he contends came from his personal funds. The client thought the funds were advancements; she did not know they were part of her settlement funds. Ballew did not place the funds into his attorney trust account (although he sent the client checks from his trust account). Ballew did not inform his client about the receipt of the funds and did not provide her with an accounting. In February 2007 Ballew offered to give the client \$500 a month for 15 months to "buy the peace" between them. In April 2007 he offered to buy her a car for the same reason. Ballew signed his client's name to settlement documents and directed his employees to falsely notarize some of them; he stated that he believes the notary seal on the settlement documents is "surplusage." The Special Master found clear and convincing evidence that Ballew violated Rules 1.2(a), 1.3, 1.4, 1.8(e), 1.15(I), 1.15(II), 3.2, 8.4(a)(4) and 9.2 of the Georgia Rules of Professional Conduct. The Special Master recommended disbarment.

The Review Panel found that testimony of Ballew's former employee was credible. The Review Panel found the evidence in conflict and that it did not support a finding by the clear and convincing standard that she did not know about or approve the settlement. The Review Panel recommended as punishment a one-year

suspension with the condition that Ballew successfully complete the Law Office Management Program.

The Supreme Court held it is not bound by the Review Panel's findings of fact or conclusions of law. It determined that the Special Master observed the former employee's demeanor and was in the best position to determine her credibility. The Supreme Court ordered that Ballew be disbarred. Justice Harold D. Melton dissented.

Benjamin S. Eichholz
Savannah, Ga.

Admitted to Bar in 1976

On June 1, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Benjamin S. Eichholz (State Bar No. 242350). Eichholz pled guilty in federal court to a felony charge of obstruction of a Department of Labor investigation.

Lea Lange London
a/k/a Lea London Podany
Cleveland, Ga.

Admitted to Bar in 1995

On June 1, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Lea Lange London (State Bar No. 456610). On May 22, 2008, London pled guilty in the Superior Court of White County to the felony charges of one count of distribution of a controlled substance (Fentanyl), and one count of crossing a guard line with and delivering a controlled substance (Fentanyl) to an inmate. London was initially sentenced on March 12, 2009, but the Court thereafter issued orders amending that sentence on June 8, 2009 and on Aug. 21, 2009.

Suspensions

Michael B. Seshul Jr.
Prescott, Ariz.

Admitted to Bar in 2002

On May 3, 2010, the Supreme Court accepted Michael B. Seshul Jr.'s (State Bar No. 617061) Second Petition for Suspension Pending Imposition of Final Discipline.

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Seshul pled guilty to one felony count of aggravated assault and one misdemeanor count of battery in March 2009. The Court rejected Seshul's previous Petition because he included the condition that imposition of any final disposition be entered *nunc pro tunc* to the date of the interim suspension order. The Court accepted the Second Petition, which did not include that condition.

Michael B. Wallace

Atlanta, Ga.

Admitted to Bar in 1994

On May 3, 2010, the Supreme Court accepted Michael B. Wallace's (State Bar No. 734183) Petition for Voluntary Discipline and ordered that he be suspended for a period of 60 days. Wallace's actions led him and his client to fail to appear at a hearing. After his client obtained new counsel, Wallace misrepresented to the client's new counsel the cause of missing the hearing.

In aggravation of discipline the Court found that Wallace received a letter of formal admonition in 2007 and an Investigative Panel reprimand in 2009.

Charles Philip Giallanza

Snellville, Ga.

Admitted to Bar in 1983

On June 1, 2010, the Supreme Court suspended Charles Philip Giallanza (State Bar No. 292510) indefinitely from the practice of law in Georgia. Six separate grievances were filed against Giallanza based on his mishandling and misappropriation of client funds. The State Bar sought a mental health examination for Giallanza. The psychologist conducting the evaluation concluded that Giallanza showed significant cognitive impairments. The Court conditioned Giallanza's reinstatement upon his providing to the Review Panel certification from a board certified psychiatrist that he is mentally competent. The Court also ordered that all pending disciplinary matters be placed on inac-

tive status pending any application for reinstatement.

Suspension Lifted

John M.B. Lewis IV

Augusta, Ga.

Admitted to Bar in 1986

On April 19, 2010, the Supreme Court of Georgia accepted Respondent's petition to lift his 24-month suspension and ordered that he be reinstated as an attorney licensed to practice law in the state of Georgia. Respondent was suspended on Oct. 7, 2007, due to his guilty plea to one count of possession of cocaine, for which he received First Offender treatment.

In support of his petition, Lewis submitted a letter from the State Bar of Georgia Lawyers Assistance Program certifying that he successfully participated in the program; that he undertook comprehensive treatment; and that he not only met the Court's conditions for lifting the suspension, but also took steps to address the concerns cited in the dissenting opinion *In re Lewis*, 282 GA. 649 (651 SE2d 729) (2007). He also submitted letters from various counseling professionals who provided extremely positive comments regarding his treatment and recovery. The Court ordered that Lewis continue to be monitored by the Lawyers Assistance Program on a quarterly basis until such time as his treating professionals and the Lawyers Assistance Program agree that he no longer needs professional consultation.

Review Panel Reprimands

Kevin Schumaker

Jonesboro, Ga.

Admitted to Bar in 2005

On April 19, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Kevin Schumaker (State Bar No. 142201) for a Review Panel reprimand. While Schumaker was employed as a public defender in 2007 and 2008, four clients filed grievances against him. He admit-

ted that he failed to communicate with reasonable diligence and promptness with two of the clients.

With respect to all of the Notices of Investigation issued in response to the four grievances, he failed to timely file a written response under oath within 30 days and instead filed his responses months later in April 2009.

With respect to the claims of two other clients, the State Bar felt there was insufficient evidence that Schumaker violated any disciplinary rule other than Rule 9.3.

In mitigation of discipline, Schumaker stated that he sought treatment for depression and alcoholism prior to the receipt of the Notices of Investigation; he sought treatment from the state of Georgia's Employees Assistance Program and private health providers; he employed the assistance of the State Bar of Georgia's Lawyer Assistance Program; and he continues to be actively involved in local 12-step groups, attending an average of seven meetings per week. He also stated that after he was given an interim suspension for failure to respond to the Notices of Investigation, he resigned from his job in September 2008 to focus on his health problems, and did not seek reinstatement until April 2009.

Kindall Grant

a/k/a Laliah Powell

Savannah, Ga.

Admitted to Bar in 1992

On April 19, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Kindall Grant (State Bar No. 586225) for a Review Panel reprimand. In March 2006 Grant admitted that she handled a real estate closing in which her clients were the sellers; that she directed her paralegal to handle aspects of the closing; that without her knowledge the paralegal fielded questions from her clients regarding the transaction and told them, falsely, that they needed to send an additional \$2,000; and that the paralegal then stole the

\$2,000 as well as other funds Grant was supposed to be maintaining in her attorney trust account. In August 2006, Grant admitted to the clients that she had not properly closed the transaction or adequately supervised the paralegal and she sent the clients the documents they needed to sign in order to complete the transaction, but the clients received a foreclosure notice because Grant had not closed the transaction and the mortgage company filed adverse credit reports against the clients with credit reporting agencies. Grant stated that once she received the signed documents back from her clients, she recorded the closing documents and sent letters of explanation to the credit agencies and that the clients' loan was later paid off and canceled of record. Grant admitted that she failed to carefully review the records relating to her attorney trust account, opting for quarterly reconciliations. She admitted that her records did not reflect at all times the exact balance held for

each client or third person. Grant stated that the paralegal eventually entered a guilty plea to felony theft, financial identity fraud and forgery; and that Grant reimbursed the clients for the \$2,000 the paralegal had stolen from them.

In another matter in 2005 she became an issuing agent for a title insurance company. In January 2007 when the company terminated her, she immediately sent a number of underwriter remittance premiums to it and returned all unused policy jackets in her possession. A large number of title insurance policies remained outstanding for which she had not properly accounted either by returning the policies unissued or by remitting the premiums collected and owed to the company on those policies. Grant said she eventually paid for all policy premiums and other associated costs and accounted for all unissued policies.

Grant offered in mitigation, that she cooperated with the State Bar in submitting a petition for volun-

tary discipline; that she is sincerely remorseful and accepts responsibility for her misconduct; that she has no prior disciplinary record; and that she has repaid her clients for the funds stolen by the paralegal, and has accounted to the title insurance company for all title policies and premiums.

Interim Suspensions

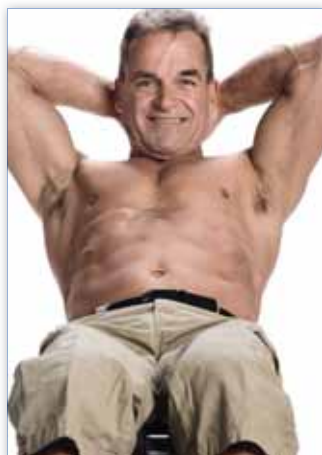
Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 15, 2010, three lawyers have been suspended for violating this Rule and none have been reinstated. (CBJ)



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

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Capturing Time in the Law Office

by Natalie R. Kelly

This article is a reprint of the article, "Capturing Time in the Law Office" that appeared in the October 2005, Vol. 11, No. 2, issue of the Georgia Bar Journal.

