

Georgia Bar Journal

December 2013 ■ Volume 19 ■ Number 4

Georgia's Juvenile Code:
New Law for the New Year





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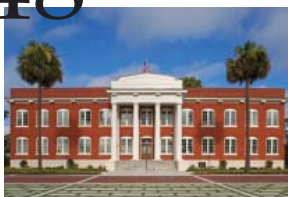
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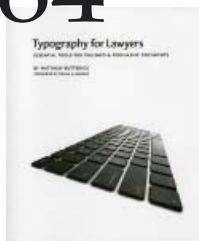
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Photo by Zach Porter Photography

by Charles L. Ruffin

Unified Bar the Result of Patience, Persistence, Hard Work

Third in a series of historical accounts in observance of the 50th anniversary of the State Bar of Georgia.

Fifty years ago this month—on Dec. 6, 1963, to be exact—the justices of the Supreme Court of Georgia signed an order establishing the

State Bar of Georgia. To begin this landmark year of historic observance and celebration, I invited our new Supreme Court Chief Justice Hugh Thompson to speak during my swearing-in ceremony at the Annual Meeting in June and tell us about the Bar's

formation, the Supreme Court's role in its creation and what it all has meant to the legal profession, the justice system and the people of Georgia.

"The process required patience, persistence, hard work, and in the end, an aligning of the stars—with the right people in the right positions at the right time."

As Justice Thompson reminded us, the unification of the Bar did not occur overnight. It required action by not just one body but five—namely the Board of Governors of the Georgia Bar Association, the state House of Representatives, the state Senate, and the executive and judicial branches of state government. This was clearly not going to occur in one fell swoop, and it did not.

In the 1920s, the Georgia lawyers who first broached the subject of a unified bar had no idea it would take some 40 years for it to become a reality. The process required patience, persistence, hard work, and in the end, an aligning of the stars—with the right people in the right positions at the right time.

This effort was born from a growing belief among lawyers that to enhance the law profession, we needed uniform standards and disciplinary procedures. Back then, if a lawyer needed to be disciplined, it was up to the local judge. The voluntary bar association had been in existence since 1883, but since membership was not required of all lawyers, it lacked power.

The Georgia Bar Association embraced the unification concept in principle at its 1926 Annual Meeting and charged its Committee on Incorporation of the Bar (appointed the previous year) with drafting suitable legislation for presentation at its next meeting. After a series of deferrals in consideration, the bill was referred back to the Committee, where it remained until 1933, when President Marion Smith of Atlanta revived the issue.¹

The legislation known as the "Georgia Bar Bill" was first introduced in the General Assembly in 1935. It passed the House of Representatives easily (by a vote of 141-11). But a lengthy debate ensued in the Senate, resulting in its defeat there. A subsequent effort in 1937 also fell short, and the proposal went back to the Bar Association's Incorporation Committee for further study. Then, as the country found itself gripped by the wars being waged abroad, interest was understandably diverted for the next decade.²

In 1949, future U.S. Attorney General Griffin B. Bell of Savannah, who was president of the Georgia Bar Association's Younger Lawyer Section (YLS) appointed a YLS Committee to Study Integration of the Bar, under the leadership of Thomas O. Marshall Jr. of Americus, a future chief justice of the Supreme Court of Georgia.³

In 1953, a report from the Committee on Jurisprudence, Law Reform and Procedure, chaired by John J. Flynt Jr. of Griffin, a future member of Congress, recommended that the resources, energy and influence of the Georgia Bar Association and its members be directed toward the passage of legislation. At the Annual Meeting a year later, they reported in part:

Of primary importance to this Committee is the matter of discipline of the members of the bar of Georgia. A properly constructed building is very dependent on a good foundation, and the starting point for discipline of members of the bar is to carefully screen applicants for admission to law schools. The present method of administering discipline and, if necessary, disbarment, is so cumbersome as to be almost useless. Integration of the bar should probably provide a better method of discipline but integration of the Bar is a matter of education of the bar for integration, and this is a long, slow process and there is a sharp difference of opinion as to whether or not the Georgia Bar should be integrated.⁴

In his 1959 annual address, Georgia Bar Association President Bob Heard pointed out there would be four major benefits to having a unified bar:

- Higher educational standards for the practice of law;
- Higher standards of ethics and disciplinary power controlled by lawyers themselves;

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- Increased influence and prestige because lawyers could now speak through one voice, the “organized bar”; and
- Higher economic standards for lawyers that could match the level of doctors and dentists.⁵

One could hardly argue with any of those objectives—unless, I suppose, you happened to be a doctor or a dentist. Unfortunately that year, the so-called “Bar Bill” again stumbled in the General Assembly despite an overwhelming pledge of support from lawmakers. On the morning of the vote, opponents were able to incite enough fear that the bill had to be withdrawn.⁶

But among leaders of the profession, support for unification did not wane. When the officers of the 1962-63 Georgia Bar Association were sworn in, they were faced with the decision whether to accept defeat or to mobilize another effort to unify. President H. Holcombe Perry of Albany, who would eventually become widely regarded as “the Father of the State Bar of Georgia,” was clearly on the side of trying again, writing, “. . . accomplishments of any lasting significance are not generally brought about by one leap. Success in achieving some desirable goal is usually an accumulation of planning and work that has gone before. Thus, the previous efforts, though unsuccessful, would of necessity be considerable benefit in the new attempt to sell the idea. There would have been a foundation in place upon which a new effort could build.”⁷

The first group to be dealt with was the Board of Governors of the voluntary bar association. The whole project could have been derailed unless a majority of Board members was convinced of its merits. And this was not easy, as an estimated one-third of Georgia’s lawyers at the time were opposed to unification. But following a series of luncheons around the state to win Board members’ support for the plan, in November

1962, the Board voted unanimously for its approval.⁸

The next hurdle was the General Assembly. Legislation was carefully drafted and introduced in the Senate, where it easily passed. But it was soon evident that there was real opposition in the House.⁹

It was fortuitous at the time that Arthur Bolton, who would go on to serve as Georgia’s Attorney General, was the floor leader for the new governor, Carl Sanders. It was also fortunate that George Busbee, who later served as governor, was an assistant floor leader. Both men were avid supporters of the legislation.¹⁰ The 40-day session progressed, and finally on the fateful day of March 4, 1963, the bill passed by a margin of 127 to 53.¹¹


It also didn’t hurt that Gov. Sanders supported the legislation. Despite the measure’s controversy, the governor never wavered in his support for it. On March 11, 1963, he signed the bill into law.¹²

The proposal then faced its final hurdle, that being the Supreme Court of Georgia. The decision was no slam dunk. The court provided ample opportunity for opponents of unification to state their case, and the justices carefully considered all points of view and possible ramifications before signing their order on Dec. 6.¹³

With the court’s order and the enactment of the legislation, it did not take long for the benefits of a unified Bar to become readily apparent. As Chief Justice Thompson concluded at the Annual Meeting, not only has the unification of the State Bar of Georgia strengthened the legal profession’s ability to protect the public through the regulation of discipline and the institution of mandatory continuing legal education, fee arbitration and many other progressive efforts, but it also has given the lawyers and judges of this state a unified voice in furthering the interests of the profession and the court system.

In a 2011 interview for the *Georgia Bar Journal*, Gov. Sanders said, “I

think that has been a tremendous benefit to those who practice law, as well as the companies and individuals who use the services of lawyers here in Georgia. We wouldn’t have a very good situation if we didn’t have an organized Bar, one that could not enforce the rules and regulations. It’s made a heck of a difference, and it’s a wonderful history when you consider from where we started and where the State Bar is today. I am glad I have seen the Bar grow and become more effective. Those of us who are in the field of law ought to be proud we’ve got an organization we can support and one that can discipline anyone who doesn’t abide by the regulations. I’m proud of what I did then, and I’m proud of what the State Bar has become.”¹⁴

A half-century later, the 45,000-plus members of the modern State Bar of Georgia are all grateful for the patience, persistence and hard work of our predecessors. 

Charles L. Ruffin is president of the State Bar of Georgia and can be reached at cruffin@bakerdonelson.com.

Endnotes

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3. Davis, 17.
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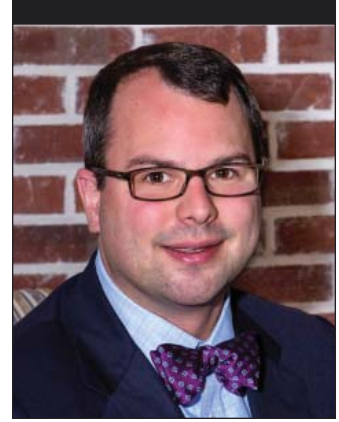
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State Bar
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by Darrell L. Sutton

Investing in the Public Interest Internship Program:

Preparing to Serve the Future

Amy Howell entered the YLD presidency at a time that history will judge as the worst for both young lawyer employment and funding and staffing for Georgia's public

interest legal organizations.

By the first half of her presidency in the fall of 2009, the "Great Recession" that began in 2007 had resulted in a decline in legal employment so significant that the American Bar Association estimated there was a six-

year surplus of young lawyers; six years' worth of young lawyers without legal employment or even the prospect of legal employment.

Coinciding with this was a reduction in funding for Georgia's public interest legal organizations so significant that an unprecedented downsizing in staffing at these organizations resulted. And this at a time when the demand for the services provided by these organizations was at its highest because of what the Great Recession also wrought on so many of our fellow Georgians.

While others saw these as unfortunate but independent consequences of the Great Recession, Howell saw an intersection between them. She therefore sought to establish a program that could simultaneously relieve both. What resulted was the YLD Public Interest Internship Program, or PIIP.

Launched during the 2009-10 Bar year, PIIP matches law students and unemployed or underemployed lawyers with summer internships at Georgia's public interest legal

organizations and provides the interns with a \$5,000 stipend to defray living expenses during the internship. In only four Bar years since PIIP's inception, 24 PIIP interns (out of 274 applicants) have provided legal services at the Georgia Legal Services Program, the Atlanta Legal Aid Society, the U.S. Department of Housing & Urban Development, the DeKalb County Public

"It is rare that we have an opportunity to at one time serve both our profession and the public. But this is one opportunity to do so. Won't you seize this opportunity? Won't you join us and serve?"

Defender's Office, the DeKalb County Child Advocacy Center, the Federal Defender Program, Gideon's Promise and the Augusta District Attorney's Office.

Considering that each PIIP internship lasts an average of eight weeks and that each intern performs approximately 40 hours of work per week, each PIIP intern contributes 320 hours of service to Georgia's public interest legal organizations. This means that, collectively, the 24 former PIIP interns contributed 7,680 hours of service to Georgia's public interest legal organizations and their fellow Georgians. This also means that each hour of PIIP intern service has cost PIIP only \$15.63; a value apparent to even the most fiscally conservative among us.

While PIIP's value is well-measured numerically, its true value is measured otherwise. For the interns, PIIP means the acquisition of legal experience and skills, which not only help them become better lawyers, but that also make them more attractive candidates for full-time legal employment. What's more, these internships allow the newest members of our profession to set down roots in Georgia and to develop relationships with the legal community both in the area of Georgia where their internship takes place and in the legal community at-large. They also help to instill an interest in public service in the hearts of those involved. And for the public interest organizations and the Georgians they serve, PIIP internships mean the fulfillment of desperately needed hours of legal services for those among us who need them most.

While the Great Recession's effects have subsided in the four years since PIIP was launched, the coinciding shortage of legal employment opportunities for Georgia's young lawyers and staffing at Georgia's public interest legal organizations continues. Consequently, the need for PIIP is just as great now as it was in July 2009. The problem, however,

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is that once the PIIP interns for 2014 are chosen and placed, PIIP will suffer a financial fate even worse than the public interest legal organizations it benefits: a dearth of funding.

It is for this reason that I have set out to ensure PIIP is endowed and, as a result, funded for 2015 and each year after that. There is no secret to creating an endowment: it is fundraising, plain and simple. And the first phase of fundraising for this endowment is the Eighth annual YLD Signature Fundraiser. This is where you come in.


On Feb. 8, 2014, the YLD Signature Fundraiser will return to the Atlanta Biltmore Hotel in the heart of Midtown. Featuring the return of the Black Tie & Blackjack theme and an evening of dinner and dancing, casino games, live music, silent auction and open bar, 100 percent of the 2014 Signature Fundraiser proceeds will benefit the PIIP endowment. The fundrais-

er goal is one-half of the amount needed to endow PIIP, or \$75,000. The only way for us to meet this goal is if you sponsor the fundraiser and attend it.

There are five sponsorship packages available, each with different benefits and ranging in cost between \$500 and \$5,000. Each sponsorship package includes tickets to the fundraiser (not to mention the VIP Host Committee reception, which will feature a bourbon tasting), but individual tickets can be purchased for \$100 (general admission) or \$150 (Host Committee), with a discount available to law students and attorneys in transition or who work in government or public interest positions.

A list of the available sponsorship packages can be found on page 9 or at <http://www.georgiabar.org/FundInitialbarnumber.asp>. You can also purchase a sponsorship or tickets via this website, or you can do so by issuing a

check payable to the State Bar of Georgia Foundation and mailing it to Young Lawyers Division, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303.

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Darrell L. Sutton is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at dls@sutton-law-group.com.