Whether you begrudgingly track time or are a real stickler about doing it every day, time tracking is an essential part of every lawyer's practice. Reviewing your current time tracking techniques can help identify weaknesses and lead to the discovery of more effective methods of dealing with this onerous task. Improved time tracking is a skill that is easily learned, and with today's technology it is easier than ever to keep up with.

Regardless of the type of law you practice, the only way to determine the profitability of your work is by tracking time spent on any given matter. Flat-fee bill lawyers, listen up. It is important for you to know whether you are losing or making money on matters. You can only determine this by tracking the amount of time you have worked on a matter and recording the expenses on the file. With proper time tracking, you will also have a record of the work you have done, and this can help immensely with the court or client that comes asking what was done on the file.

The most common way of tracking time is by writing it down on paper—listing what you have done and for how long. These pieces of paper, the stock in trade for lawyers, eventually make it to the bookkeeper or other accounting staff person to begin the billing cycle. If not handled properly, these pieces of paper can make the lawyer pay a price in terms of lost time and/or profit.




The other method for getting time to the billing stage is to dictate the information so that a paralegal or other legal assistant can transcribe it and enter it into a system that can bill it out. There is even a multi-step method that allows the paralegal or legal assistant to record time spent on any given matter and input it into the billing system at a later time. Because the time information can go through so many different transformations, it is easy to see that the likelihood of data entry errors and the mismanagement of information are increased in inefficient time tracking scenarios. Again, this can result in lost time and/or profit. This is especially true when the firm does not have a good pre-bill and final billing process.

The good news is that there are many methods of tracking time. Some of these not only address how many times information must be transformed before entering the final bill stage, but ensure that the frequency of time capture is such that time is not lost due to the egregious method of the lawyer recreating the time at the conclusion of a matter as opposed to tracking time as work is performed. Lawyers who track more time can bill more time, and consequently, can position themselves to receive more money.

Efficient time entry is accomplished best by using technology. Today's time and billing applications allow attorneys to directly input time. The popup timers in many of the programs keep track of time as it passes and the lawyer simply provides the work details and stops to the timer to enter the duration of the task performed. To ensure constant access to the process, many handheld devices and remote entry options are available for time tracking as well. These automated methods make it easier for lawyers to keep time as they work.

Regardless of the chosen method, make sure you:

- retain detailed information on the work performed
- keep track of the actual amount of time worked
- record both billable and non-billable time
- use terminology that will translate into an easily understood bill
- avoid redundancy in time capture techniques prior to getting information into your billing system

The bottom line is your time tracking techniques can usually be improved. There are many options when it comes to time tracking and billing programs. The Law Practice Management Program can help you choose proper time tracking techniques and tools so you can move toward a more productive and profitable practice. 



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

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Savannah Bar Association

A Commitment to Service

by Linda G. Edwards and William K. Broker

New leadership was sworn in to the Savannah Bar Association at the annual cocktail reception held at the Telfair Academy of Arts & Sciences on June 10. William K. Broker of Georgia Legal Services' Savannah Regional Office was sworn in as president. He is joined by Gregory Sapp of the Sapp Law Group as president-elect; Roy Paul of Bart, Meyer & Co., as treasurer; and Wendy Williamson of the Mediation Center as secretary.

Broker's election as president is consistent with the Savannah Bar Association's long tradition of service to those unable to afford attorneys. The newly elected president has worked as the managing attorney of the Savannah Regional Office of Georgia Legal Services since 1984. A native of Glynn County, Broker has adopted Savannah as his home and currently resides in the First City with son Aidan, 9, and daughter Sheridan, 7.

Broker has been a strong advocate for those in need and has worked tirelessly helping to strengthen the foundation for a service so widely needed. Prior to the

existence of Georgia Legal Services, the Savannah Legal Aid Society was the expression of the Savannah Bar's determination to make legal assistance available to those unable to afford it. It was the vision of the late Hon. H. Sol Clark, along with others, who championed this work and became strong supporters of Georgia Legal Services when it came into existence. In addition to his commitment to his work with Georgia Legal Services, Broker is dedicated to helping the local bar find ways to be a part of the delivery of legal services to the poor.

This mission is most recently evidenced by the "Ask A Lawyer" Day held on May 28 and sponsored by the Pro Bono Project and the Young Lawyers Division of the Savannah Bar Association. Recruited by Paul Painter III, 28 attorneys agreed to come into the local legal services office on a Friday morning and meet with individuals in need of legal assistance who are unable to pay for it. In one morning alone, 10 attorneys were able to assist 24 individuals who otherwise would not have had the opportunity to discuss their legal issue with an attorney. Painter recruited the attorneys and Georgia Legal Services helped locate the clients and housed the event.

Broker has also worked in various ways to facilitate the connection of local lawyers with pro bono work. Ten years ago, working with local volunteer and current Georgia Legal Services Program Treasurer Mark Schaefer, Broker worked to form the Savannah Hospice



(Left to right) 2010-11 Savannah Bar Association officers Roy Paul, treasurer; Wendy Williamson, secretary; Bill Broker, president; and Greg Sapp, president-elect.

Pro Bono Project. This was a collaboration of a local nonprofit, Hospice Savannah, Inc., and Savannah attorneys interested in doing work on behalf of hospice patients and their families who otherwise could not afford attorneys. The provision of services included not only the easily anticipated wills and other advance directives, but also assisting families in getting access to bank accounts and understanding how to best prepare for death from a legal standpoint.

Georgia Legal Services also offers a unique opportunity for Savannah attorneys who are no longer interested in or able to continue their practice. Attorneys wishing to remain engaged in the practice of law without the demands of their earlier work can continue to engage with other lawyers in assisting the community through the Senior Volunteer Attorney Project. The project was recognized by the State Bar of Georgia in 1997 with the William B. Spann Award and has hosted more than 50 attorneys who have retired, are "between jobs" or just starting out and have not yet found the right niche in which to practice.

It is through these various opportunities that the Savannah

Office of Georgia Legal Services has become adept at building on the talents of individuals who can provide legal services to low-income people—a service that would otherwise be unavailable.

Having served on the Board of Governors of the State Bar of Georgia, the State Bar Investigative Panel and for several years on the Executive Committee of the Savannah Bar Association, Broker brings to his position as president of the Savannah Bar Association not only zeal but the practical experience needed to merge the legal needs of low-income Savannahians with the talent local lawyers are willing to bring to the table. These efforts are an integral part of building the community all lawyers have a role and responsibility in championing.


"I am always overwhelmed with the willingness most lawyers have to do pro bono work. The frustration lies in our inability to build on this willingness and make opportunities for service available to these attorneys. That is clearly an important work the Savannah Bar Association and Georgia Legal Services share."

Now sitting uniquely at the helm of both entities, Broker plans to engage the specialty bars in the community in recognizing oppor-

tunities for service. The Savannah Young Lawyers Division, the Port City Bar Association, the Catholic Lawyers Guild and the Savannah Chapter of the Georgia Association for Women Lawyers have all indicated interest in identifying specific projects in which the members can be engaged to not only build on the success of their individual bars, but to make service an integral component of the work of those bars.

An emerging component which plays an important role in the ability of the Bar to serve has been the location of the Coastal Office of the State Bar of Georgia in Savannah. Broker credits Coastal Office manager Linda Edwards with playing a vital role in letting Savannah attorneys know how valuable the presence of the State Bar can be in making Bar services, meeting space, training and other benefits of Bar membership available to those interested in service.

"Service is without question what it is all about. It's my hope that we can corral the Savannah Bar, Georgia Legal Services, specialty bars and our local State Bar office into a model of service for our community. Attorneys have a unique talent and franchise that is best exercised in a spirit of service," Broker concluded.

The coming year promises to be an exciting one for the Savannah Bar Association. 



Linda Edwards is the office administrator at the State Bar of Georgia's Coastal Georgia Office in Savannah and can be reached at lindae@gabar.org.



William K. "Bill" Broker is the current president of the Savannah Bar Association and managing attorney for the

Savannah Regional Office of the Georgia Legal Services Program.

Fitzgerald Flavor

Rich in History and Diversity

by Bonne D. Cella

It was a Union drummer boy who became a prominent Indiana attorney in the 1890s who first imagined the formation of this small town in South Georgia. P.H. Fitzgerald, a veterans' pension attorney, envisioned a place where aging Union soldiers could live their remaining years in a comfortable climate away from harsh winters and unrelenting droughts.

Fitzgerald, also an editor, owned the *American Tribune* newspaper during the paralyzing depression and drought in the Midwest in the 1890s, he and other editors sent out a call for help across America through the nation's newspapers. Georgia was the first state to respond, sending trainloads of food to feed the hungry even though her own people were suffering from their own hardships. This act of kindness from the state of Georgia did not go unnoticed by Fitzgerald. While continuing to help the Union veterans, he petitioned Georgia Gov. William J. Northen (a Confederate veteran who must have received teasing about his surname resembling the name of the enemy) for assistance. Together they organized the American Tribune Soldiers' Colony Company, selling enough stock in the North to purchase 50,000 acres of pine forest in South Georgia. The new colony — "open to all good people" — saw a great movement southward with some 2,700 Union veterans and their families eventually settling among their former enemies.