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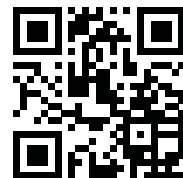
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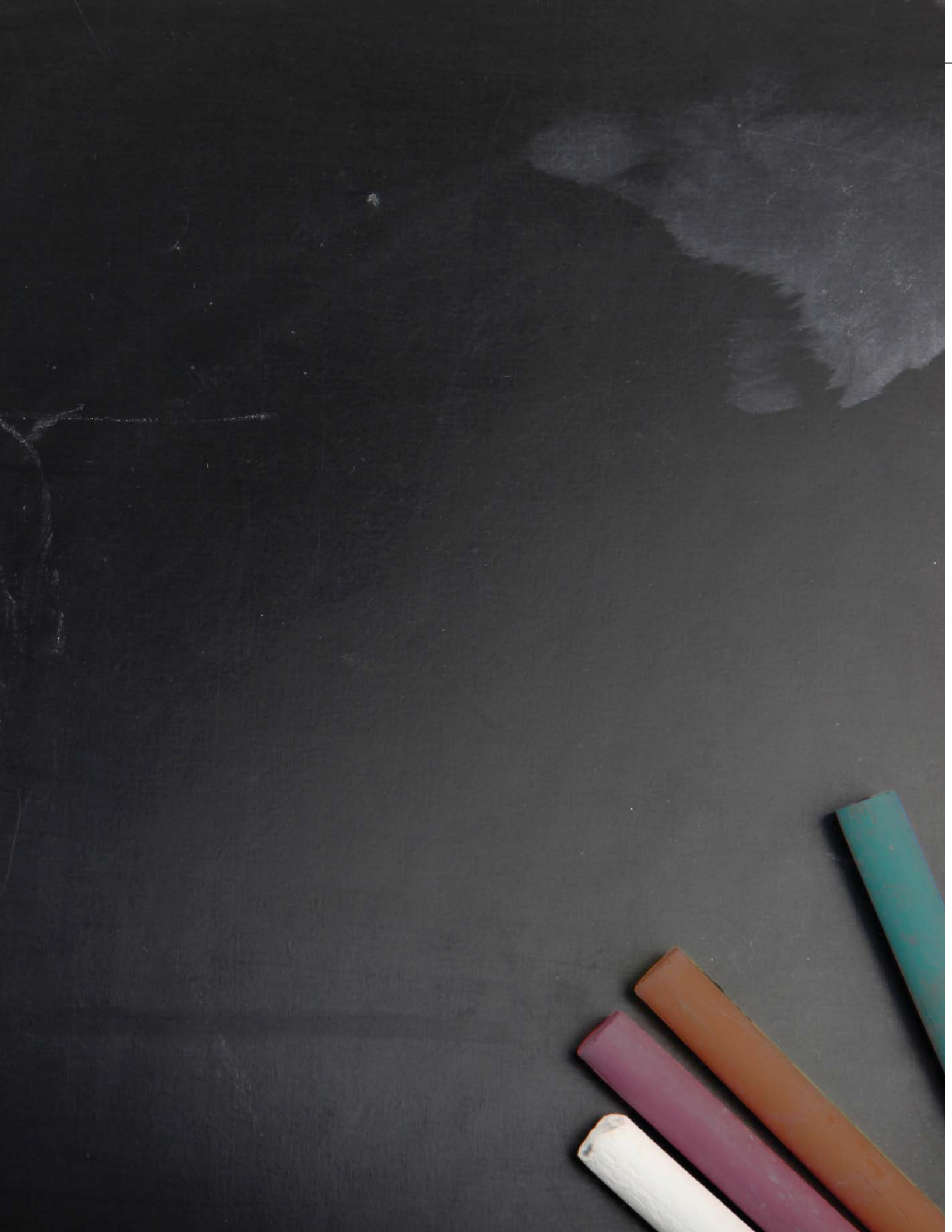
In 2013, Georgia State Law celebrated attorney Judith A. O'Brien. *Who will the college honor this year?*

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Georgia's Juvenile Code: New Law for the New Year

A Collaborative Article

For the first time in more than 40 years, Georgia has a new juvenile code. Not just a warmed up version of the current code, but a comprehensive rewrite that includes the exhaustive research, extensive outreach and pragmatic compromise needed to create the 248-page legislation that the Georgia General Assembly passed unanimously this year and signed into law on May 2, 2013.¹

Several members of the Child Advocacy and Protection Section have studied the three central articles of the new juvenile code (NJC)² to highlight the changes that are to take effect on Jan. 1, 2014. Among the contributors to this review are juvenile court prosecutors, juvenile court defense attorneys, special assistant attorneys general (who represent the state in deprivation matters), a parent attorney, a former child attorney and juvenile court judges. Each section benefits from the grouping of traditionally “opposing” points of view. A prosecutor and a defense attorney teamed to highlight the delinquency section; a parent attorney, attorneys for the Division of Family and Children Services (DFCS) and a child attorney (now juvenile court judge) took on the dependency section; and a public defender and a prosecutor tackled the new Children In Need of Services (CHINS) section—all with a goal of highlighting one or two issues in each

section, out of many, that make this new legislation so important in our state and a model for change around the country.

Delinquency

The Enhanced Presence of Lawyers

From arrest to disposition, the delinquency section (Article 6) of the NJC contains numerous changes to the way young people alleged to have committed delinquent offenses are treated. However, the most systemic reform of what happens inside the courtroom comes from the enhanced presence of lawyers for both parties.

Prosecutors

Traditionally, the role of the prosecutor in juvenile court has been tenuous—the district attorney needed to be invited by the judge to participate in the proceedings³ and petitions initiating the proceedings did not even have to be drafted by a lawyer, let alone a prosecuting attorney.⁴

The uncertainty of the role of a prosecutorial authority in the juvenile court often led to unpredictable results. First, if invited, the district attorney merely conducts the proceedings. This often means that the prosecutor's first contact with a case is when an assistant district attorney is called to conduct a trial on the merits. That prosecutor is saddled with a petition that was filed by a non-attorney. The petition may have fatal defects or even vary from the evidence of the case.⁵

These uncertainties have led to unfortunate results in individual cases⁶ and to drastic policy changes for the state. Indeed, the impetus for the creation of exclusive

jurisdiction of the superior court for certain serious offenses⁷ arose out of a case in which a young person charged with rape was allowed to complete a diversion program without ever appearing before the court.

The NJC creates several procedural mandates intended to create a consistent prosecutorial presence throughout the delinquency process. First, “[a] petition alleging delinquency *shall* be filed by an attorney.”⁸ This was meant to relieve law enforcement officers, probation officers and other court personnel from the responsibility of drafting accusatory documents.⁹ It will have the added benefit of allowing for the prosecutor to examine the evidence to determine the sufficiency of the allegation prior to the invocation of the court’s jurisdiction.¹⁰ A prosecutor is also in the best position to make an appropriate charging decision in light of the purpose of the juvenile court¹¹ and in the best interest of justice.¹²

Second, “[a] prosecuting attorney *shall* conduct delinquency proceedings on behalf of the [S]tate.”¹³ The NJC creates a flexible scheme whereby the district attorney is designated as the principal entity tasked with providing representation on behalf of the state in all delinquency proceedings, but allows for local jurisdictions to appoint a juvenile prosecutor under certain circumstances.¹⁴ The statute also created a mechanism by which the district attorney may delegate the duty to appoint a juvenile prosecutor to the county government.¹⁵

Whether the prosecuting attorney is an assistant district attorney or an appointed independent prosecutor, the law has created a scheme that creates both powers and duties for a specialized prosecutorial entity that will understand the juvenile proceedings code and will be invested in the underlying purpose of the juvenile court.

Defense Attorneys

Much like prosecutors, defense attorneys in Georgia have tradition-

ally needed to be “invited” to the proceedings. This invitation comes when the young person hires his or her own attorney or applies for the services of the public defender. Each year, thousands more waive their right to be represented.

Young people were first provided with the right to counsel in 1967 with the U.S. Supreme Court’s landmark decision in *In re Gault*.¹⁶ In requiring that every young person in delinquency proceedings be informed of his or her right to counsel and that those who cannot afford counsel be provided with an attorney at no cost, the Supreme Court found that the “[f]ailure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.”¹⁷

Prior to this overhaul of the Georgia juvenile code, state law contained limited protections against the waiver of counsel in delinquency proceedings.¹⁸ As a result, Georgia’s young people regularly waive this right with nothing more than a series of “yes ma’am” responses to a series of questions posed by the judge. Although the creation of a statewide indigent defense system has decreased this practice somewhat since a finding in 2001 that an estimated 90 percent of children facing delinquent charges in many Georgia counties waived their right to counsel before ever speaking to an attorney,¹⁹ countless young people across Georgia continue to waive their right to representation. Cognitively, however, children often cannot process abstract decisions such as a waiver of counsel in the manner adults do. Instead, children base their decisions upon an inherent desire to please their peers and adults or the impulse just to be done with it.²⁰ Even more troubling, parents often waive their child’s rights in anger over the child’s behavior or in the belief that they, as parents, can handle all

court matters as well as any attorney. This often results in waiving a right neither the child nor the parent fully understands.

The NJC addresses this practice in several ways. First, the bill makes clear that only the young person, not his or her parent, may waive the right to counsel.²¹ Most importantly, though, it standardizes legal representation across counties by limiting a judge’s exercise of personal discretion by mandating that the child cannot waive his right to counsel if his liberty is in jeopardy.²²

Although there are still many questions about how the NJC will work in practice, at a minimum, children in Georgia will no longer be sent to detention without a meaningful review of the case by a prosecutor and representation at the proceedings by a defense attorney.

Dependency

Article 3—Surprising Changes

Article 3 of the NJC governs dependency proceedings (formerly deprivation proceedings) and sets forth its four-part purpose as follows: “(1) To assist and protect children whose physical or mental health and welfare is substantially at risk of harm from abuse, neglect or exploitation and who may be further threatened by the conduct of others by providing for the resolution of dependency proceedings in juvenile court; (2) to ensure that dependency proceedings are conducted expeditiously to avoid delays in permanency plans for children; (3) to provide the greatest protection as promptly as possible for children; and (4) to ensure that the health, safety and best interests of a child be the paramount concern in all dependency proceedings.”²³ With regard to dependency, the NJC expands the definition of a child to include as any individual who is under the age of 18 years; under the age of 22 years and in the care of DFCS; or under the age of 23 years and eligible for and receiving independent living services through DFCS.²⁴

Under the current juvenile code (CJC), the court is mandated to appoint an attorney to represent the child only in proceedings involving the termination of parental rights.²⁵ Furthermore, it is not clear in the CJC whether a child is a party to a deprivation proceeding.²⁶ Surprisingly, it has taken the passage of the NJC to confer upon a child unqualified status as “a party” in his or her judicial proceedings in the juvenile court.²⁷

The NJC mandates that the court shall appoint an attorney and a guardian ad litem (GAL) for an alleged dependent child, however, the appointed attorney may serve as the child’s GAL unless or until there is a conflict between the attorney’s duty to such child as child’s attorney and the attorney’s considered opinion of such child’s best interests as GAL.²⁸ The NJC requires the court to appoint a Court Appointed Special Advocate (CASA) to act as GAL whenever possible, and provides that a CASA

may be appointed in addition to an attorney who is serving as a GAL.²⁹ The NJC provides an exhaustive list of 13 factors the GAL and CASA shall consider and evaluate in determining the child’s best interests,³⁰ as well as 17 minimum duties and responsibilities the GAL and CASA shall perform.³¹ The NJC permits the court to remove a GAL or CASA when the court finds that the GAL or CASA has acted in a manner contrary to a child’s best interests, has not appropriately participated in the case or if the court deems continued service as inappropriate or unnecessary.³²

The NJC provides clear practice guideline for courts and child welfare practitioners by codifying best practices identified in the long-standing *Resource Guidelines*³³ published by the National Council of Juvenile and Family Court Judges and already implemented in many juvenile courts around the state and around the country. Among these is the “one judge,

one family” policy by which all cases and hearings concerning the same child or family are heard by the same judge.³⁴ The NJC also mandates that the court review the cases of dependent children sooner and more often than is required by the CJC, specifying that the first periodic review hearing be held within 75 days of the child’s removal from his or her home and every four months thereafter.³⁵ Recognizing the harmful effects of prolonged temporary placements and the importance of moving children quickly toward permanency, the NJC limits the court’s ability to grant continuances of required hearings beyond their statutory time limits. A continuance can only be granted when the continuance is not contrary to the interests of the child and upon a showing of good cause.³⁶ The NJC specifically states that neither a stipulation between attorneys nor the convenience of the parties constitutes good cause.³⁷

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Under the NJC, visits between a child who has been removed from the home and his or her parents will be less restrictive and less expensive for the department to facilitate. These visits are presumed to be unsupervised unless the court finds that unsupervised visits are not in the child's best interest.³⁸ In cases where the permanency plan for the child is reunification, this provision will provide parents and children with the opportunity to engage in more meaningful visitation and to maintain familial bonds during the reunification process.