When building the new city, (laid out in a perfect square with brick streets reminiscent of Savannah and Charleston) seven streets were named for Union generals



Photos by Bonne D. Cella

Fitzgerald attorney Ben Mills and wife, Gudren, in the dining room of their restored home.

and seven streets were named for Confederate generals (the fire department happens to be located right off of Sherman Street). The first school opened in 1896 with children from 38 states and two territories. A festival of thanksgiving was organized that first year to celebrate the success of the colony. Separate parades were planned —



Artwork in The Blue and Gray Museum, located in Fitzgerald.

one for the Blue and one for the Gray—but when the band began to play the National Anthem, all of the veterans stood side by side and marched together uniting the town.

The Blue and Gray Museum located in the old railroad depot is a must see with more than 1,200 artifacts and photographs on display that tell the story of Fitzgerald and its Civil War roots. To keep the rich history of Fitzgerald alive, re-enactments of the Parade of Unity and the Roll Call of the States continues to this day. The capture site of Jefferson Davis is eight miles southwest of Fitzgerald in Irwinville. The Jefferson Davis Museum there has interesting Confederate relics and an excellent video presentation chronicling the last days of the Confederacy.

Another unique aspect of Fitzgerald are the Burmese chickens that are found near many homes and businesses. In the 1960s Georgia's Department of Natural Resources stocked Burmese chickens all over the state as an additional game bird like pheasants or quail. Those released along the Ocmulgee River made their way to Fitzgerald and there they stayed—propagating and prospering. It is almost like

they took a cue from Fitzgerald—settling in a place that is inviting and open to all! Residents have a love/hate relationship with the fowl because they tend to wake up early with a rousing *cock a doodle doo* and cause traffic problems when lines of baby chicks follow their mothers across the street. But those that like the colorful fowl claim they help to keep bugs away. The Wild Chicken Festival is held every year in March in celebration of these curious inhabitants.

New York Times best selling author Frances Mayes was born and raised in Fitzgerald. Her childhood home on Grant Street is where she read Nancy Drew mysteries that fueled her imagination. Mayes' *Under the Tuscan Sun* stayed on the bestseller list for 142 weeks and her novel *Swan* (the original name of Fitzgerald) is loosely based on family and characters she knew in Fitzgerald.

Fitzgerald¹ attorney Ben Mills has practiced law for 51 years there and enjoys his unique town and takes pride in sharing its heritage. He and his wife, Gudren, also love living in their unusual home—a 12,000 square foot dwelling that was once



A local Burmese chicken on the lookout in its adopted home of Fitzgerald.

known as The Roanoke Primary School built in 1938. Rescued by the Mills in 1979 and lovingly transformed, the family room was once the school's auditorium—complete with its own kitchen (one of three on the property). Mills restored many of the beautiful antique pieces in the home and his wife, an avid art collector, has a wonderful flair for design. This remarkable home is not unlike Fitzgerald—warm and welcoming. Rich in history and diversity, the whole idea was envisioned by one who happens to be an attorney. GBI



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

Endnote

1. Fitzgerald, part of the Cordele Judicial Circuit, has 18 attorneys listed in the State Bar of Georgia directory. The oldest law firm, Jay Sherrill Smith & Braddy, saw its beginning in the earliest days of the settlement.

Sections End of Year Wrap-Up

by Derrick W. Stanley

Amelia Island was the backdrop for the 2010 State Bar of Georgia Annual Meeting where the Section Awards were announced as well as the final approval of the 43rd section of the State Bar.

Annual Meeting Events

Friday, June 18, started off with a bang after the Opening Night Festival, which was co-sponsored by many sections (please see box on page 84). The General Practice and Trial Section Law, chaired by W. Pope Langdale III, held the annual Traditions of Excellence Breakfast and announced the 2010 recipients. The Tradition of Excellence Awards have become one of the most prestigious honors a lawyer or judge can receive. They are predicated on age, years of practice and service to the public and bar. The 2010 recipients are: Ray Persons, Atlanta (defense), George "Buddy" Darden, Atlanta, (general practice), Hon. Hugh Lawson, Macon (judicial) and Andrew M. Scherffius, Atlanta (plaintiff). As is the case every year, the breakfast and awards ceremony was presented to a capacity crowd.

At the same time as the Traditions of Excellence Breakfast, the Tort and Insurance Practice Section, chaired by David Charles King, was having its annual breakfast meeting.

Once the breakfast meetings concluded, the Plenary Session and awards presentation began. After a variety of awards were distributed, the annual Section Awards were presented. These awards are given to outstanding sections for their dedication and service to their areas of practice, and for devoting endless hours of volunteer effort to the profession:

- Section of the Year:
Business Law Section, Edgar Cleveland Snow Jr., chair
- Awards of Achievement:
Corporate Counsel Section, L. Briley Brisendine Jr., chair; Dispute Resolution Section, John A. Sherrill, chair; Family Law Section, Tina Shadix Roddenbery, chair; and Intellectual Property Law Section, Andrew Crain, chair

Later the same day, the Judicial Section, chaired by Hon. Anne B. Workman held their annual meeting and luncheon.

The Criminal Law Section hosted a Lunch and Learn CLE presentation. Thomas Meaker, PhD, with NMS Labs, discussed how a toxicology lab views the Melendez-Diaz Supreme Court Decision and presented a PowerPoint "walkthrough" of a toxicology laboratory and the equipment used. Meaker ended the session by opening the floor to questions. Mike Cranford, the section's chair said "Dr. Meaker's PowerPoint clearly shows that most laboratories are willing to work with both the prosecutor and defense to ensure accurate results."

"Meet the 2010 Court of Appeals of Georgia Candidates" was a lunch program held by the Appellate Practice Section, chaired by Amy Levin Weil. Christina Smith, chair-elect of the section described the program as follows, "The Appellate Practice Section members held this panel lunch to give attorneys across Georgia the opportunity to hear from the candidates for this important statewide judgeship. The five panelists come from differing legal backgrounds, so it was interesting to hear their responses to the questions that were posed." *The Daily Report* videotaped the program which can be viewed at <http://multimedia.dailyreportonline.com/coaforum/>.

The Labor and Employment Law Section, chaired by D. Albert Brannen Jr. co-sponsored a reception with the Women and Minorities in the Profession Committee. Additionally, the General Practice and Trial Law Section held their Traditions of Excellence reception. Both receptions offered the attendees an opportunity to network in a festive environment.

On Saturday, June 19, the Board of Governors of the State Bar of Georgia unanimously approved the formation of the Nonprofit Law Section. The formation of the section was completed by the efforts of Brooks Wallace Binder III and Cassady Vaughn Brewer, who will serve as the co-chairs during the section's first year.

The purpose of this section shall be to establish and maintain, as an integrated group, members of the State Bar of Georgia who are legal advisors in the field of nonprofit law; to provide an opportunity for the exchange of information and ideas; to improve the professional responsibility with respect to the practice of nonprofit law; to provide, serve and act as a central association and forum for the study, discussion, resolution, collection and dissemination of ideas, information, data, conclusions and solutions with respect to, and com-



(Left to right) Winners of the 2010 Traditions of Excellence Award with General Practice and Trial Law Section Chair W. Pope Langdale III, Andrew M. Scherffius (plaintiff), Hon. Hugh Lawson (judicial), George "Buddy" Darden (general practice) and W. Ray Persons (defense).

Photos by Sarah I. Coole and Derrick W. Stanley



(Left to right) Business Law Section Chair Edgar C. Snow receives the Section of the Year Award from President Bryan Cavan.

mon problems created by, the field of nonprofit law.

Should you desire to join the Nonprofit Law Section, please download the application that can be found on the "How To Join a Section" link at www.gabar.org/sections.

Local Events

The Intellectual Property Law Section sponsored one lunch program in May and two programs in June. *IP Law: Private Rights and the Public Interest* was held on May 24 at the Bar

Center. The Copyright Committee of the Intellectual Property Law section arranged a panel discussion on Public Rights and the Public Interest. The panelists included: Hon. Stanley Birch, U.S. Court of Appeals for the 11th Circuit; Joe Beck, Kilpatrick Stockton, LLP; and David Shipley, University of Georgia.

On June 2, the section held *U.S. Design Patents: 101 and Beyond*. The discussion included how design patents are often an overlooked option for protecting product design and how they can provide

valuable protection at a reasonable cost. During this presentation, the panelists explored the basics of design patents, recent developments in the law and techniques for broadening a design patent's scope. This program was held at Kilpatrick Stockton LLP.

The Antitrust Law Section presented *Through the Eye of the (American) Needle: Current Issues in U.S. Antitrust Law* on June 10 at Alston & Bird LLP. Stephen Calkins, associate vice president and professor of law at Wayne State University, moderated this discussion.