Article 4—Reforming Termination of Parental Rights

Article 4 of the NJC governs termination of parental rights (TPR) proceedings and sets forth its five-part purpose as follows: “(1) To protect a child who has been adjudicated as a dependent child from his or her parent who is unwilling or unable to provide safety and care adequate to meet such child's physical, emotional and mental health needs by providing a judicial process for the termination of all parental rights and responsibilities; (2) to eliminate the need for a child who has been adjudicated as a dependent child to wait unreasonable periods of time for his or her parent to correct the conditions which prevent his or her return to the home; (3) to ensure that the continuing needs of a child who has been alleged or adjudged to be a dependent child for proper physical, mental and emotional growth and development are the decisive considerations in all proceedings; (4) to ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this article while ensuring that the fundamental needs of a child are not subjugated to the interests of others; and (5) to encourage stability in the life of a child who has been adjudicated as a dependent child and has been removed from his or her home by ensuring that all proceed-

ings are conducted expeditiously to avoid delays in resolving the status of the parent and in achieving permanence for such child.”³⁹ Further, “[n]othing in this article shall be construed as affecting the rights of a parent who is not the subject of the proceedings.”⁴⁰

Currently, once an order terminating parental rights is entered, the relationship between the child, parent and other family members, including siblings is effectively severed.⁴¹ A TPR case has been called the “civil death penalty” because it causes the “death” of a family from the child's point of view. Indeed, under the CJC, the child's rights within the family and the parent's responsibilities, powers, duties and privileges are all extinguished.⁴² Under the NJC, however, until an adoption of the child is finalized, the following rights of the child remain intact: to receive child support and to inherit from and through the parent.⁴³ Further, the relationship between the child and his or her siblings remains intact and is only terminated by a final order of adoption.⁴⁴ Even after the child is adopted, the NJC gives the child the right to pursue any civil action against the parent.⁴⁵ The CJC provides the parents one year or longer to work with DFCS prior to the filing of a termination petition; in contrast, the NJC gives the parents only six months.⁴⁶ This modification is designed to place a child in a permanent family much more quickly and to prevent the child from suffering the consequences of “foster care drift.”

Under the CJC, no statutory provision permits reunification between a parent and child once the legal relationship is severed. In an important reform of the current law, the NJC provides that if a child has not been adopted within three years from the date the termination order has been entered, and the court has determined that adoption is no longer the permanent plan for the child, *the child* may petition the court *to reinstate parental rights*.⁴⁷ If it appears that the best interests

of a child may be promoted by reinstatement of parental rights, the court, after a hearing, shall grant the petition if it finds that adoption is not likely and reinstatement is in the child's best interest.⁴⁸ The petition is subject to dismissal if the parent objects to the reinstatement.⁴⁹ This reform takes into account the realities of one of the most pervasive forms of neglect—that arising from the substance abuse of the parent—and the reality that the parent may have to go through several relapses over time before securing the kind of recovery that would allow that parent to resume parenting responsibilities. For such a parent and child, and in the absence of another permanent family opportunity, reunification might be in the child's best interest. For the first time in Georgia, the NJC makes reunification following termination an option for a child in long term foster care.

Children In Need of Services

One of the primary features of the NJC is the creation of a classification of young people called Children In Need of Services (CHINS) found in the new Article 5. CHINS changes how young people charged with status offenses, acts that are only offenses because of the status of the actor as a child, are treated in the juvenile court setting, primarily by attempting interventions before going to court for resolution. Under the CJC, these young people are treated similarly to young people charged with delinquency offenses. The most common status offenses seen in juvenile court are truancy, runaway and unruly.⁵⁰

Purpose

The purpose of the CHINS Article is to acknowledge that certain immature behaviors seen at home and school should not be treated as delinquent behaviors.⁵¹ Instead, the NJC envisions these children and their families receiv-

ing coordinated community services that will enable them to make choices that enable the child to become a responsible and productive member of society, while protecting the integrity of the family.⁵²

A complaint alleging that a young person is "a child in need of services" may be filed by the child's parent or anyone who is informed and believes that the alleged facts are true.⁵³ Specific requirements are set out for school officials to seek resolution of problems by working with the child and family within the educational framework before bringing a complaint in juvenile court.⁵⁴

Once a complaint is received by the juvenile court intake officer, the court is required to appoint an attorney for the child, as well as a CASA, when possible, to work with the child and family.⁵⁵ The NJC also envisions that, at certain times, it may be necessary for the court to appoint an attorney to act as a GAL for the child.⁵⁶ This attorney may be the same person as the child's attorney unless and until a conflict arises between the two roles.⁵⁷

The CHINS Article contains some inconsistencies with respect to the point at which a child is entitled to appointed counsel, particularly in cases in which the child is detained.⁵⁸ Also, it is not clear as to whether or not financial eligibility is an issue to be determined prior to the court's appointing a lawyer to represent the child.⁵⁹ It is clear, however, that the intent of the law is that a child shall be represented by an attorney at every hearing.⁶⁰

Consistent with the focus of CHINS cases as being family treatment-oriented, pre-adjudication secure or non-secure residential detention of the child is authorized only as necessary to protect the child's health or welfare, and then, only for brief periods of time *and* after completion of a detention assessment that has determined that there are no available alternatives that would prevent the need for such detention.⁶¹

A CHINS child who is a runaway, is habitually unruly, or has previously failed to appear at a scheduled hearing can be held for no more than 24 hours without a continued custody hearing to determine probable cause.⁶² Without explanation of the distinction, children with other CHINS allegations can be held for up to 72 hours prior to a hearing.⁶³ It is unclear whether this distinction is an oversight or intentional, but the discrepancy will likely be addressed in the next legislative session. A child placed out-of-the home in foster care must have a hearing within five days.⁶⁴ Regardless of the exact time of the continued custody hearing, it is clear that the intention of the CHINS Article is to avoid lengthy, if any, detention periods.

Following a determination of probable cause, the child may be detained an additional 72 hours, excluding weekends and legal holidays, only for the purpose of providing time to locate an alternative placement pending adjudication.⁶⁵ Furthermore, the court must determine by clear and convincing evidence that no less restrictive alternative will suffice and that detention is required to protect the child or secure his or her appearance in court.⁶⁶ Detention may not be used to punish or even to treat or rehabilitate the child, to allow a guardian to avoid his or her legal responsibilities or to unnecessarily curtail the child's freedom.⁶⁷

If a child is detained, the NJC requires that a petition be filed within five days, with the adjudicatory hearing held within 10 days of that date.⁶⁸ Otherwise, the petition must be filed within 30 days, with adjudication held within 60 days.⁶⁹ If the court finds a child to be in need of services, the disposition hearing shall be within 60 days of adjudication.⁷⁰ This expanded continuance of disposition is likely authorized in anticipation of efforts to organize an effective and workable community-based treatment plan.⁷¹

It remains unclear as to who is responsible for filing the CHINS

petition. At the time of the writing of this article, district attorneys' offices vary in their stated positions about their responsibility for handling CHINS cases because the cases under the NJC are clearly not delinquencies. Some jurisdictions are considering solving this problem by requiring the complainant to also file the petition. This responsibility will undoubtedly be addressed in the "clean-up bill."

Disposition of a CHINS case may include any order authorized for the disposition of a dependent or delinquent child, except that a CHINS child may not be placed in a secure or non-secure residential facility.⁷² The court may place the child on probation, order compliance by the child and/or caretakers with recommended treatment, require community service, order restitution be paid or order any other appropriate measure, as long as the disposition is the least restrictive and most appropriate disposition for the child.⁷³ The disposition shall be in effect for the shortest time necessary to accomplish the purposes of the order and is to be reviewed within three months, and at least every six months afterwards.⁷⁴ It is anticipated that attorneys will continue in the representation of their CHINS clients throughout the pendency of the order.⁷⁵

Violations of valid CHINS court orders must be proven beyond a reasonable doubt.⁷⁶ Upon such finding, the judge may make any disposition that could have been made at the time of the original order was entered.⁷⁷ Because detention was not an option at that time, it appears that detention could not be used in the disposition of a violation either.⁷⁸ This issue will likely be a matter of discussion in the future also.


The CHINS Article contains provisions for disposition of an unreasonably incompetent CHINS child similar to provisions for delinquent children, utilizing a comprehensive services plan.⁷⁹ If a child is subject to a comprehensive services plan when he or she reaches the age of

18, proper referral for adult services shall be made.⁸⁰

It should be noted that, because there is no statewide, fully funded uniform juvenile court system, juvenile courts are reliant on their local counties for funding. Consequently, there may be insufficient resources in many jurisdictions to support all of the laws comprising the new juvenile code. This is particularly true of the appointment of counsel in a timely and continuing manner. Lack of funding within the courts and independent resources available within the local communities will also determine the extent of services available to work toward achieving the goals of CHINS court orders. Persuasive data was provided to the governor's Special Council on Criminal Justice Reform about the potential for significant savings through reduced detention for low-risk offenders and the potential for increased funding, based on those savings, for the needed alternatives to detention and community intervention programming that are essential for this new approach to work throughout the state. All stakeholders understand that the initial infusion of \$5 million for such alternatives is intended to be the jumpstart for the generation of the savings that will in turn fund additional interventions, much the same way as was experienced in Ohio under a similar program. For this new program to work in Georgia, significant patience will be required of the many jurisdictions around the state that do not have sufficient resources.

Conclusion

The NJC brings a new tone and vision to juvenile justice and child neglect and welfare in Georgia. The highlights above are only a sampling of the reforms that are smart, progressive and intended to increase justice and public safety for Georgia's children and youth, families and communities. Those closest to the rewrite efforts know that the signing of HB 242 into law

was only the "end of the beginning." Technical corrections to a bill more than 200 pages long are to be expected and are anticipated to be introduced in the 2014 legislative session. Even when those corrections are made, implementation issues will take time to be sorted out and new practices will take some time to become familiar practices. Nevertheless, much progress has been made on behalf of the citizens of Georgia, some of whom are our most vulnerable, and all stakeholders who took the time to be part of the solution have much to point to in the NJC as signs that Georgia, as a state, is very much on the right track. 

A collaborative team prepared this article. All who contributed to this effort are listed below in alphabetical order: **Hon. Wenona C. Belton** (wenona.belton@fultoncountyga.gov); **Sarah G. Dubale** (sdubale14@lawmail.mercer.edu); **Robert E. Hall** (ted@robertehall-law.com); **Sharon N. Hill** (shill@gaappleseed.org); **Diana Ruth Johnson** (dianarughjohnson@bellsouth.net); **Hon. Willie J. Lovett Jr.** (willie.lovett@fultoncountyga.gov); **Mary K. McKinnon** (mary.mckinnon@pacga.org); **Hon. Nicki N. Vaughan** (nvaughan@hallcounty.org); **Randee J. Waldman** (rwaldm2@law.emory.edu); and **Thomas L. Williams** (tom.williams@gwinnettcountry.com).

Endnotes

1. HB 242, 2013-2014 Leg., Reg. Sess. (Ga. 2013).
2. For the purposes of this article, the newly passed legislation, HB 242, will be called the "New Juvenile Code (NJC)." The current juvenile code, still in effect until Dec. 31, 2013, will be called the "Current Juvenile Code (CJC)." The NJC can be found online at <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/242> (last visited Nov. 20, 2013).
3. CJC O.C.G.A. § 15-11-41(c).
4. CJC O.C.G.A. § 15-11-38.

5. Even though a petition for delinquency does not need to be drafted with the precision of a criminal accusation, the petition must allege facts with sufficient particularity to meet the due process requirements of the United States Constitution. *T.L.T. v. State*, 133 Ga. App. 895, 212 S.E.2d 650, 653 (1975).
6. *In re T.F.*, 314 Ga. App. 606, 724 S.E.2d 892 (2012).
7. Commonly known as the seven deadly sins, SB 440 (the School Safety and Juvenile Justice Reform Act, which passed into law in 1994) amended O.C.G.A. § 15-11-28 to grant the Superior Court exclusive jurisdiction over the offenses of murder, rape, voluntary manslaughter, armed robbery (with a firearm), aggravated sexual battery, aggravated child molestation and aggravated sodomy.
8. NJC O.C.G.A. § 15-11-520 (HB 242/AP beginning at Line 5092) (emphasis added).
9. See GA. APPLESEED CTR. FOR LAW AND JUSTICE, COMMON WISDOM: MAKING THE CASE FOR A NEW JUVENILE CODE IN GEORGIA (2008), available at <http://www.gaappleseed.org/children/reports/> (last visited Nov. 20, 2013).
10. Ga. Rules of Professional Conduct, Rule 3.8.
11. NJC O.C.G.A. § 15-11-1 (HB 242/AP beginning at Line 48).
12. *Bordenkircher v. Hayes*, 434 U.S. 357, 364-65 (1978).
13. NJC O.C.G.A. § 15-11-473(a) (HB 242/AP beginning at Line 4602) (emphasis added).
14. NJC O.C.G.A. § 15-18-6.1 (HB 242/AP beginning at Line 7706).
15. *Id.* If the district attorney does not have adequate resources to represent the state in juvenile delinquency proceedings, the district attorney is to notify the chief judge of the Superior Court, the judges in juvenile court and the local governing authority for that county. The governing authority may then appoint an attorney to represent the state in all delinquency proceedings in that county.
16. 387 U.S. 1, 36 (1967).
17. *Id.* at 19-20.
18. Counsel may be waived by a child facing delinquency charges, unless