On June 16, *Local Patent Rules for the Northern District of Georgia* was held at the State Bar by the Intellectual Property Law Section. The Local Patent Rules for the Northern District of Georgia governing pretrial procedures for patent infringement and invalidity claims were enacted nearly six years ago in July of 2004. During this workshop, the panelists discussed whether the Local Patent Rules are achieving the goals for which they were enacted, compared and contrasted the Rules with practices in other jurisdictions, and discussed potential ways to improve the Rules. The workshop

featured a presentation of the results of a survey of local patent litigators, along with comments from a panel of experienced practitioners. Panelists included: Doug Salyers, Troutman Sanders LLP; Bill Capp, Duane Morris LLP; and Steve Moore, Kilpatrick Stockton LLP.


The International Law Section and ICLE sponsored *The Global Movement of Goods* on June 24 at Kilpatrick Stockton LLP. This is the second in a series of four CLE programs on international law and the global movement of products and services. Later that evening, the Intellectual Property Law Section held their annual Summer Social. Students, summer associates and attorneys showed up for this reception that was held at Tin Lizzy's in Midtown.

The Franchise and Distribution Law Section held their annual meeting on June 29 at the offices of DLA Piper. During the luncheon, the section elected a new slate of officers, and Perry McGuire and Phillip L. "Les" Wharton facilitated a discussion titled *The Accidental Franchisor*.

On June 30, the Technology Law Section held its annual meeting

and luncheon at Morris, Martin & Manning, LLP. Stephen Weizenecker, partner at Lewis, Brisbois, Bisgaard & Smith, presented the program *Apps: Traps and Maps. Oh My! A survey of legal issues for digital media distribution*. After the presentation, the section conducted its annual meeting.

Many sections conduct annual meetings during the month of June electing new officers at the end of the Bar year, which runs July 1 – June 30. Section officers can be found on the section web pages at www.gabar.org/sections.

Belonging to a section ensures that you will receive notification of upcoming meetings and events. You will also have the opportunity to network with your peers before and after the meetings. For more information on how to join a section, please visit www.gabar.org/sections or contact Derrick Stanley at 404-524-8774 or derricks@gabar.org. 



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

Thanks to the following sections for contributing to the success of the 2010 State Bar of Georgia Annual Meeting

Gold

Labor & Employment Law
Tort and Insurance Practice

Silver

Criminal Law
Real Property Law

Bronze

Intellectual Property Law

Copper

Elder Law
Workers' Compensation Law
Eminent Domain Law
Health Law
Individual Rights Law
Taxation

Other

Administrative Law
Animal Law

Appellate Practice
Creditors' Rights
Employee Benefits Law
Entertainment and Sports Law
Environmental Law
Franchise & Distribution Law
General Practice & Trial
Immigration Law
Judicial
Technology Law

General Practice and Trial Law Section Lawyers Step Up to the Plate

by Mike Monahan

The State Bar of Georgia General Practice and Trial Law Section hosted a free “Ask-a-Lawyer” day in 12 cities in Georgia on Thursday, May 20. The clinics were held in Albany, Augusta, Brunswick, Dalton, Douglasville, Gainesville, Macon, Rome, Savannah, Valdosta and Waycross.

The free statewide advice clinic program was aimed at providing help to local low-income families and seniors. The General Practice and Trial Law Section, one of the largest sections of the State Bar of Georgia, partnered with Georgia Legal Services Program (GLSP) and the State Bar of Georgia Pro Bono Project in hosting the event. More than 120 lawyers from the section volunteered their time to provide free consultations to more than 300 clients in the areas of consumer law, wills and powers of attorney and family law.

The pro bono event was lead by Valdosta attorney, William “Pope” Langdale III, chair of the section. “The General Practice and Trial Law Section of the State Bar is comprised of attorneys from all corners of our state, with diverse practices ranging from consumer law to criminal law, and domestic relations to personal injury. As such, our section is often referred to as Georgia’s largest law firm,” said Langdale. “And, with such talented attorneys located

across the state, it is our duty to give back to our communities, and we can do so by helping serve those who are unable to afford the legal services that so many of our members can provide. We are proud to have had this opportunity to partner with Georgia Legal Services in this first ever statewide pro bono event, and look forward to making this an annual event.”

“Lawyers all over Georgia often tell me they recognize how critical the services of GLSP are to addressing serious legal problems that low-income families in their communities have,” said Phyllis Holmen, executive director of GLSP. “This event offered a great opportunity for volunteers to take part in the solution on a very local level. We’re very grateful to all the volunteers who stepped up to meet some new clients!”

“Lawyers are in short supply in many parts of the state,” said Mike Monahan, director of the State Bar of Georgia Pro Bono Project. “With the majority of the state’s lawyers in Atlanta, and the majority of low-income households outside Atlanta, the burden of pro bono services falls heavily on small town and small city lawyers,” he added. “We’re very appreciative of the wonderful effort on the part of the Bar’s General Practice and Trial Law Section.”



Macon-area lawyers who participated in the Ask-a-Lawyer Day are (left to right) Stephen Barnes of Stephen N. Barnes Jr. LLC; Mike Smith of Clark & Smith Law Firm LLC; Jenny Stansfield, Tyler Bryant, and Stuart Walker all of Martin Snow LLP. Not pictured: Christopher Arnold of Jones, Cork & Miller LLP; and Monica Wilburn.



Albany participants included: (Back row, left to right) Gail S. Pursel of Gardner, Willis, Sweat & Handelman; Thomas G. Ledford of Ledford Law Firm, LLC; Tommy Duck of Thomas V. Duck III PC; Greg Fullerton of Watson Spence LLP; (Front row, left to right) Lorilynn Daniel, GLSP Pro Bono Coordinator and Loyless Harris, GLSP paralegal.

Casemaker 2.2

A Benefit For All Georgia Attorneys

by Sheila M. Baldwin

Legal research through the State Bar of Georgia's Casemaker is becoming more widely used as attorneys make every effort to keep client services affordable while maintaining quality representation. Casemaker is not just for the solo practitioner or small firms. Many mid-sized firms, as well as a few of the large firms, conduct their initial searches in Casemaker. If you are looking to use this benefit for the first time, this article will address some frequently asked questions about Casemaker.

What Cases are Available?

Casemaker is divided into federal and state libraries. States that are Casemaker consortium members have customized databases to give their members access to the most relevant material (see fig. 1). Georgia case law has been expanded to include cases back to 1887, with the 11th Circuit going back to 1879. All state libraries contain at a minimum, case law, statutes and the state

constitution. Case law for all 50 states goes back to 1950, with many states having pre-1899 coverage. Multistate searches of case law are provided as an option. The federal library contains the Supreme Court, district and circuit courts, bankruptcy opinions, federal court rules, the U.S. Code, code of federal regulations and the U.S. Constitution, as well as some specialty appeals courts.

How Often are Cases Published?

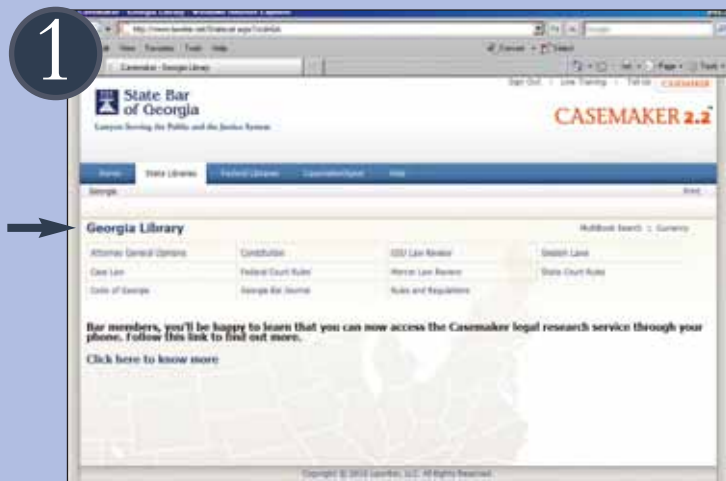
According to the editorial staff at Casemaker, cases are collected and published within 24 hours of release from the courts.

Can I Search Federal and State Libraries at the Same Time?

Casemaker 2.2 includes several new features such as the ability to search in state and federal libraries from one screen using the "All Jurisdiction" drop down tab (see fig. 2).

Does Casemaker Summarize Cases?

CasemakerDigest provides a summary of recent decisions based on area of law, court or judge. The Casemaker editors write the summaries, categorize them by topic and make the summaries available through the online service, e-mail or even RSS feed (see fig. 3).



We offer Casemaker training classes four times a month. Upcoming training classes can always be found on the State Bar of Georgia's website, www.gabar.org, under the News and Events section. Onsite Casemaker training can also be requested by local and specialty bar associations.

Is There a Shepardizing Feature to Casemaker?

Casemaker addresses this subject in their FAQs in the help section:

Casemaker's unique CASE check function allows the user to achieve this on their own. After locating a case, users are provided with the full text of all cases that discuss the case in question. In addition, Casemaker puts the user in the exact location where the case in question is cited by the subsequent case. This allows users to make their own decision as to the case's relevance as opposed to relying on summaries generated by individuals who may or may not be legal professionals.