- the child was “not represented by the child’s parent, guardian or custodian.” CJC O.C.G.A. § 15-11-6; *see also* A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974).
19. GA.: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (2001), *available at* <http://njdc.info/pdf/georgia.pdf> (last visited Nov. 20, 2013).
 20. *See* Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 611-612 (Sept. 2002).
 21. NJC O.C.G.A. § 15-11-475(b) (HB 242/ AP beginning at Line 4618).
 22. NJC O.C.G.A. § 15-11-475(c) (HB 242/ AP beginning at Line 4620).
 23. NJC O.C.G.A. § 15-11-100 (HB 242/ AP beginning at Line 1448).
 24. NJC O.C.G.A. § 15-11-2 (10) (A), (C), (D) (HB 242/ AP beginning at Line 126). *Compare* CJC O.C.G.A. § 15-11-2(2) defining child as any individual who is under the age of 18 if alleged to be a deprived child.
 25. *Compare* CJC O.C.G.A. § 15-11-98(a) and O.C.G.A. § 15-11-6(b).
 26. *Id.*
 27. NJC O.C.G.A. § 15-11-2(52) (HB 242/ AP beginning at Line 382) (“‘Party’ means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter...”).
 28. NJC O.C.G.A. §§ 15-11-103(b), 15-11-104 (a), (b) (HB 242/ AP beginning at Line 1531).
 29. NJC O.C.G.A. § 15-11-104(d) (HB 242/ AP beginning at Line 1559).
 30. NJC O.C.G.A. §§ 15-11-105(b), 15-11-106(a)(2) (HB 242/ AP beginning at Line 1594).
 31. NJC O.C.G.A. §§ 15-11-105(c) (HB 242/ AP beginning at Line 1615), 15-11-106(a)(2) (HB 242/ AP beginning at Line 1684).
 32. NJC O.C.G.A. §§ 15-11-104(h) (HB 242/ AP beginning at Line 1573), 15-11-106(c) (HB 242/ AP beginning at Line 1692). Additionally, the court may discharge a CASA upon a finding that the CASA has acted in a manner contrary to the mission and purpose of the affiliate CASA program. NJC O.C.G.A. § 15-11-106(c) (HB 242/ AP beginning at Line 1692).
 33. The Resource Guidelines are available for purchase at <http://my.ncjfcj.org/NCJFCJ/Store/PublicationDetails.aspx?pld=CAN-01> (last visited Nov. 20, 2013).
 34. NJC O.C.G.A. § 15-11-3 (HB 242/ AP beginning at Line 477).
 35. NJC O.C.G.A. § 15-11-102(d) (HB 242/ AP beginning at Line 1509). *Compare* CJC O.C.G.A. § 15-11-58(k) requiring that the Court review a child’s case within 90 days of the dispositional hearing, but no later than six months after the child was placed in DFCS custody.
 36. NJC O.C.G.A. § 15-11-110 (HB 242/ AP beginning at Line 1740).
 37. *Id.*
 38. NJC O.C.G.A. § 15-11-112 (HB 242/ AP beginning at Line 1773).
 39. NJC O.C.G.A. § 15-11-260(a) (HB 242/ AP beginning at Line 3268).
 40. NJC O.C.G.A. § 15-11-260(b) (HB 242/ AP beginning at Line 3286).
 41. CJC O.C.G.A. § 15-11-93.
 42. *Id.*
 43. NJC O.C.G.A. § 15-11-261 (HB 242/ AP beginning at Line 3288).
 44. *Id.*
 45. *Id.*
 46. *Compare* CJC O.C.G.A. § 15-11-94 (b)(2) and NJC O.C.G.A. § 15-11-311(b) (HB 242/ AP beginning at Line 3758).
 47. NJC O.C.G.A. § 15-11-323 (HB 242/ AP beginning at Line 3839).
 48. *Id.*
 49. *Id.*
 50. NJC O.C.G.A. § 15-11-2(11) (HB 242/ AP beginning at Line 135) enumerates all of the ways in which a child could be a child in need of services.
 51. NJC O.C.G.A. § 15-11-380-381 (HB 242/ AP beginning at Line 3886).
 52. *Id.*
 53. NJC O.C.G.A. § 15-11-420 (HB 242/ AP beginning at Line 4190).
 54. NJC O.C.G.A. § 15-11-422(b) (HB 242/ AP beginning at Line 4232).
 55. NJC O.C.G.A. § 15-11-402 (HB 242/ AP beginning at Line 3992).
 56. *Id.*
 57. *Id.*
 58. *Compare* NJC O.C.G.A. § 15-11-402(a) (HB 242/ AP beginning at Line 3993) *with* NJC O.C.G.A. § 15-11-402(g) (HB 242/ AP beginning at Line 4011) and NJC O.C.G.A. § 15-11-412(b) (HB 242/ AP beginning at Line 4085).
 59. *Id.*
 60. *Id.*
 61. NJC O.C.G.A. § 15-11-410 (HB 242/ AP beginning at Line 4042).
 62. NJC O.C.G.A. § 15-11-412 (HB 242/ AP beginning at Line 4075).
 63. NJC O.C.G.A. § 15-11-413 (HB 242/ AP beginning at Line 4090).
 64. *Id.*
 65. NJC O.C.G.A. § 15-11-414(d) (HB 242/ AP beginning at Line 4131).
 66. NJC O.C.G.A. § 15-11-415 (HB 242/ AP beginning at Line 4149).
 67. *Id.*
 68. NJC O.C.G.A. § 15-11-400 (HB 242/ AP beginning at Line 3954).
 69. *Id.*
 70. *Id.*
 71. NJC O.C.G.A. § 15-11-442 (HB 242/ AP beginning at Line 4320).
 72. *Id.*
 73. *Id.*
 74. NJC O.C.G.A. § 15-11-445 (HB 242/ AP beginning at Line 4397).
 75. NJC O.C.G.A. § 15-11-443 (HB 242/ AP beginning at Line 4361).
 76. NJC O.C.G.A. § 15-11-424(f) (HB 242/ AP beginning at Line 4392).
 77. *Id.*
 78. *Id.*
 79. NJC O.C.G.A. § 15-11-450 (HB 242/ AP beginning at Line 4402).
 80. NJC O.C.G.A. § 15-11-451(f) (HB 242/ AP beginning at Line 4483).

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Traps for the Unwary Through the Invest Georgia Exemption

by Jonathan B. Wilson and Emily Stuart Horn

Crowdfunding is one of the most innovative concepts in securities law in the past 50 years, and Georgia is on the cutting edge of this new trend. Crowdfunding represents a potential revolution in the market for capital for small businesses and new business start-ups. Crowdfunding is the idea that a large group of people, with access to information, can reach accurate and effective investment decisions even if that large group of people includes individuals who have no formal training in making investment decisions. If crowdfunding were permitted without constraint by securities laws, it would allow companies to solicit both large and small investments from an unlimited number of people, without regard to their wealth or financial acumen.

The Invest Georgia Exemption (IGE), an administrative rule adopted by the Georgia Commissioner of Securities in 2011, makes possible a wide-scale distribution of solicitations to buy certain unregistered securities to Georgia residents.¹ The IGE, as a form of crowdfunding, puts Georgia in a very small group



of states that has allowed intrastate crowdfunding. Because securities offerings are governed by both state and federal law, however, there are traps that an alert entrepreneur must seek to avoid when structuring a sale of securities under the IGE.

Background: Securities Law 101

What makes crowdfunding potentially revolutionary is that its core premise—that it is good to allow an issuer of securities to plead its case directly to a large number

of potential investors—flies in the face of the philosophy that undergirds securities law in the United States.

But before we can talk about securities law, we need to be clear on what a security is. A standard law school class on securities might spend a month answering this question, but the simplified answer is a security is any indicator of ownership in a business or a financial asset.² The most common type of security is stock, which represents an ownership interest in a corporation's equity. Partnerships and limited liability companies also have ownership interests, which are sometimes called "partnership units," "membership interests" or "membership units." These securities, which represent an ownership stake in the profit of a business, are generally called "equities" because they represent the equitable ownership of the business. A debt instrument is also a security. For example, promissory notes, corporate bonds and debentures are all "debt" securities. The important thing to remember is that both debt and equity are securities that are subject to regulation in the United States both at the federal and state levels.

Federal Law Governing Securities

The chief federal laws governing securities are the Securities Act of 1933 (the 1933 Act) and the Securities Exchange Act of 1934 (the 1934 Act).³ The 1933 Act and the 1934 Act were both Congressional reactions to the great stock market crash of 1929. The thinking at the time was that the markets had become overheated, in part, because of an influx of new, small investors who had been solicited by unscrupulous brokers. Among the other reforms contained in the 1933 Act and the 1934 Act was a general prohibition on sales of securities unless those securities had been registered with the Securities and Exchange Commission (SEC) or were subject to an exemption.⁴

Registration means that the company issuing the securities (known to securities professionals as the issuer) had to file a registration statement with the SEC. Nearly every publicly traded company (i.e., the ones whose stock can be bought or sold through the NASDAQ and NYSE stock markets) at one point filed a registration statement as part of an initial public offering (IPO). Because the registration process is both expensive and time-consuming as are the ongoing reporting requirements under the 1934 Act, most small businesses and new ventures raise growth capital through private transactions that take advantage of one of the available exemptions from registration.

The Private Offering Exemption

The statutory exemptions to the general federal obligation to register securities are primarily set forth in Sections 3 and 4 of the 1933 Act. Statutory exemptions include everything from sales of stock in certain banks⁵ to sales of stock in purely intrastate transactions.⁶ Section 4(2) of the 1933 Act exempts sales of securities in a transaction that does not involve a public offering.⁷



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This last exemption is somewhat vague, because the statute does not define “public offering.” To eliminate the ambiguity, the SEC eventually adopted Regulation D, a set of regulations that creates safe harbors for certain kinds of non-public transactions.⁸ One of those safe harbors is for private sales of securities to “accredited investors” who are defined in Rule 501 of Regulation D to include an individual person with either (a) income of \$200,000 or more for two or more consecutive years (\$300,000 if married and filing jointly) and with the expectation of achieving at least that level of income in the current year, or (b) a net worth of \$1 million or more (excluding the individual’s primary residence).⁹

Private offerings under Regulation D are the method most start-ups and small businesses have used to raise funds for the past 50 years. Among other exemptions, Regulation D provides an exemption for a private sale of securities to accredited investors.¹⁰ The exemption is fairly easy to satisfy so long as all of the investors are accredited, the issuer files a Form D with the SEC (which is a very basic document that requires minimal information regarding the issuer and the securities being offered) and the issuer avoids any public solicitation or general advertising of the offering.¹¹

Although many start-ups and small businesses have relied on Regulation D to raise funds in private offerings, the prohibition on public solicitation or general advertising has become harder to understand and implement with the advent of the Internet. Before the web, private offerings under Regulation D were made by word of mouth, through prior relationships and from trusted referrals. With the easy availability of mass communication made possible by the web, entrepreneurs have struggled to understand why they cannot simply advertise the availability of their offerings on their websites and through social media like Facebook, Twitter and LinkedIn. It

is this intersection between mass communications over the web and the theory that large numbers of people with access to information can make accurate estimates and decisions that spurred the legislative incorporation of crowdfunding in the JOBS Act of 2012.

Crowdfunding and the JOBS Act

As the idea of crowdfunding took root and in an attempt to spark greater job creation in the aftermath of the Great Recession of 2007-08, Congress, in 2012, enacted the “Jumpstart Our Business Startups Act,” or JOBS Act, to make it easier for small businesses to raise funds through securities offerings.¹² Among the new ideas implemented in the JOBS Act was an amendment to the 1933 Act, creating a new exemption from registration that would permit the crowdfunding of securities offerings.

Through the JOBS Act, Congress amended the 1933 Act to exempt from registration sales of securities directly to the public through a “crowd-fund portal.” This new entity—the crowd-fund portal—was to be defined by regulations promulgated by the SEC.¹³ At the signing of the JOBS Act, President Obama said, “[b]ecause of this bill, start-ups and small business will now have access to a big, new pool of potential investors—namely, the American people. For the first time, ordinary Americans will be able to go online and invest in entrepreneurs that they believe in.”¹⁴

Among other changes to securities laws, the JOBS Act opened the door for private companies to publicly advertise the availability of investment opportunities in their securities (a practice known as “solicitation,” which was previously banned under the 1933 Act unless the offering was registered). Removing the ban on solicitation was intended to make it easier for private companies to locate potential “accredited investors” who

would be qualified to invest in exempt offerings of their securities under Regulation D.¹⁵

Knowing that it would be necessary for the SEC to promulgate regulations to implement these changes, Congress specifically obligated the SEC to adopt rules promptly. In the JOBS Act, Congress required the SEC to “revise its rules” with respect to the ban on Regulation D solicitations “not later than 90 days after the enactment of this Act.”¹⁶ Congress also required the SEC “not later than 270 days after the enactment of this Act” to issue such rules as may be necessary to carry out the amendments regarding crowdfunding contained in the JOBS Act.¹⁷ Despite these clear instructions, more than a year after the adoption of the JOBS Act, the SEC has still not adopted rules to define a “crowd-fund portal” or to otherwise allow issuers to undertake crowdfund offerings in the way the JOBS Act contemplates.¹⁸

Because of this delay, several states, including Georgia, have adopted rules (both through regulatory change and through legislation) to allow various kinds of crowdfunding on an intrastate basis (i.e., where both the issuer of the securities and each investor are residents of the same state).¹⁹ This kind of crowdfunding (generally called intrastate crowdfunding) takes advantage of an exemption in federal securities laws that exempts from federal registration under the 1933 Act those offerings that are entirely between an issuer and investors who are residents in the same state.

Intrastate Crowdfunding through the Invest Georgia Exemption

The Georgia Commissioner of Securities, anticipating a need to reform the state’s securities laws to allow some form of crowdfunding, adopted a regulatory exemption for intrastate crowdfunding in November 2011 under a rule it named the Invest Georgia

Exemption.²⁰ After it was amended several times, most recently in December 2012, the IGE allows a company that is organized in Georgia (which may be a corporation, partnership or limited liability company) to raise up to \$1 million per year in a crowdfunded offering that consists entirely of Georgia residents.

As part of the IGE offering:

- The issuer of the securities must be a for-profit entity that is formed under the laws of the state of Georgia and registered with the Georgia Secretary of State;²¹
- The transaction must fall within the intrastate exemption offered by Section 3(a)(11) of the 1933 Act and the safe harbor provided in SEC Rule 147;²²
- The sum of all cash and other consideration received for all sales of the securities through the IGE must not exceed \$1 million (after taking into account all sales under the IGE during the preceding 12 months);²³
- No single investor may invest more than \$10,000 unless that investor is an accredited investor (as defined in Regulation D);²⁴
- Funds received must be deposited in a bank or depository institution authorized to do business in Georgia and funds

must be used in accordance with representations made to investors;²⁵ and

- Before any general solicitation or the 25th sale of the security, whichever occurs first, the issuer must file a notice with the Georgia Commissioner of Securities that specifies that securities are being offered under the IGE. That notice must contain the name and address of (a) the issuer; (b) all persons who will be involved in the offer or sale of securities; and (c) the bank or other depository institution in which investor funds will be deposited.²⁶

An issuer planning to rely on the IGE to offer its securities must be an operating company (i.e. one that will generate revenue through the sale of products or services) and not an entity that will make investments in others so that it would fall into the definition of an "investment company" as defined in the federal Investment Company Act of 1940.²⁷ In addition, the issuer must inform all purchasers of its securities that the securities have not been registered under the 1933 Act and instead are exempt under the IGE. The issuer must also inform all purchasers that the securities are subject to the limitation on resales contained in SEC Rule 147(e).²⁸

The issuer may not use the IGE in conjunction with other exempt sales of securities, except for offers and sales to (a) an officer, director, partner or trustee or an individual occupying similar status or performing similar functions, or (b) a person owning 10 percent or more of the outstanding shares of any class of securities of the issuer.²⁹ The IGE may not be used if the issuer is subject to a disqualifying event as specified in Rule 590-4-2-.06.³⁰

Ongoing Obligations Under Federal Securities Laws

Before Georgia's entrepreneurs start raising funds through the IGE, they should carefully review the obligations they will still need to satisfy under federal securities laws. A chief limitation is that private companies (meaning those who do not file ongoing financial statements and other reports under the 1934 Act) are still subject to a limitation on the maximum number of shareholders they may have. Although the IGE places no limit on the number of Georgia investors that can invest in a Georgia business, the 1934 Act effectively does, even though the offering is exempt from federal registration under the 1933 Act and qualifies

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for the Rule 147 safe harbor.³¹ Section 12(g) of the 1934 Act requires companies that have (1) assets exceeding \$10 million and (2) 500 or more non-accredited investors or more than 2,000 total investors to file a registration statement.³² Further, the 1934 Act imposes reporting requirements on such companies, in addition to companies registered under the 1933 Act. These reporting requirements mandate that a company must file annual, quarterly and other filings with the SEC.³³ This reporting process is expensive, time-consuming and exactly the process that most companies hoped to avoid by utilizing the IGE.

If a company utilizing the IGE does not vigilantly monitor the type and number of investors from whom it accepts an investment, a Georgia company could end up with 1934 Act reporting requirements. For example, a Georgia company with \$9.5 million in assets meets the requirements of the IGE and accepts investments totaling \$1 million under the IGE from 2,000 investors, 500 of which happen to be non-accredited. Subsequent to its IGE offering, this company will be subject to the 1934 Act's reporting requirements, even though the offering and sale of the securities were exempt from federal registration under Section 3(a)(11) of the 1933 Act and the Rule 147 safe harbor thereunder.

This bizarre outcome is the result of a different definition of exempted securities under the 1933 Act versus the 1934 Act. Section 3 of the 1933 Act defines exempted securities to include intrastate offerings (i.e. securities offered and sold only to residents of a single state.)³⁴ However, the 1934 Act definition of exempted securities does not contain this intrastate offering exemption.³⁵

Some may argue that if a security qualifies as an exempt security under the 1933 Act that it should implicitly qualify as an exempt

security under the 1934 Act due to the languages set forth in the 1934 Act defining exempted securities to include "such other securities . . . as the Commission may . . . exempt."³⁶ However, this assumption ignores the plain language of the 1934 Act and apparent legislative intent: if Congress wanted to adopt the same definition of exempt security in the 1934 Act as in the 1933 Act, it could have done so. A prudent investor will not rely on such an assumed conformance of definitions, which conflicts with the plain language of the statutes.

This "wrinkle" will have the effect of causing companies to prefer accredited investors over non-accredited investors and/or require a higher minimum investment in offerings under the IGE. For example, instead of accepting \$1 million in investments in increments of \$1 per investor from any Georgian who wants to invest, a Georgia company aware of the wrinkle will limit to less than 500 the number of unaccredited investors from whom it accepts money and limit its total investors to 2,000 or less. President Obama's statement that ordinary Americans can now invest in entrepreneurs they believe in is certainly limited under the IGE and is not yet true under the JOBS Act.

The unwary Georgia company might raise \$1 million from one million investors and wind up as a public company when its assets exceed \$10 million. For example, a \$10 million company with 499 unaccredited investors may end up as a 1934 Act reporting company when a grandfather transfers shares to his young and unaccredited grandchildren. Once the 1934 Act threshold is exceeded, a company would have to reduce its number of shareholders to less than 300 in order to restore its non-reporting status.³⁷

This wrinkle for companies utilizing the IGE would not apply, however, to companies raising funds under the type of crowd-

funding that should one day become possible under Title III of the JOBS Act. Title III of the JOBS Act amends Section 12 of the 1934 Act to provide that shareholders obtained through a securities offering under Title III of the JOBS Act do not count for purposes of the shareholder limits in Section 12 of the 1934 Act.³⁸


A second important limitation is the ban on general solicitation. Although no statute defines the phrases "general solicitation" and "general advertising," there is a nonexhaustive list of efforts in Rule 502(c) that are considered by the SEC to constitute general solicitation and general advertising.³⁹ Issuers selling securities in a private offering under Regulation D are required to comply with the general prohibition on general solicitation and general advertising.

Through the JOBS Act and the 506(c) rules already issued thereunder, Congress in 2012 loosened the prohibition on general solicitations by permitting issuers of securities in private offerings under Regulation D to engage in general solicitations and by permitting private offerings through the crowdfunding provisions of the JOBS Act to widely advertise their offerings through crowd-fund portals. This loosening of the prohibition on general solicitations, however, does not apply to solicitations under the IGE (which, for federal law purposes, are exempt from registration under Section 3(a)(11) of the 1933 Act). The general rule against solicitations will continue to apply to IGE offerings.

To avoid offending federal law, therefore, issuers in an IGE offering should ensure that their offering materials are only available to Georgia residents. One way to accomplish this, for example, would be to require web users to certify their residence before obtaining access to the offering materials. Issuers using the IGE, however, will need to restrict their web and social media communications so that they do not rise to the

level of a general solicitation. This means that the issuer can advertise itself and its products to the general public and may even call attention to the fact that it is engaged in an IGE offering, but should not openly solicit sales of its securities or provide the chief details (i.e., offering price, minimum investment amount, etc.) in communications that are generally available to the public.

Conclusion

The IGE offers Georgia companies the ability to engage in intrastate crowdfunding now, in advance of the availability of interstate crowdfunding under the JOBS Act. Although crowdfunding under the IGE and crowdfunding under the JOBS Act have many similarities, there are important differences that create traps for the unwary. Georgia entrepreneurs should be careful to consult with counsel experienced in this area before engaging in an offering of securities. 



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Endnotes

1. Ga. Comp. R. & Regs. R. 590-4-2-.08 (2012), *et seq.*
2. SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946) (finding that an investment contract, or security, exists if there is present an investment of money in a common enterprise with profits to come solely from the efforts of others).
3. 15 U.S.C. § 77a, *et seq.*; 15 U.S.C. § 78a, *et seq.*
4. See 15 U.S.C. § 77e.
5. *Id.* § 77c(a)(5).
6. *Id.* § 77c(a)(11).
7. *Id.* § 77d(a)(2).
8. 17 C.F.R. 230.500 (2013), *et seq.*
9. *Id.* §§ 230.501(a)(5), 230.501(a)(6).
10. *Id.* §§ 230.505, 230.506.
11. 17 C.F.R. § 230.500 (2013), *et seq.*
12. Jumpstart Our Business Startups Act of 2012, H.R. 3606 (April 5, 2012).
13. *Id.* at Title III.
14. *Remarks by the President at JOBS Act Bill Signing*, WHITEHOUSE.GOV (April 5, 2012, 2:36 PM), <http://www.whitehouse.gov/the-press-office/2012/04/05/remarks-president-jobs-act-bill-signing> (last visited Nov. 17, 2013).
15. *Id.*
16. Jumpstart Our Business Startups Act of 2012, H.R. 3606 (April 5, 2012), § 201(a)(1).
17. *Id.* § 302(c).
18. On July 10, 2013, the SEC adopted rules to lift the ban on general solicitations in Regulation D offerings. Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Securities Act of 1933 Release No. 33-9415, 78 Fed. Reg. 44771 (July 24, 2013).
19. Georgia and Kansas have adopted administrative rules to permit intrastate crowdfunding within their states. Washington and North Carolina have considered legislation. Patrick Clark, *Kansas and Georgia Beat the SEC on Crowdfunding Rules. Now Others are Trying*, BLOOMBERG BUSINESSWEEK (June 20, 2013), <http://www.businessweek.com/articles/2013-06-20/kansas-and-georgia-beat-the-sec-on-crowdfunding-rules-dot-now-others-are-trying> (last visited Nov. 17, 2013). In North Carolina, the bill passed the House of Representatives but was not acted upon by the Senate. Tim Huntley, *North Carolina State Senate Fails to Support Crowdfunding Legislation*, ANENTREPRENEURIALIFE.COM (Aug. 26, 2013), <http://anentrepreneuriallife.com/north-carolina-state-senate-fails-to-support-crowdfunding-legislation/> (last visited Nov. 17, 2013). Legislators in Michigan introduced a bill in that state that would allow intrastate crowdfunding. Charles Luzar, *Update: Michigan Intrastate Crowdfunding Could be Legal by Year's End*, CROWDFUNDINSIDER.COM (Oct. 8, 2013, 9:12 AM), <http://www.crowdfundinsider.com/2013/10/24113-michigan-house-republicans-push-intrastate-crowdfunding-bill/> (last visited Nov. 17, 2013). A bill is also pending in the Wisconsin legislature that would permit intrastate crowdfunding. A.B. 350, 2013-2014 Leg., Reg. Sess. (Wis. 2013); Jonathan B. Wilson, *Wisconsin Crowdfunding Bill*, POINTOFLAW.COM (Sept. 10, 2013, 7:55 AM), <http://www.pointoflaw.com/archives/2013/09/wisconsin-crowdfunding-bill.php> (last visited Nov. 17, 2013).
20. Ga. Comp. R. & Regs. R. 590-4-2-.08 (2013), *et seq.*
21. *Id.* at 590-4-2-.08(1)(a).
22. *Id.* at 590-4-2-.08(1)(b).
23. *Id.* at 590-4-2-.08(1)(c).
24. *Id.* at 590-4-2-.08(1)(d).
25. *Id.* at 590-4-2-.08(1)(e).
26. *Id.* at 590-4-2-.08(1)(f).
27. *Id.* at 590-4-2-.08(1)(g).
28. *Id.* at 590-4-2-.08(1)(e).
29. *Id.* at 590-4-2-.08(2).
30. *Id.* at 590-4-2-.08(3).
31. 15 U.S.C. § 78l(g).
32. *Id.* § 78l(g).
33. *Id.* § 78m.
34. *Id.* § 77c(a)(11).
35. *Id.* § 78c(a)(12)(A).
36. *Id.* § 78c(a)(12)(A)(vii).
37. *Id.* § 78l(g)(4).
38. Jumpstart Our Business Startups Act of 2012, H.R. 3606 (April 5, 2012), § 303.
39. 17 C.F.R. § 230.502(c) (2013).

National Constitutional Celebration Planned

by Steve Harper and Dave Oedel

From March 12-14, 2014, the State Bar of Georgia, led by President Charles L. Ruffin, along with a number of partners and sponsors, will host a national celebration of the U.S. Constitution on the occasion of the 225th anniversary of its ratification. The event will take place at Atlanta's Westin Buckhead Hotel.

"This national celebration will be the signature event of our year-long, simultaneous observance of the 225th anniversary of the U.S. Constitution and the 50th anniversary of the creation of the unified State Bar of Georgia," Ruffin said. "Bringing some of the nation's greatest legal minds to Georgia—including U.S. Supreme Court Justice Antonin Scalia, renowned historian David McCullough and many others—provides a unique opportunity for State Bar members and the public to experience what will be a fascinating discussion of the Constitution's role in shaping our society over the past 225 years, today and in the future."

The celebration will begin at 1 p.m. on Wednesday, March 12, with Dean Erwin Chemerinsky of the University of California at Irvine School of Law debating Prof. Richard Epstein of New York University School of Law about the nature of constitutional interpretation. They will defend and critique in a lively setting contrasting rationales for a range of interpretive approaches, from original meanings to pragmatic contemporary meanings, with other approaches pondered and debated as well.



On Wednesday afternoon, nationally prominent legal historians will discuss the significance of the ratification process to the Constitution's meaning today for the nation, its states and its people. Participants

will include Prof. Akhil Amar of Yale Law School, Prof. Jack Pratt of the University of South Carolina School of Law and Prof. Melvin Urofsky of American University.

Later Wednesday afternoon, the celebrants will be joined by Georgia Attorney General Sam Olens, North Carolina Attorney General Roy Cooper and Colorado Attorney General John Suthers. Olens and the other attorneys general from both parties are emerging as defenders of and challengers to the constitutional boundaries of congressional and federal executive power that had long been treated as forgotten or irrelevant.