Additionally, Casemaker Notes appear below the case heading to alert the user that there has been a

subsequent ruling, as in the example of *Hughes & Peden, Inc. v. Budd Contracting Co., Inc.*, 193 Ga.App. 656, 388 S.E.2d 753 (Ga. App. 1989), where the following text appears below the heading, "Casemaker Note: Portions of this opinion were specifically rejected by a later court in 205 Ga.App. 561" (see fig. 4). These features are available when you search within the case law library. CASECheck appears to the right of the results page and CaseNotes appear right below the heading of the case (see fig. 5).

Is Boolean Searching Possible?

Yes, in fact a guide is found at the bottom of the search page that contains tips for creating Boolean-like searches. It is also possible to use natural language or a combination of the two when searching the full document area. An important thing to distinguish between the "Full

Document" and the "Advanced Field" search fields is that the former searches the text of the opinion and the latter searches the heading of the case.

For the answer to other questions about Casemaker, please refer to the help section under frequently asked questions or the user manual. A video is also available on the help page, providing an excellent overview for first time users, but it is not Georgia specific so not all features covered are part of our library (see fig. 6). Please feel free to e-mail sheilab@gabar.com or call 404-526-8618 if you have any questions about Casemaker. 



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

Georgia High School Law Honor Society 2009-2010

Albany High School

Shaniqua Jackson
Suzanne Elizabeth Johnson
Danyale Thurman
Evetta Whitley
Asia Woods

Benjamin E. Mays High School

Quanesha L. Anderson
Nicole Andrews
LaPortia Moné Banks
Imani Bell
Jasmine Davis
Nafraitis Antionette Ellison
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Angel N. Hayes
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Lexus C. Luke
Charles Anthony McGinty
Belinda Parker
DeAnna Rawls
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Alexander D'Ante Ross
Déja Thomas
Elijah Kareem Weaver

Centennial High School

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Danielle Dankner
Meredith Nichole Lysett
Allison McCall
Jacob Garrett McGoff
Sarah E. Parker
Elizabeth Sanders
Sierra Elise Schultz
Christopher Thomas Richard Scott Webb

Meadowcreek High School

Maia Haile
Perpetua Udekigbo

North Forsyth High School

Kristen Bates
Kayla Marie Bettes
Jordan Paige Bryant
Grace Cho
Jacob S. Edwards
Brett Garner
Kevin Grasso
Dane Johnson
Robert Miller
Erin Moore
Jackson Lindsay Reynolds III
Moses Min-Kyu Tincher

North Gwinnett

Samarth Barot
Carrie Emerson
Joshua Sang hun Kim
Sarah MacDougall
Sheena V. Patel
Jay'Da Alexandria Tranon

North Springs

Laurence Black
Scott Connor Ciepluch
James Jackson III
David Kontyko
Kyle D. Robotham
Amanda Wolkin

Northview

Frances Theadora Dietrick
Smitha Ganeshan
Tamera Willis

Ola High School

Regan L. Corder
Marilyn Elise Dyess
Hunter Furnish
Ashley Countiss Thompson
Karen Walters

Pro Bono Publico Chapter

Barbara Jayne McGaughey
Tessa Spangler

Therrell High School

Genero Radarius Carter
Bryshawnya Daughtry
Destiny Glaze
Kristopher Hardy
Victoria Amara O. Hull
Breanna Johnson
Akeyla Lockhart
Nathan E. Nelson
Gynnelle Marnise Newsom
Gregory Oshotse
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A Special Thanks to the Sponsors:

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Based on **Keenan's Kids Foundation 2010 Playground Safety Campaign results**, the Westminster Schools' 5th graders went to several metro-Atlanta parks in a culminating week of community service work. Thanks to them, those sites were made safer for themselves, their peers and other children in Georgia.

The Foundation encourages all communities to partake in similar projects!



How can you help?

Visit www.keenanskidsplaygroundsafety.com to see the latest Report Cards & photos from the Foundation's research of more than two-dozen playgrounds with tips and information on how anyone can rate and improve the safety of a local park. You can print off the Playground Safety Handbook and download the Playground Safety Podcast for even more examples!



Keenan is a renowned child advocate attorney, founder of the Foundation, author of *365 Ways to Keep Kids Safe*, one of Oprah Winfrey's "People of Courage" and an Emory University Lifetime Child Advocate Award.



Keenan's Kids Foundation * 148 Nassau St. NW * Atlanta, GA 30303 * 404-223-5437
www.keenanskidsfoundation.com * office@keenanskidsfoundation.com

A Picture Can be Worth 1,000 Words, and a Chart, Even More

by Karen J. Sneddon and David Hrick

Sometimes a picture, diagram or chart can communicate an idea far more effectively than words can. This installment of Writing Matters is intended to get you thinking about what tools to use when words fail.¹

Charts to Impeach or Contrast

Litigators are often faced with witnesses who say one thing at deposition and another thing at trial. Or, an opposing counsel may assert that a certain case supports a client's position, when, in fact, the case undermines it. Worse, at times opposing counsel may crop a quote from a document, witness or case to create a false impression of its substance.

One way to combat these common problems, besides merely descriptive text, is a two-column chart.² So, for example, if a party misrepresents the holding of a crucial case, the following might be more effective than plain text (please see chart on page 91).

This visual grabs the reader's attention and highlights the substance of the message. A similar chart can be used in various contexts where juxtaposition of the language is important. That often can be done more effectively with a chart than just text.



Maps and Diagrams

Where a dispute involves real property, say in a dispute over the location of an easement, including a clearly labeled survey showing the disputed property is highly effective at making the issues clear. Yet, in some cases we have been involved in, the party in its opening brief has failed to include a map. Because today it is very easy to include graphics in Word and other word processing documents, there is little reason to not include them.³ The same is true for drawings or photographs of the scenes of accidents when the scene is important to understanding the dispute or its resolution.

Somewhat distinctly, it can also be highly effective to prepare charts or diagrams especially for purposes of the motion or appellate brief. For example, if the procedural posture of a case is important, or if a complicated administrative or other process was involved, a diagram laying out how the case or matter proceeded can be extremely informative.

Pictures of Physical Injuries, Property Damages or Related Materials

In personal injury cases, it may be helpful (and persuasive) to include not just a description of the injuries or property damage, but to include photographs that make the harm real. Complex medical malpractice cases and products liability cases almost demand this sort of treatment. Some companies even sell medical drawings that can be used both in briefs and as demonstratives at trial.


Images of Actual Document Text

Owing to the growth of technology, today it is easier than ever to include images of actual document text—an image of the language from the contract at issue,

Quote from Plaintiff's Brief	Actual Holding of <i>Smith v. Jones</i>
"This Court holds that . . . the statute of limitations . . . for malicious prosecution is two years."	"This Court holds that, in light of the 2008 amendment to the statute, the statute of limitations in this case for malicious prosecution is two-years. We express no opinion as to cases filed prior to the effective date of the amendment."

for example. While sometimes a dispute is over the meaning of just a few words, an image would be unnecessary or inefficient. But where headings, the layout or indentation of the document or other features may influence the meaning of the disputed language, it may be helpful to include a pdf image of the document, rather than plain text. More importantly, where handwritten iterations are involved (such as a testator's shaky signature), a picture may be a much more effective way to convey the story of the changes to the document than a written description.

Conclusion

It probably need not be said, but including too many graphics can make a document not only look awkward, they can decrease readability and therefore, effectiveness. But, used appropriately, a picture can be worth the proverbial 1,000 words. 



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



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

Writing Program at Mercer Law School is currently ranked as the nation's number one by *U.S. News & World Report*.

Endnotes

1. The arrangement of words on a page creates a visual effect. See generally Gerald Lebovits, *Document Design: Pretty in Print – Part I*, 81-APR N.Y. St. B.J. 64 (Mar./Apr. 2009); Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108 (2004).
2. For any documents submitted to court, check the court rules concerning the use of charts, graphs, graphics, and other visuals — especially for complying with word-count rules, and be sure your software counts the words in the chart. On a related note, for suggestions for the use of visuals in jury trials, see Gregory J. Morse, *Techno-Jury: Techniques in Verbal and Visual Persuasion*, 54 N.Y.L. SCH. L. REV. 241 (2009/2010). See also Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010).
3. Many tip sheets on how to insert graphics, make tables and deal with graphics are available on the Internet. See, e.g., <https://it.emory.edu/MEDIA/TipSheet-Word2007.pdf>.

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Law Day 2010

Lawyers in Service to Their Communities

by Avarita L. Hanson and Joy Lampley

Each year, bar associations across the country take a moment to reflect on the law and the legal profession by celebrating Law Day.

Law Day is a national day to celebrate the rule of law and its contributions to the freedoms Americans enjoy every day. Georgia attorney Allan J. Tanenbaum headed up the American Bar Association's (ABA) Law Day efforts this year. The 2010 Law Day theme set by the ABA was: Law in the 21st Century: Enduring Traditions, Emerging Challenges.

Law Day had its origin in 1957, when ABA President Charles S. Rhyne envisioned a special day for celebrating our legal system.¹ On Feb. 3, 1958, President Dwight D. Eisenhower established Law Day by issuing a proclamation.² Since then, every president has issued an annual Law Day Proclamation.³ This year, President Barack Obama proclaimed:

As we begin the second decade of the 21st century, the law is changing dramatically as it seeks to shape and adapt to new conditions. Economic mar-



(Left to right) YLD member Darrell Sutton receives the Cobb County Bar Association's Ross Adams Award from Hon. David Darden during the Cobb Bar's Law Day Award Luncheon.

Photos provided by the Cobb County and Gate City Bar Associations

kets are becoming global, transactions require cultural adaptation and understanding, populations are more mobile, and communication technologies such as the Internet bridge distances and time zones to form new communities around the world. In such a world, all of us must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices, and acquire new cultural understandings. In a global era, matters such as human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation become not just international issues—between nations—but shared concerns. Law Day 2010 provides us with an opportunity to understand and appreciate the emerging challenges and enduring traditions of law in the 21st century.”⁴

In April, the State Bar Committee on Professionalism invited all local and circuit bar associations across the state to participate in Law Day 2010. In so doing, the Committee on Professionalism specifically requested bar associations to host Law Day events and programs that would engage the public and encourage attorneys to publicly reaffirm their commitment to the profession. Numerous bar associations responded to the call and hosted events throughout April and May. The events ranged from attorney oath renewal ceremonies to essay contests to a mock trial play featuring fairy tale characters, all with the goal of reaching out to the public and celebrating our legal system. Nine bar associations and the Young Lawyers Division shared information regarding their Law Day programs with the Professionalism Committee. See the list of participating bar associations and their activities above.

Local and Voluntary Bar Associations Law Day Activities

Cobb County Bar Association

- Held its annual *Are You Smarter Than A Sixth Grader Contest* and produced *Cinderella v. The Evil Stepmother* at the Marietta Sixth Grade Academy
- Held a Law Day Awards Luncheon/Oath Renewal Ceremony at the Marietta Country Club
- Held the annual Law Day Breakfast at the Cobb County Superior Court on April 30
- Hosted “A Night at the Museum” at the Marietta/Cobb Museum of Art, a benefit for the Cobb Community Service Fund
- Held a Wills and Advanced Directives workshop for the elderly in conjunction with the Young Lawyers Division

DeKalb Bar Association

- Partnered with the DeKalb County School System and sponsored poster and essay contests in elementary and middle schools
- Presented the Liberty Bell Award to a community member
- Taught high school students about the legal system
- The Officer of the Year Award was presented by DeKalb County District Attorney Gwendolyn Keyes Fleming
- A proclamation was issued by DeKalb County CEO Burrell Ellis declaring the month of May as law month in DeKalb County

Dublin Circuit Bar Association

- Hosted an Oath Renewal Ceremony at the Dublin Country Club with Hon. John Ellington of the Court of Appeals of Georgia presenting the keynote address. Attorneys who practiced 30 or more years were specially recognized.

Gate City Bar Association

- Hosted a successful Community Law Clinic at Greenbriar Mall in southwest Atlanta and provided free legal advice to over 100 members of the public. Citizens had the opportunity to have a one-on-one consultation with an attorney in the following practice areas: bankruptcy, foreclosure, family law and criminal law.

Georgia Association of Black Women Attorneys

- Partnered with the Gate City Bar Association, the Gate City Bar Judicial Section and

Cascade United Methodist Church in Atlanta in a Law Day service featuring Paul L. Howard Jr., Fulton County district attorney, as the keynote speaker. The event attracted more than 800 people, including visiting attorneys, judges, law enforcement personnel, lawmakers and their families.

Gwinnett County Bar Association

- Had a Education Campaign in partnership with local public and private schools, which included an essay contest for students and a \$500 student scholarship, speeches by members in the classrooms and tours of the Gwinnett Justice and Administration Center throughout the month of April
- Held a Community Service Project at the Lawrenceville Food Cooperative
- Held a Law Day Banquet at the Gwinnett Environmental and Heritage Center and presented the Liberty Bell Award, Law Enforcement Officer of the Year Award, Pro Bono Award and Merit Award
- Held a Judges’ Reception in the Gwinnett Justice and Administration Center at which Gwinnett Circuit judges and staffs were recognized
- Law Day Proclamations were solicited from local government agencies to encourage citizens to learn more about Law Day and the judicial system

Gwinnett County Minority Bar Association

- Partnered with Friendship Baptist Church in sponsoring a program called Youth Summit 2010 at which Gwinnett County judges and attorneys spoke to young people about the law

Macon Bar Association

- Hosted an essay contest and held a Law Day Luncheon where awards were presented and the essay contest winner was recognized

Rockdale County Bar Association

- Collected toys for children and presented them to the Rockdale County Court Appointed Special Advocate Office

State Bar of Georgia Young Lawyers Division Ethics & Professionalism Committee

- Presented Hinesville attorney Carl Varnedoe with the Sixth Annual Young Lawyer Ethics and Professionalism Award in honor of Law Day 2010 at the State Bar’s Annual Meeting

The array of 2010 Law Day activities by Georgia bar associations and the YLD is widespread and impressive. It is also a testament to all the positive acts lawyers and judges perform in their communities—not just in May but year-round. These events engage the public in learning about the law and

appreciating the impact of the law on lives. Members of the Bar also take the opportunity to reaffirm our own commitment to the rule of law.

Special thanks to Dick Donovan, chair of the Committee on Professionalism, and Joy Lampley and Alex Reed, co-chairs of the Law Day Programs sub-



(Left to right) Gate City Bar Association members Willie J. Lovett Jr. and Shatoree Bates volunteer at the Gate City Bar Community Legal Clinic at Greenbriar Mall.




(Left to right) Catherine Vanderberg received the Cleveland Award of Professionalism from Sarah Cipperly at the Cobb County Bar Association Law Day Luncheon.



Members of the Cobb County Bar Association in their mock trial attire. (Front row, left to right) Cindy Yeager, Rebecca Sample, Bert Reeves, Marcy Millard and Allyson Russell-Blair. (Back row, left to right) Heidi Geiger, chair, Partners in Education, Kim Frye, Hon. Robert E. Fournoy III, Matt Friedman and Jeffrey Haskin.



(Left to right) Gate City Bar Association members Jamal Williams, Adrienne Hunter-Strothers and Kimberly Bourroughs at the Community Law Clinic.

committee, for their efforts in encouraging Law Day programming throughout Georgia. They literally put Georgia 2010 Law Day activities on the ABA map (see www.lawday.org). As important, their efforts helped to centralize information about Law Day activities which will allow the Georgia bench and bar to plan and execute even better programs in the future. What a wonderful way to preserve enduring traditions, meet emerging challenges and serve people. 



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



Joy Lampley is a member of the State Bar of Georgia's Committee on Professionalism. She is an assistant chief counsel for the U.S.

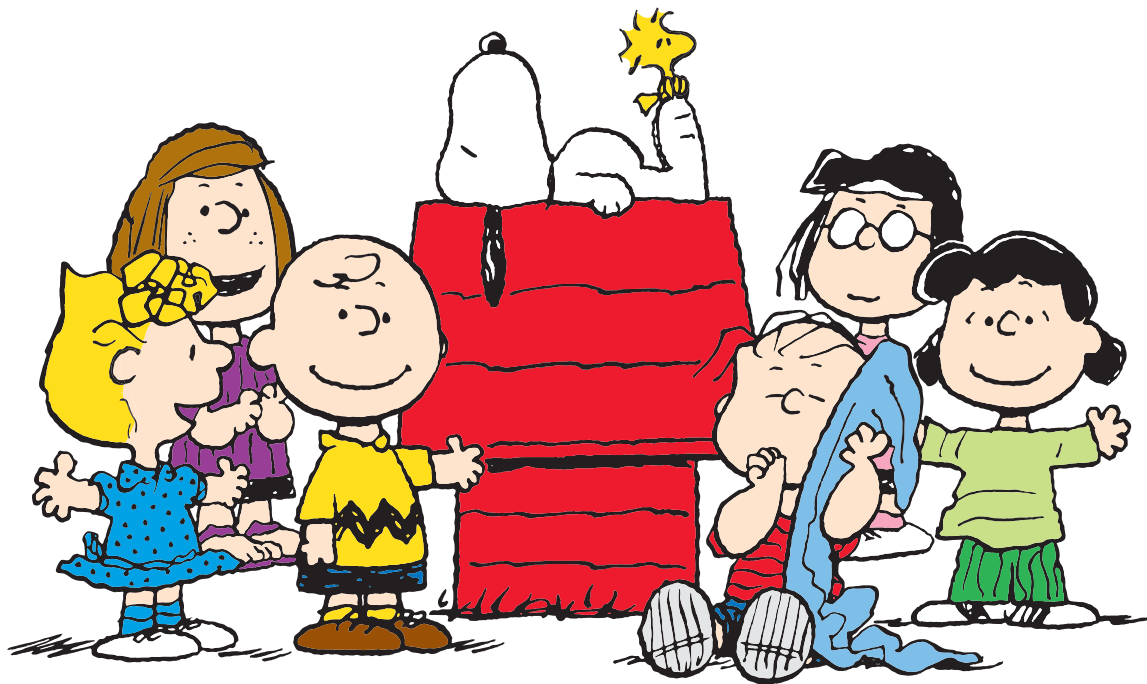
Department of Homeland Security and can be reached at joylampley.gabwa@gmail.com.