During Wednesday's dinner gala, Pulitzer Prize winner and Medal of Freedom recipient David McCullough will address the gathering, speaking on "The Founding Fathers and the Founding Time."

On Thursday morning, March 13, starting at 9 a.m., attendees will be treated to a reenactment of the arguments in the historic case of *Furman v. Georgia*, featuring Stephen Bright and Anne Lewis, an introduction by Anne Emmanuel and a bench composed of leading jurists from the 11th Circuit Court of Appeals, the Supreme Court of Georgia and the Court of Appeals of Georgia. In *Furman*, the Court confronted constitutional questions about the death penalty that remain resonant today.

Later in the morning, the gathering will hear from two of today's most distinguished, prolific and successful advocates before the U.S. Supreme Court, former Solicitors General Paul Clement and Seth Waxman. They will share their insights about the most important

constitutional questions that have recently, and may soon, confront the Court and our nation.

After lunch on Thursday, the celebrants will hear from two panels who parse the meanings of the Court's decisions for the public's consideration. National Public Radio's Nina Totenberg, the *New York Times*' Adam Liptak and SCOTUSblog editor Amy Howe will discuss the nuances of presenting constitutional questions to and for the broader public. Later, prominent academic bloggers Jack Balkin, Michael Dorf and Eugene Volokh will discuss the role of net-based colloquy in providing forums for the broadening constitutional conversation so eagerly sought today by many citizens.


Rounding out the Thursday afternoon program, attendees may attend one of three sessions—one featuring Jim Marshall, president, U.S. Institute of Peace, who will talk about America's international role as a beacon of constitutionalism; a session led by Prof. Charles Shanor, Emory University School of Law on national security and the Constitution; or a session moderated by Prof. Eric Segall, Georgia State University College of Law, leading a panel discussion on gun rights and regulation featuring Prof. Bob Cottrol, George Washington University; Prof. Sandy Levinson, University of Texas Law School; Prof. Nelson Lund, George Mason University School of Law; and Prof. Adam Winkler, University of California at Los Angeles Law School.

The celebration on Friday, March 14, will begin with discussion by some of the nation's leading jurists

on how constitutional meanings have bearing on their work in interpreting the law while deciding cases of significance to the people. Judge Alex Kozinski of the Ninth Circuit Court of Appeals, Judge Richard Posner of the Seventh Circuit Court of Appeals and Justice David Nahmias of the Supreme Court of Georgia will begin the session at 9 a.m. by discussing constitutional interpretation from the vantage point of courts that owe deference to prior decisions of the Supreme Court of the United States.

Later in the morning, after an address from an important but unconfirmed guest about the Constitution's significance for civil rights, the celebrants will hear from Hon. Antonin Scalia, Associate Justice of the Supreme Court of the United States on our Constitution's meaning. The celebration will end at noon on Friday.

"All members of the legal profession have a duty to continue learning and teaching others about the law and the fundamental principles on which it is based," Ruffin said. "Our national celebration of the 225th anniversary of the ratification of the Constitution will be a meaningful step toward meeting that responsibility. The better educated that we and our fellow citizens are, the safer our nation will be going forward."

For additional information, please feel free to contact Prof. Dave Oedel of Mercer University Law School at oedel_dg@law.mercer.edu or Georgia ICLE Executive Director Steve Harper at constitution@iclega.org. 

Please join the State Bar of Georgia in celebrating the
United States Constitution 225 years after its ratification.

March 12-14, 2014

For more information on the Constitutional Symposium, please see the ad on the back cover.

2014 State Bar Legislative Preview

by Rusty Sewell

On Jan. 13, the General Assembly will reconvene for the 2014 session, which is the second year of their two-year session. Since this is the second year, there are a number of carry-over bills that the General Assembly did not pass in the 2013 session that could be voted on in 2014. Some of these bills have been worked on over the interim by study committees of the Legislature.

This is to say that the Legislature will have issues ready to work on from day one. This also should be a quick session because the state will have to move up the primary date for elections to comply with the time requirement for getting ballots to military personnel. The federal government has changed the time requirement to extend the time between the primary and any run-off elections.

The Bar legislative staff will be ready for the fast pace. We have already had one meeting of the Bar's Advisory Committee on Legislation (ACL) where two legislative proposals were approved and then passed by the Board of Governors at their November meeting:

- A funding request of \$2.5 million in the state's fiscal year 2015 budget to provide legal services for victims of domestic violence. The State Bar was responsible for starting this state funding in 2005 and has continued to support state funding for this issue.
- A continuation funding request of \$800,000 in the state's FY 2015 budget for the Georgia Appellate Resource Center to provide post-conviction legal services in death penalty cases. The Center has



continuously received State Bar support for its budget requests.

The ACL will meet again in December to hear any additional proposals that may be presented to them by State Bar sections and committees. Approved proposals will then be presented to the Board of Governors in January.

Since this is the second year of the session, we do have two bills that were approved by the Board of Governors in 2013 that we anticipate will be voted on by legislators in the 2014 session. HB 654 relates to testamentary guardianships and HB 685 updates the Uniform Deployed Parents Custody and Visitation Act. Both of these bills are in the House Civil Judiciary Committee and we are optimistic about their passage in the upcoming session.

Three bills that the Bar voted to oppose are carry-over bills that will require our continued opposition. SB 209, known as the "Legal Zoom" bill, tries to define what the practice of law is, but that can only be done by the Supreme Court of Georgia. SB 141 is called the "Patient Injury Act." It tries to set up an administrative remedy for medical malpractice claims and denies the right of patients who are injured by the negligence of doctors their right to go to court. SB 202 deals with settling disputes between nursing homes and residents (or their guardians) through binding arbitration rather than through the courts. Our goal is to ensure that these proposals do not advance next session.

Some other issues that affect lawyers and the judicial branch that are anticipated include:

- **Criminal Justice Reform.** This will be the third year of Gov. Deal's Special Council on Criminal Justice Reform and they have been highly successful in reforming the criminal justice system. In the past two years, the governor has supported legislation reforming both the adult and juvenile systems which resulted in improvements in the systems as well as financial savings to the state. The Council may propose legislation for next session, but their main focus has been to work on methods to help released inmates find jobs and housing, thus lowering the odds that these individuals will return to prison.

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Your state legislators expect and want your input on legislation. The most effective communication with legislators comes from constituents—those who live in their communities and vote in their districts. You can find out who your state representative and senator are by visiting www.house.ga.gov/Representatives/en-US/HouseMembersList.aspx and www.senate.ga.gov/senators/en-US/SenateMembersList.aspx. Then send them a letter or email or call their office and respectfully ask for their favorable consideration on legislation important to you.

- **Judicial Funding.** As always, the Bar will be working with the governor's office and the legislators to make sure that the judiciary has adequate funding.
- **Other Issues.** As usual, other issues of interest to attorneys will arise during the session. I encourage you to follow all the activities of the General Assembly by visiting the State Bar's website, www.gabar.org, where you will find summaries of legislative proposals and the bills/resolutions that are supported or opposed by the State Bar. Also on the site are weekly updates of legislative activities, links to specific legislation that may be of interest and links to view live streaming

from the floors of the House and Senate and committee meetings. I encourage you to get involved in the process by contacting your legislators and asking for their support on issues of interest to you.

If you have any questions about the Bar's legislative program, don't hesitate to call our office at 404-872-1007, or email me at rusty@georgiacp.com. 

Rusty Sewell is one of the State Bar's professional legislative representatives. He can be reached at 404-872-1007 or rusty@georgiacp.com.

Diversifying the State Bar of Georgia:

How its Members Challenge Underrepresentation of Diverse Attorneys

by Marian Cover Dockery

On Oct. 3, the State Bar of Georgia Diversity Program and the Chief Justice's Commission on Professionalism (CJCP) kicked off the 2013 Fall CLE and Luncheon Program with a Welcome Reception hosted by Nelson Mullins. The event included the panel discussion "A Historical and Practical Perspective of Diversity in the State Bar of Georgia."

The panelists, all leaders in the State Bar, revealed that there has been slow progress bringing diversity to our ranks. Although more minorities are participating in the Board of Governors, the numbers are unsatisfactory.

A. James Elliott, State Bar past president and associate dean at Emory School of Law, appointed the first African-American female lawyer to serve on the Board of Governors in addition to appointing another African-American, Marva Jones Brooks, as city of Atlanta attorney during his presidency.

Avarita Hanson, executive director of CJCP, commented: "The appointment became more than a symbolic act or mere recognition of the need for representation of lawyers of color and women on the Board of Governors. It is historic because it contributed as a catalyst for positive changes in the bar, its programs



Richard M. Rufolo, vice president of employment and labor for UPS, addresses the attendees at the annual State Bar Diversity Luncheon.

Photos by Don Morgan

and policies, in the courts and in Georgia including the perception of equal access to justice by those involved in our courts and judicial system."

The other panelists were also instrumental in bringing positive changes to the Bar. Chief Justice (ret.) Leah Ward Sears was the first African-American woman and the youngest woman to serve on the Supreme Court of Georgia. Justice Sears was also the first woman in Georgia to be elected state-wide. Thomas Sampson, managing partner of Thomas, Kennedy, Sampson & Tompkins, the oldest minority-owned firm in Georgia, was one of the first African-American attorneys to serve on the Board of Governors and has done so for 15 years. His service has inspired minorities to get involved in the Bar and to form their own law firms. Rita Sheffey is a partner at Hunton & Williams and currently serves as secretary of the State Bar. She has also served as president of the Atlanta Bar, Atlanta Legal Aid and the Atlanta Volunteer Lawyers Foundation, becoming only the second person to do so. Sheffey's position as a partner with a major law firm coupled with her volunteer service reminds women that they can take on leadership roles with the State Bar while practicing law and do both successfully.

The conversation of the panelists did reveal how we as lawyers and a society still need to understand the power of promoting inclusion and the importance of total acceptance of minorities in the State Bar. Sears discussed how she was marginalized at professional events by attendees who assumed that she was a member of the service staff because she was a minority. Sampson recollected experiences in court where judges made assumptions regarding the party the firm was representing, the assumption being that his minority firm was not representing the Fortune 500 Company. These stories only con-



(Left to right) Rita Sheffey, Thomas Sampson, Marian Cover Dockery, A. James Elliott, Chief Justice (ret.) Leah Ward Sears and Avarita Hanson after the panel presentation on "A Historical and Practical Perspective of Diversity in the State Bar of Georgia."



(Left to right) Robin Sangston, Charles Johnson III, Dean Richardson Lynn, Marian Cover Dockery, Scott Masterson, Charles Huddleston and Kamla Alexander spoke on the panel addressing the declining number of law school applicants.

firm that progress has been slow in raising the awareness of lawyers and educating our members that we all have a responsibility to speak up when our peers are marginalized.

CLE Topics

The CLE and Luncheon, held Thursday, Oct. 3, featured a full day of speakers and panel-

ists addressing diversity issues in the profession.

Charles Johnson III, partner, Holland & Knight, moderated the first panel, "The Declining Number of Law School Applicants." Speakers included Dean Richardson Lynn, Atlanta's John Marshall Law School; Kamla Alexander, senior counsel, The Coca-Cola Company; Scott



(Left to right) Facilitators of "Succeeding in a Lean Economy" included: Charles Huddleston, Martine Cumbermacke, Marian Cover Dockery, Kathleen Currey and Harold Franklin Jr.

Masterson, managing partner, Atlanta office of Lewis Brisbois Bisgaard & Smith LLP; and Robin Sangston, vice president of legal affairs and chief compliance officer, Cox Communications.

The panel addressed the declining numbers of law school applicants and law graduates' challenges securing jobs following graduation; however, it was pointed out that minority applicants are not on the decline, but instead fewer white students are applying to law school. The decline of white applicants to law school is 18 percent, more significant than any other group of students admitted to law school. Latinos and African-American students actually showed a slight increase in admissions.

Change of Delivery of Legal Services

The panelists also addressed the change in how legal services have been delivered in the last few years. Many corporations' in-house counsel are performing the work that outside counsel had performed in the past, as well as utilizing outside services such as Counsel-on-Call to perform projects previously delegated to law firms.

Diversity is Key When Hiring Outside Counsel

When in-house lawyers hire law firms, the panelists agreed that

in-house counsel considers team diversity when pitches are made; if subsequently, inside counsel discover that the minorities on the pitch are only "window dressing" the companies will move their business to another firm.

Support of Pipeline Programs

The panel concluded by speaking to why supporting pipeline programs for students as young as elementary school is a key strategy to increase diversity in law schools. Students who are exposed to legal careers at a young age have the opportunity to consider the law as a future profession. They also benefit from learning what initial courses they should take and the skills they need to develop to succeed in law school, in addition to gaining an understanding of how different life experiences can prepare them for success in pursuit of a professional degree.

Know Your Elevator Speech, Your Strategic Plan and Your Brand

Marian Dockery gave a presentation on the value of being prepared when approached by a prospective employer. The three strategies she emphasized for attorneys seeking employment were: preparing to give the 30- or 60-second ele-

vator speech; preparing long and short term strategic plans for your career and; knowing your brand. Following an explanation of the three, the attendees divided into four groups to work on the three strategies led by facilitators Charles Huddleston, chair, Georgia Diversity Program; Kathleen Currey, partner, Parker Hudson, Rainer & Dobbs; Harold Franklin Jr. partner, King & Spalding; and Martine Cumbermacke, partner, Swift, Currie, McGhee & Hiers. The attorneys who developed the best elevator speeches and strategic plans and brands presented to the full group.