Endnotes

1. Law Day: A Research Guide—Law Library of Congress, <http://www.loc.gov/law/help/commemorative/observations/law-day.php> (last visited July 15, 2010).
2. *Id.*
3. *Id.*
4. ABAnet.org, Law Day 2010, <http://www.abanet.org/published/lawday/home.shtml> (last visited July 15, 2010).

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In Memoriam

The Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

Mary Kathleen Bahl
Valdosta, Ga.
Mercer University School of Law
(2000)
Admitted 2001
Died June 2010

Robert K. Ballew
Blue Ridge, Ga.
University of Tennessee College
of Law (1952)
Admitted 1954
Died April 2010

Robert Jordan Beckham
Jacksonville, Fla.
University of Florida College
of Law (1955)
Admitted 1982
Died September 2009

Lloyd Cleveland Burton
Rome, Ga.
Georgia State University College
of Law (1988)
Admitted 1988
Died June 2010

Douglas Olen Carlyle
Marietta, Ga.
University of Georgia School
of Law (1975)
Admitted 1975
Died March 2010

Randall M. Clark
Brunswick, Ga.
Mercer University School of Law
(1972)
Admitted 1972
Died June 2010

W. Barron Cumming
Griffin, Ga.
University of Georgia School
of Law (1964)
Admitted 1964
Died March 2010

Margaret Deimling
Atlanta, Ga.
Emory University School of Law
(1968)
Admitted 1968
Died May 2010

Herbert O. Edwards
Cumming Ga.
Emory University School of Law
(1949)
Admitted 1949
Died September 2009

Leonard M. Geldon
Dublin, Ga.
Woodrow Wilson School of Law
(1980)
Admitted 1987
Died February 2010

Robert M. Goldberg
Roswell, Ga.
Woodrow Wilson School of Law
(1981)
Admitted 1982
Died June 2010

Thomas William Greene
Decatur, Ga.
Woodrow Wilson School of Law
(1971)
Admitted 1971
Died October 2009

Richard H. Grigsby
Atlanta, Ga.
Howard University School of Law
(1981)
Admitted 1981
Died October 2009

Roy E. Harkleroad
Broxton, Ga.
Woodrow Wilson School of Law
(1975)
Admitted 1975
Died October 2009

Hon. Harold M. Hill Jr.
Atlanta, Ga.
Emory University School of Law
(1957)
Admitted 1957
Died July 2010

Speros D. Homer Jr.
Greenwood, S.C.
University of South Carolina
School of Law (1970)
Admitted 1971
Died April 2010

James Ernest Hudson
Athens, Ga.
University of Georgia School
of Law (1958)
Admitted 1957
Died January 2010

Rufus Lloyd Jacobs Jr.
Marietta, Ga.
Woodrow Wilson School of Law
(1978)
Admitted 1979
Died September 2009

John D. Jelkes
Atlanta, Ga.
Atlanta Law School (1951)
Admitted 1950
Died May 2010

James Fred Jones Sr.
Atlanta, Ga.
University of Texas School of Law
(1950)
Admitted 1958
Died April 2010

Susan C. Kalinka
Baton Rouge, La.
Emory University School of Law
(1985)
Admitted 1986
Died August 2009

Adrian Moore-Pleasant
Chapel Hill, N.C.
University of North Carolina
School of Law (2005)
Admitted 2006
Died May 2010

W. Fred Orr II
Decatur, Ga.
Emory University School of Law
(1965)
Admitted 1964
Died May 2010

Hon. Wilbur D. Owens Jr.
Macon, Ga.
University of Georgia School
of Law (1952)
Admitted 1952
Died April 2010

Robert Andrews Preston Jr.
New Orleans, La.
Loyola University School of Law
(1986)
Admitted 2006
Died April 2010

Patricia Kested Shepard
Salem, Ore.
New York University School
of Law (1967)
Admitted 1990
Died November 2009

M. Francis Stubbs
Reidsville, Ga.
Mercer University School of Law
(1969)
Admitted 1970
Died July 2010

James K. Stucko
Augusta, Ga.
University of Notre Dame Law
School (1962)
Admitted 2003
Died November 2009

Thomas L. Swift
Brunswick, Ga.
Emory University School of Law
(1978)
Admitted 1978
Died January 2010

Carroll L. Wagner Jr.
Atlanta, Ga.
University of Virginia School of
Law (1969)
Admitted 1969
Died July 2009

Steven Allen Westby
Atlanta, Ga.
Emory University School of Law
(1980)
Admitted 1980
Died June 2010

Nancy Brooks White
Greenville, S.C.
Loyola University School of Law
(1984)
Admitted 1995
Died February 2010


William J. Williams
Augusta, Ga.
University of Georgia School
of Law (1971)
Admitted 1971
Died June 2010



Margaret Ware Deimling passed away in May 2010. A native of Atlanta, she was born May 2, 1932, to Katherine Catchings and Henry Hall Ware Jr., a respected Atlanta attorney. Deimling attended Washington Seminary and went on to graduate early on the Dean's List from Duke University in 1954. She was a member of Pi Beta Phi Sorority and was voted the Sweetheart of Sigma Chi Court for three years. She received her J.D. from Emory University School of Law in June 1968, one of the first of only four women (in a class of 100) that the school had ever admitted and became known fondly as the "Dean of Women." All four women graduated in the top 10 percent of their class making *Law Review*.

A member of the State Bar of Georgia and Lawyers Foundation of Georgia, she worked in the trust department of the Trust Company of Georgia. She became a law assistant for the Supreme Court of Georgia and then staff attorney for

the Court of Appeals of Georgia from 1975-95. While there, she devised and set up a system to screen and expedite dismissal of cases that had been filed incorrectly and were unqualified for judicial review on the merits of the appeal. Deimling's system proved so successful that after she retired the Court of Appeals hired seven attorneys to staff the system and the Supreme Court also adopted her approach.

She was president of Georgia Association for Women Lawyers, 1974-75. Deimling was involved in many civic activities over the years, as elder and trustee for Covenant Presbyterian Church, serving on the Pastoral Search Committee, chairman of the Worship Committee and singing in the choir, a charter-patron member of High Museum of Art and the Atlanta Symphony Orchestra; member of Fernbank Museum, Atlanta History Center, Atlanta Botanical Garden, Georgia Trust for Historic Preservation, fellow of the Lawyers' Foundation of Georgia, past president of Board of Directors of Friends of the Northside Library, Peachtree Battle Garden Club and volunteer at the 1996 Olympic Games in Atlanta. She always looked forward to lunching and attending alumni reunions with her loyal circle of lady friends, most dating back to her elementary school days in Buckhead. A Blue Devil's basketball fanatic and enthusiastic member of the Iron Dukes, she steered her team through every game to their 2010 National Championship victory. 



For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 659-6867 or 104 Marietta St. NW, Suite 630, Atlanta, GA 30303.

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12 CLE Hours

AUG 19 ICLE
Nuts & Bolts of Family Law
Savannah, Ga.
See www.iclega.org for location
6 CLE Hours

AUG 20 ICLE
Arbitration
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

AUG 26 ICLE
Contract Litigation
Atlanta, Ga.
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6 CLE Hours

AUG 27 NBI, Inc.
Handling a Social Security Disability Case
Atlanta, Ga.
6 CLE Hours

AUG 31 ICLE
Solo Practice Mini Boot Camp
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3 CLE Hours

SEPT 2 ICLE
Foreign Corrupt Practices Act
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

SEPT 2 ICLE
Family Wealth Management
Atlanta, Ga.
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6 CLE Hours

SEPT 3-4 ICLE
Urgent Legal Matters
Atlanta, Ga.
St. Simons Island, Ga.
12 CLE Hours

SEPT 9 ICLE
Federal Civil Trial Practice
Atlanta, Ga.
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6 CLE Hours

SEPT 9-11 ICLE
Insurance Law Institute
St. Simons Island, Ga.
See www.iclega.org for location
12 CLE Hours

SEPT 10 ICLE
Class Actions
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

SEPT 10 ICLE
Citizens United
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See www.iclega.org for location
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SEPT 13	NBI, Inc. <i>Resolving Title Issues – From Surveys and Liens to Restrictions and Authority</i> Atlanta, Ga. 6 CLE Hours	SEPT 22	ICLE <i>VA Certification Training</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
SEPT 15	NBI, Inc. <i>Accounting 101 for Attorneys</i> Atlanta, Ga. 6 CLE Hours	SEPT 24	ICLE <i>Revisiting Younger's Ten Commandments</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
SEPT 16-17	ICLE <i>City & County Attorneys Institute</i> Athens, Ga. See www.iclega.org for location 12 CLE Hours	SEPT 24	ICLE <i>Professionalism & Ethical Dilemmas</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
SEPT 16	ICLE <i>LLCs</i> Atlanta, Ga. See www.iclega.org for location 3 CLE Hours	SEPT 24	ICLE <i>Georgia Law of Torts</i> Macon, Ga. See www.iclega.org for location 6 CLE Hours
SEPT 16	ICLE <i>Hot Topics in Guardianships</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	SEPT 28	NBI, Inc. <i>Resolving Legal and Financial Issues in Elder Care</i> Atlanta, Ga. 6 CLE Hours
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SEPT 30 ICLE
Lawyers' Assistance Program
Atlanta, Ga.
See www.iclega.org for location
CLE Hours TBD