The Importance of Diversity in the Courtroom

This panel of jurists was led by Hon. Kimberly Esmond Adams, Fulton County Superior Court and featured Hon. Anne Elizabeth Barnes, presiding judge, Court of Appeals of Georgia; Hon. Dax Lopez, State Court of DeKalb County; and Hon. Tangela Barrie, DeKalb County Superior Court. All agreed that diversity is essential in the courtroom so that the citizens feel they will get a fair trial. Diversity is not only important on the bench, but the court clerk, the guards, the administrators, the bailiff and other court personnel as well as the jurors, must reflect the diversity of the county where the trial is held. The perception that there will be a just and fair trial that is of utmost importance. As the majority of the defendants are African-American, if they walk into a courtroom where no one looks like him/her, the perception is that it is not possible to get a fair trial even if that is not the case.

Lopez, the only Latino judge in Atlanta, emphasized the importance of mentoring and encouraging other minorities to join the bench. His mentor, the first Latino judge in DeKalb, Hon. Anthony DelCampo, encouraged Lopez to become a judge before he retired from the bench and returned to private practice. In DeKalb, the most diversified

county in Georgia, the judges speak four different languages: English, French, Spanish and Mandarin. Asian-Americans, Latinos and African-Americans are all represented on the bench, which is not the case in other Georgia counties. This diversity is a testament to DeKalb's commitment to its constituents to ensure that all the defendants are provided excellent services in the courtroom and ensuring a comfort level to defendants who otherwise may feel marginalized.

Prior to the keynote address, State Bar President Charles L. Ruffin, welcomed the attendees to the luncheon and commented on why a diverse bar is in the best interest of all its members and how fueling this diversity through pipeline programs is key in ensuring a diverse bar in the future. Keynote speaker, Richard M. Rufolo, vice president of employment for UPS, discussed his company's commitment to diversity and their active involvement in programs that encourage diverse students to attend law school. UPS embraces diversity by example. Its senior vice president and general counsel, Teri McClure, is an African-American woman who supports diversity in every aspect of the legal departments' practices by seeking to secure the services of outside counsel who are diverse. UPS has been widely recognized for its diversity efforts by several organizations, including the Minority Corporate Council Organization and as the top corporate supporter of HBCU Engineering Programs. UPS serves as a leader not only for Georgia corporations, but for companies nationwide. 



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

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

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2014

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*FEBRUARY AND MARCH DATES TBD

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Section dues are currently half-off and
membership will be valid through June 30.

Kudos

> **Alice S. Mitchell**, chief of the **Georgia Department of Labor's Appeals Tribunal** in Atlanta, was elected **president** of the **National Association of Unemployment Appeals Professionals (NAUIAP)**. NAUIAP is comprised of professionals with state labor departments throughout the United States who administer the unemployment insurance appeals process. A 20-year veteran of the appeals process, Mitchell has served as chief of the Georgia Tribunal since 2002.

>  **Moore & Reese, LLC**, announced that partner **Mindy C. Waitsman** was elected to serve on the **Board of Directors** of the **Georgia Chapter of the Community Associations Institute (CAI)**. The Georgia Chapter of the CAI was formed in 1981. Members include: condominium and homeowner associations, individual home owners, management companies, individual community association managers and providers of professional services and products for community associations. The Georgia Chapter has more than 750 members.


> **Deborah Marlowe**, a partner at **Fragomen, Del Rey, Bernsen & Loewy, LLP**, was elected to **Emory University's Board of Trustees** for a six-year term. The Board of Trustees governs the university by establishing policy and exercising fiduciary responsibility for the long-term well-being of the institution. The board and its executive committee act on recommendations from board committees, university officers and the university senate.


>  **McKenna Long & Aldridge LLP** announced that partner **William "Bill" Ide** was honored with the **2013 Rule of Law Champion Award** by the **American Bar Association Rule of Law Initiative**. The initiative honors those who have led efforts to advance the rule of law, to increase access to justice, to establish independent legal and judicial systems, to protect human rights and to strengthen civil society. Ide was honored for his dedication to leading the advance of the rule of law over the last four decades.


> **Greenberg Traurig, LLP**, announced that **Joe Whitley** was named **chair** of the **Administrative Law and Regulatory Practice (AdLaw) Section** of the **American Bar Association**. Under Whitley's leadership, the section will focus on growing its membership, and continuing the programs and publishing that are hallmarks of the section. Whitley

also will focus on building regional strength for the section by creating regional sub-committees for up to five regions in the United States. Additionally, a special committee of corporate general counsels will be created to provide feedback and insights to the AdLaw Section Council on the continuing growth of the regulatory state.



 **Hunton & Williams LLP** announced that **Jason M. Beach, T. Brian Green, Bradley W. Grout, James D. Humphries IV** and **Rita A. Sheffey** received the firm's **2013 E. Randolph Williams Award** for outstanding pro bono service. The award is presented annually to firm lawyers and legal professionals who contribute more than 100 hours of pro bono legal services to indigent persons and community service programs during the firm's most recent fiscal year. The prestigious honor is named after firm co-founder E. Randolph Williams, who is remembered for his legal accomplishments and philanthropy.

>  The **Georgia Defense Lawyers Association (GDLA)** announced that the **Defense Research Institute** honored GDLA Immediate Past President **Lynn M. Roberson** of Swift, Currie McGhee & Hiers in Atlanta with the **2013 Fred H. Sievert Award**. This award is presented annually to an individual who has made a significant contribution towards achieving the goals and objectives of the organized defense bar. All nominees must be the current or past president of a state and local defense organization, who have initiated innovative projects for the betterment of the organization and exercised strong leadership.

>  **Taylor English Duma LLP** announced that **Michele L. Stumpe** was selected by the **Georgia Restaurant Association (GRA)** as a finalist for its 7th annual **Georgia Restaurant Association Crystal of Excellence Awards**. Stumpe was the recipient of the GRA Chairman's Award—an award that honors a single individual in the restaurant industry who has provided extraordinary service to the industry as a whole. Stumpe has

been representing members of the restaurant industry for more than 20 years in the areas of alcohol licensing and consulting, premises liability, business litigation, hospitality and dram shop litigation.

>



Schumacher



Hafer



Perez

Kilpatrick Townsend & Stockton LLP announced that partner **Jennifer Schumacher**

was named **co-chair** of the **Employee Benefits Law Section** of the **State Bar of Georgia**. Schumacher previously served as secretary. The Employee Benefits Law Section seeks to: promote knowledge and understanding of laws regulating employer-sponsored benefit plans through continuing legal education opportunities in the fields of executive and equity compensation, qualified retirement plans, health and welfare plans and ERISA litigation; establish a liaison with the Department of Labor, Internal Revenue Service and employee benefit practitioners; and develop collegiality among practitioners within the employee benefits area of practice.

Partner **Randy Hafer** was appointed **co-chair** of the **American College of Construction Lawyers' (ACCL) Alternative Disputes Resolution Committee**. The ACCL Alternative Disputes Resolution Committee interfaces with the various ADR providers such as the AAA, JAMS and CPR, and keeps the College members informed of the latest developments and best practices in arbitration, mediation, dispute boards and other ADR procedures.

Partner **Adria Perez** was elected to the **Atlanta Volunteer Lawyers Foundation (AVLF) Board of Directors**. AVLF was created in 1979 through the joint efforts of the Atlanta Legal Aid Society, the Atlanta Bar Association, the Atlanta Council of Younger Lawyers and the Gate City Bar Association to offer lawyers an opportunity to provide civil legal representation for the poor. Since then, AVLF has provided representation for indigent clients through the efforts of volunteer private attorneys, its student clinical program and various outreach programs.

>



Nelson Mullins Riley & Scarborough LLP announced that partner **Stan Jones** was elected to the **Board of Directors** of the **Georgia Legal Services Program (GLSP)**. GLSP is a statewide nonprofit law firm serving 154 counties in Georgia. The organization provides representation to eligible clients in selected civil matters and works

to assure that low-income Georgians have access to justice and opportunities out of poverty.

Nelson Mullins Riley & Scarborough LLP was selected by the **National Legal Aid & Defender Association (NLADA)** to receive its annual **Beacon of Justice Award**. Nelson Mullins was recognized for its participation in the creation of a pro bono appellate program to handle appeals for indigent clients; for *Barton v. S.C. Department of Probation, Parole and Pardon Service*; and for its representation in class actions to improve prison conditions for inmates with mental illness.

>



Barlay Law Group LLC announced that **Thua G. Barlay** was named to the **Leadership Georgia Class of 2014**. Leadership Georgia is a prestigious 40-year-old organization of community and state leaders. Affiliated with the Georgia Chamber of Commerce, Leadership Georgia trains and builds a network of emerging young leaders from across the state.

>



Brian D. Burgoon was elected **president-elect** of the **University of Florida College of Law Alumni Council**. He has served on the Alumni Council since 1997, and as a member of its Board of Directors/Executive Committee since 2009. Burgoon is a sole practitioner with The Burgoon Law Firm, LLC in Atlanta, and focuses his practice on business litigation, civil litigation and personal injury.

>




Carlock, Copeland & Stair, LLP, announced that partner **Marquetta J. Bryan** was presented with the **"Strong" Award** by **Girls Inc.** at their annual Strong, Smart and Bold awards luncheon. Bryan received the award for being a dynamic leader in a male dominated field, setting a positive example for young women and exemplifying the qualities of a strong woman.

>




Hon. Hal Moroz announced the release of his new book, ***Federal Benefits for Veterans, Dependents, and Survivors***. The book covers U.S. Department of Veterans Affairs (VA) benefits, VA claims, federal tort claims and more. Its sections form a comprehensive guide to the process and benefits available for U.S. military veterans and their families. The book is designed to educate the layman in veterans matters, and better prepare them to ask questions of the VA or legal counsel, should the need arise.

>  The **Georgia Association of Health Underwriters (GAHU)** announced that **Daniel R. "Trey" Tompkins III** was chosen as the recipient of the **Kathy Cruce Memorial Health Underwriter of the Year Award**. The award is the highest bestowed by the GAHU. Tompkins is the president of Admin America, Inc., an employee benefits administration company based in Alpharetta.


> **William E. Cassara**, of Evans, has been appointed by Secretary of Defense Chuck Hagel to a Subcommittee of the Secretary of Defense's Response Systems Panel addressing the issue of sexual assault in the military. Cassara is a former active and reserve (retired) Army Judge Advocate whose law practice is limited to military law, with an emphasis on defense of courts-martial, court-martial appeals, military discharge upgrades and correction of military records.

On the Move

In Atlanta

>  **Carlock, Copeland & Stair, LLP**, announced that **George B. Green Jr.** joined the Atlanta office as an **associate**. Green joined the general liability, employment litigation and insurance coverage and bad faith practice groups. His practice focuses on premises liability, products liability, sexual harassment, discrimination, retaliation and wrongful discharge. The firm is located at 191 Peachtree St. NE, Suite 3600, Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; www.carlockcopeland.com.

>  **Jackson Lewis LLP** announced that **David A. Hughes** joined the firm's Atlanta office as **partner**. Hughes was previously a partner at Ogletree Deakins, where he concentrated his practice on employment law counseling and litigation. The firm is located 1155 Peachtree St. NE, Suite 1000, Atlanta, GA 30309; 404-525-8200; Fax 404-525-1173; www.jacksonlewis.com.


>  **Smith Moore Leatherwood** announced the expansion of the firm's health care group with the addition of **Andy Lemons**. Lemons' practice focuses on regulatory and transactional matters, providing strategic advice to hospitals, laboratories, physician groups, and pharmaceutical, biotechnology, and medical device companies on various matters. The firm is located at 1180 W. Peachtree St. NW, Suite

2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.



Nelson Mullins Riley & Scarborough LLP announced that **Eric Wilensky** joined the firm as a **partner**. Wilensky practices in the areas of commercial real estate investment, joint ventures, borrower financing and development, with a concentration in retail and multifamily property categories. **Cheryl Shaw**, **Branden Baltich** and **Kate Lewis** joined the firm as of counsel. Shaw practices in the areas of corporate law, executive compensation and employee benefits. Baltich is a member of the corporate and securities group. Lewis focuses her practice in the areas of commercial real estate, financial services, and workouts and restructurings of distressed properties. **Greg O'Neil** joined the firm as an associate. He practices in the areas of products liability, commercial law and premises liability. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; www.nelsonmullins.com.

> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Amy Tidwell Andrews** joined the firm's corporate/mergers and acquisitions group as an **associate**. Andrews counsels clients on a range of corporate and commercial real estate transactions and business development opportunities. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

>  **Peck, Shaffer & Williams LLP** announced that **Ashton M. Bligh** joined the firm as an **associate**. She practices in the firm's conduit, housing and traditional governmental practice groups. The attorneys in these practice groups participate in financings for hospitals, assisted living and continuing care retirement communities, university facilities, multifamily housing developments, public school systems, cities and counties. The firm is located at 3353 Peachtree Road, Suite M20, Atlanta, GA 30326; 404-995-3850; Fax 404-995-3851; www.peckshaffer.com.

> **Burr & Forman LLP** announced that **Tala Amirfazli**, **Daniel French** and **Jeff Holt** joined the firm as **associates**. Amirfazli is a member of

the general commercial litigation practice group. French is a member of the banking and real estate and creditors' rights and bankruptcy practice groups. Holt is a member of the corporate practice group. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.



Kilpatrick Townsend & Stockton LLP announced that **Hayley Ambler**, **Yendelela Anderson** and **David C. "Clay" Holloway** were elected to **partnership** effective Jan. 1, 2014. Ambler is a member of the infrastructure team. Anderson is a member of the labor and employment team. Holloway is a member of the patent litigation team. **Crystal Genteman** joined as an **associate** on the firm's trademark and copyright team in the intellectual property department. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.