**SEPT 30-
OCT 2** ICLE
Workers' Compensation Institute
St. Simons, Ga.
See www.iclega.org for location
12 CLE Hours

OCT 1 ICLE
Expert Testimony
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 6 ICLE
Title Standards
Atlanta, Ga.
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6 CLE Hours

OCT 6 ICLE
Internal Corporate Investigations
Atlanta, Ga.
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6 CLE Hours

OCT 7 ICLE
Child Welfare Attorney Training
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6 CLE Hours

OCT 8 ICLE
Killer Cross Examinations
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6 CLE Hours

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6 CLE Hours

OCT 8 ICLE
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OCT 13 ICLE
Law Practice Management
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6 CLE Hours

OCT 14-15 ICLE
Eleventh Circuit Appellate Practice Institute
Atlanta, Ga.
See www.iclega.org for location
12 CLE Hours

OCT 14-15 The Seminar Group
7th Annual Labor & Employment Law Conference
Atlanta, Ga.
12.4 CLE Hours

OCT 15 ICLE
Milich on Georgia Evidence
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OCT 20	ICLE <i>Beginning Lawyers – Replay</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	OCT 28	ICLE <i>How to Take Control of Your Practice</i> Atlanta, Ga. See www.iclega.org for location 4 CLE Hours
OCT 20	ICLE <i>Family Law</i> Augusta, Ga. See www.iclega.org for location 6 CLE Hours	OCT 28-29	ICLE <i>Consumer & Business Bankruptcy</i> Greensboro, Ga. See www.iclega.org for location 9 CLE Hours
OCT 21	ICLE <i>Federal Criminal Practice</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	OCT 29	ICLE <i>Auto Insurance Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
OCT 21	ICLE <i>Premises Liability</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	OCT 29	ICLE <i>U.S. Supreme Court Update</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
OCT 22	ICLE <i>Mortgage Meltdown Crisis</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	OCT 29	ICLE <i>Securities Litigation</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
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OCT 22-23	ICLE <i>Business Law Institute</i> Pine Mountain, Ga. See www.iclega.org for location 8 CLE Hours		

UPL Advisory Opinion No. 2010-1

Issued by the Standing Committee on the Unlicensed Practice of Law on June 4, 2010.

Note: This opinion is only an interpretation of the law, and does not constitute final action by the Supreme Court of Georgia. Unless the Court grants review under Bar Rule 14-9.1(g), this opinion shall be binding only on the Standing Committee on the Unlicensed Practice of Law, the State Bar of Georgia, and the petitioner, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

QUESTION PRESENTED

Assuming no traverse has been filed by any party in a garnishment action, is the completion, execution and filing of an answer in the garnishment action by a non-attorney employee of the garnishee considered the unlicensed practice of law?

SUMMARY ANSWER

A nonlawyer who answers for a garnishee other than himself in a legal proceeding pending with a Georgia court of record is engaged in the unlicensed practice of law.

OPINION

"The summons of garnishment shall be directed to the garnishee, commanding him to file an answer stating what money or other property is subject to garnishment." O.C.G.A. §18-4-62(a). The "answer must be filed with the court issuing the summons," and "if the garnishee fails to answer the summons, a judgment by default will be entered against the garnishee for the amount claimed by plaintiff against the defendant." *Id.*

The summons of garnishment form set out in O.C.G.A. §18-4-66(2) states that the garnishee is to file an

"answer in writing with the clerk of this court...." The garnishee is warned that "[s]hould you fail to answer this summons, a judgment will be rendered against you for the amount the plaintiff claims due by the defendant." *Id.* O.C.G.A. §18-4-82 refers to the document prepared by the garnishee as an "answer," as does O.C.G.A. §18-4-97(a): "The garnishee shall be entitled to his actual reasonable expenses, including attorney's fees, in making a true answer of garnishment."

A properly served garnishee is bound to file an answer with the appropriate court. If the answer is not filed, the garnishee faces a default judgment. The inescapable conclusion is that a garnishment action is a legal proceeding. That being the case, the Committee examines who is permitted to file an answer to a legal proceeding that is pending with a Georgia court.

"Georgia's citizens, of course, have a constitutionally protected right of self-representation." *In re UPL Advisory Opinion 2002-1*, 277 Ga. 521, 522 ft. nt. 3 (2004). A party to a legal action can also be represented by a duly licensed attorney at law. *Ga. Const. (1983), Art. I, Sec. 1, Para. XII*. As far as corporate self-representation, "[i]n this state, only a licensed attorney is authorized to represent a corporation in a proceeding in a court of record, including any proceeding that may be transferred to a court of record from a court not of record." *Eckles v. Atlanta Technology Group*, 267 Ga. 801, 805 (1997). The Georgia Court of Appeals concluded "that the rationale and holding of *Eckles* should, and does, apply to limited liability companies." *Winzer v. EHCA Dunwoody, LLC*, 277 Ga. App 710, 713 (2006). See also *Sterling, Winchester & Long, LLC v. Loyd*, 280 Ga. App. 416, 417 (2006).

The Committee concludes that a nonlawyer who answers for a garnishee other than himself in a proceeding pending in a Georgia court of record is engaged in the unlicensed practice of law.

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

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

A copy of the proposed amendments may be obtained on and after Aug. 2, 2010, from the court's website at

www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by Aug. 31, 2010.



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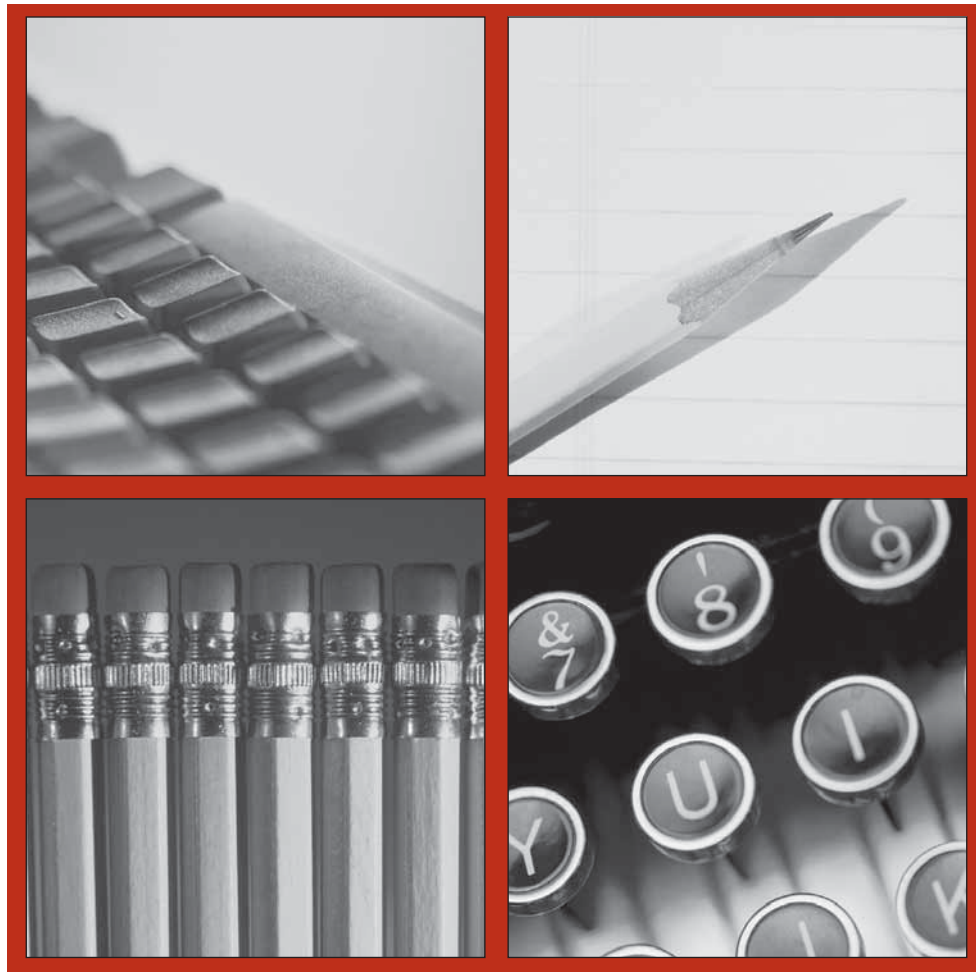


Nine Albany High School students were inducted into the Georgia Law Honor Society of Secondary Schools at the Dougherty Circuit Bar Association's Law Day Banquet on April 28. The students are pictured with their teacher-sponsor, Lynn Miller.

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