Hall Booth Smith, P.C., welcomed **Matt Towery** as **of counsel** and **managing director** of the firm's **national government affairs group**. Towery will continue to serve as chairman and CEO of InsiderAdvantage.com. **Adam R. Schmidt** and **Sean Sullivan** joined the firm as **associates**. Schmidt's practice areas include professional negligence/medical malpractice, and long term care and senior housing industry. Sullivan represents professionals, including attorneys, medical professionals and corporate officers in professional liability, criminal and civil misconduct allegations. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hallboothsmith.com.

Ken David & Associates, LLC, announced that **Christopher Kleps** joined the firm as an **associate**. He is involved in both the workers' compensation practice group and the civil litigation practice group. Since 2009, Kleps has worked exclusively on employment matters involving administrative agencies. He previously worked for the Georgia Department of Labor evaluating unemployment insurance benefit cases at

multiple levels of appeal. The firm is located at 229 Peachtree St., Suite 950, Atlanta, GA 30303; 404-446-4488; Fax 404-446-4499; www.kendavidlaw.com.

Miller & Martin PLLC announced that **Sarah E. Klapman** and **Rachel A. Purcell** joined the firm's Atlanta office as **associates** in the litigation department. Klapman concentrates her practice in the area of business litigation and white collar criminal defense. Purcell concentrates her practice in the area of business litigation. The firm is located at 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com.



Klapman

Purcell

Taylor English Duma LLP announced the addition of **Jay Patton** to the firm's litigation practice. Patton represents and advises companies involved in consumer-driven litigation and business to business disputes. The firm is located at 1600 Parkwood Circle, Suite 400 Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenghish.com.



Greenberg Traurig, LLP, welcomed **Ian Macdonald** as a **shareholder**, and **Scott Decker**, **Emily Liss** and **Avani Patel** joined the firm as **associates**. All are members of the business immigration & compliance practice. The firm is located at 3333 Piedmont Road NE, Suite 2500, Atlanta, GA 30305; 678-553-2100; Fax 678-553-2212; www.gtlaw.com.

Alston & Bird LLP announced the addition of **George Abney** as a **partner** in the firm's tax controversy group whose practice focuses on civil and criminal tax controversy matters. Abney is a former federal prosecutor with the Tax Division of the U.S. Department of Justice in Washington, D.C. and a former assistant U.S. attorney in the Northern District of Florida. The firm is located at 1201 W. Peachtree St., Atlanta, GA 30309; 404-881-7000; Fax 404-881-7777; www.alston.com.




Morris, Manning & Martin, LLP, announced that **Steven Pritchett** and **Michael Rhim** were elected **partner** effective Jan. 1, 2014. Pritchett, who is in the litigation practice, specializes in commer-




Pritchett

Rhim

cial litigation with an emphasis on product liability. Rhim is in the tax, real estate and real estate capital markets practices. His specialties include real estate finance, partnership tax, transactional tax planning, state and local tax, and general business transactions. 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.


- >  **Webb, Zschunke, Neary & Dikeman, LLP**, announced that **Andrei V. Ionescu** joined the firm as an **associate**. He concentrates his practice in the areas of personal injury, premises liability, bad faith litigation and insurance disputes.

The firm is located at 3490 Piedmont Road, Suite 1210, Atlanta, GA 30305; 404-264-1080; Fax 404-264-4520; www.wznd.net.

- >  **James-Bates-Brannan-Groover-LLP** announced that **J. William Boone** joined the firm as a **partner**. His practice areas include bankruptcy, workouts and reorganization, litigation, and corporate & business transactional law. The firm is

located at 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; www.jamesbatesllp.com.

In Augusta

- >  **Gregory J. Gelpi** announced the opening of **The Gelpi Law Firm, P.C.** The firm is a general practice, but Gelpi will concentrate his work in the areas of criminal and juvenile law. The firm is located at 237 Davis Road, Suite D, Augusta, GA 30907;

706-434-3597; www.gelpilawfirm.com.

In Columbus

- > **J. A. "Andy" Harp** announced the opening of **The Offices of J. A. Harp, LLC**. The firm is located at The Terraces of Green Island, 6001 River Road, Suite 210, Columbus, GA 31904; 706-322-8004; Fax 706-322-8082; www.jaharp.com.


- > **Page, Scrantom, Sprouse, Tucker and Ford, P.C.**, announced that **Julie E. Dorchak** and **Daniel L. Griffith** joined the firm as **associates**. Dorchak represents individuals and corporations in the areas of corporate law, estate planning and litigation. Griffith represents individuals and corporations in the areas of litigation, real estate and corporate law. The firm is located at 1111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; www.columbusgalaw.com.

In Macon

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Alan H. Rumph** joined the firm's health law practice as **of counsel**. Stark's practice focuses on health care compliance and fraud and abuse matters, as well as reimbursement issues and structuring transactions among health care entities. The firm is located at 300 Mulberry St., Suite 201, Macon, GA 31201; 478-750-0777; Fax 478-750-1777; www.bakerdonelson.com.

- > **Spivey, Pope, Green & Greer, LLC**, announced the addition of **John A. Wilkerson** and **C. Taylor Broun** as **associates**. Wilkerson practices in the areas of commercial litigation, banking, and creditors' rights and bankruptcy. Broun practices in the areas of commercial real estate, affordable and public housing, and wealth building and tax planning. The firm is located at 438 Cotton Ave., Macon, GA 31201; 478-254-8866; Fax 478-254-8980; www.spgglaw.com.




In Norcross

- >  **LaSheka T. Payne** announced the opening of **The Payne Law Office**. Payne's practice areas include Social Security disability, VA disability and debt relief. The firm is located at 1770 Indian Trail Road, Suite 200, Norcross, GA 30093; 678-252-0855; Fax 678-369-0193; www.thepaynelawpractice.com.

In Peachtree City

- >  **Karen Gainey** announced the opening of the **Law Office of Karen Gainey, P.C.** The firm specializes in estate matters, including estate planning, probate, estate administration, and guardianship and conservatorship. The firm is located at 430 Prime Point, Suite 105, Peachtree City, GA 30269; 770-731-1603; Fax 678-815-0960; www.kgaineylaw.com.

In Savannah

- >    **HunterMaclean** announced that **Daniel R. Crook** and **Edgar M. Smith** were named **partners** at the firm.

Crook practices in the area of corporate law as well as commercial real estate. Smith's practice includes maritime tort and contract matters, bankruptcy and creditors' rights, real estate litigation and business litigation. **Courtney L. Valentine** joined the firm as

an **associate** in the business litigation group. She focuses her practice in the areas of business litigation and corporate law. The firm is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Warner Robins

>



Camp



Potter

Westmoreland, Patterson, Moseley & Hinson, LLP, announced the move of their Warner Robins office. Partner **Wm. John Camp** and associate **Philip Potter** serve the community from this location.

The firm also has offices in Macon and Albany providing a wide range of legal services including disability, personal injury, workers' compensation, family law, real estate and probate. The office is now located at 310 Margie Drive, Warner Robins, GA 31088; 478-328-8300; www.wpmlegal.com.

In Baltimore, Md.

>



Ober | Kaler announced that **Justin M. Daniel** joined the firm as a member of the firm's e-discovery team. The team works with attorneys across the firm's practice groups on electronic discovery issues related to large cases and investigations. It is the only one of its kind among Baltimore law firms. The firm is located at 100 Light St., Baltimore, MD 21202; 410-685-1120; Fax 410-547-0699; www.ober.com.

In Memphis, Tenn.

> **Stites & Harbison, PLLC**, announced the opening of an office in Memphis. The firm is located at 20 S. Dudley St., Suite 802, Memphis, TN 38103; 901-969-1133; Fax 901-881-3653; www.stites.com.

In Norfolk, Va.

>



Maersk Line, Ltd., announced that **Gary E. English** accepted the position of **associate general counsel (maritime law)**. Maersk is located at 1 Commercial Place, 20th Floor, Norfolk, VA 23510; 757-857-4800; Fax 757-852-3232;

www.maersklinelimited.com.

In Raleigh, N.C.

>



Kilpatrick Townsend & Stockton LLP announced that **Jason D. Gardner** was elected to **partnership** effective Jan. 1, 2014. Gardner is a member of the electronics/software team. The firm is located at 4208 Six Forks Road, Suite

1400, Raleigh, NC 27609; 919-420-1700; Fax 919-420-1800; www.kilpatricktownsend.com.

Leadership Georgia is a prestigious 40-year-old organization of community and state leaders. Affiliated with the Georgia Chamber of Commerce, Leadership Georgia trains and builds a network of emerging young leaders from across the state. The Leadership Georgia Class of 2014 includes 12 attorneys:

Thua G. Barlay, Barlay Law Group LLC

Joseph Odilo Blanco, McKenna Long & Aldridge LLP

Sherry Boston, DeKalb County Solicitor-General's Office

Carolyn Cain "Tippi" Burch, King & Spalding LLP

Audra Dial, Kilpatrick Townsend & Stockton LLP

Leslie Kali Eason, The Eason Law Firm

Amanda Nichole Heath, Augusta Judicial Circuit District Attorney's Office

Joshua Robert McKoon, Crowley McKoon

Hon. Amanda Harper Mercier, Appalachian Judicial Circuit

Brooke Pettis Newby, Nelson & Smith

Byung Jin "BJay" Pak, Georgia House of Representatives (R-Lilburn), Ballard Spahr LLP

Julie Mickle Wade, The Wade Law Firm

You Can't Change Horses in the Middle of the Stream

by Paula Frederick

"I'm about to be dumped by my lawyer and I've got a hearing next week," your prospective new client explains. "She was mad that I didn't take the last settlement offer so she is going to start billing me by the hour. She says she needs \$5,000 to prepare for trial, or she's going to withdraw from the case!"

"But you had a contingency fee agreement when you hired her, right?" you ask.

"Yes, I've got it right here!" the client says, handing the paperwork to you. "We agreed on 33 percent of any recovery. She knows I don't have the cash to pay her up front; that was the whole point!"

"Here's what I think," your prospective new client opines as he finishes his story. "She thought I'd take that measly settlement offer and she'd make a quick buck. Now she is completely unprepared for trial and she needs an excuse to get out!"

What are your options when you find yourself in the middle of a matter and realize that your fee arrangement stinks? Maybe you insisted on an hourly rate but later find you could have made a killing with a contingency fee. Maybe you see your contingency going up in smoke when the client rejects an offer and insists on taking a mediocre case to trial. Maybe you charged a flat rate but greatly underestimated the amount of work the case was going to take.

Whatever the reason, it's not easy for a lawyer to change a fee agreement in midstream—particularly when the proposed change will result in higher compensation to the lawyer.

The Rules of Professional Conduct provide little guidance for these situations. Rule 1.5(b) only requires that "any changes in the basis or rate of the fee or expenses . . . be communicated to the client."


The Model Rules do allow modification of an existing fee agreement; however, the change must be "reasonable under the circumstances at the time of the



modification." *American Bar Association Formal Advisory Opinion 11-458, Aug. 4, 2011.* Usually there must be a change in circumstances that was not anticipated at the time of the original fee agreement to justify a modification that benefits the lawyer.

The ABA opinion does make an exception for periodic increases in a lawyer's hourly rate, finding that such increases do not have to be separately negotiated with each client if communicated to the client at the start of representation. So it's OK to raise your rates at the start of each year if you have gotten the client's informed consent to the change in advance.

On the other hand, proposing a fee change on the eve of trial or under threat of withdrawal is not reasonable, and disciplinary authorities will look with suspicion upon either practice.

The bottom line is this: put some thought into how and what you are charging before you enter a fee agreement, because you are likely going to be stuck with it. 



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

(September 12, 2013 through October 18, 2013)

by Connie P. Henry

Disbarments/Voluntary Surrenders

Ralph Joseph Hiers

Atlanta, Ga.

Admitted to Bar in 1996

On Sept. 23 2013, the Supreme Court of Georgia disbarred attorney Ralph Joseph Hiers (State Bar No. 351937). The following facts are deemed admitted by default: Hiers agreed to represent a client in a divorce action. The client retained Hiers in August 2011 and made an initial payment of \$200. In September the client paid an additional \$275. Shortly thereafter, Hiers asked her to review a draft counterclaim he had emailed to her. She responded to Hiers by email the same day. Although the client repeatedly tried to contact Hiers thereafter, she could never reach him again. She initiated a grievance and in November 2012, Hiers advised the Investigative Panel that he had serious health issues, acknowledged that he owed the client a refund and indicated that he would consider whether to file a petition for voluntary discipline. Hiers failed to make further contact with the State Bar and failed to refund any money to the client. Hiers received an Investigative Panel reprimand in 2012.

Michael David Mann

Roswell, Ga.

Admitted to Bar in 1991

On Sept. 23 2013, the Supreme Court of Georgia disbarred attorney Michael David Mann (State Bar No. 469127). The following facts are deemed admitted by default: Mann represented two clients in criminal cases in the Superior Court of DeKalb County. The court held Mann in contempt for repeated failures to appear for scheduled hearings and for trial, and found him to have made a false statement as to whether he appeared on a certain day. His absence delayed the cases and inconvenienced his clients, the court, the co-defendants

and their counsel. One of Mann's clients was unable to enter a plea because he failed to appear.

In another case, a client paid Mann \$4,000 to represent him in a criminal matter. Mann filed an entry of appearance and several motions. He provided copies of the filings to the client, but failed to appear for two court proceedings. The court directed the client to retain other counsel. Mann told the client that he would refund the \$4,000, but he never did so. The State Bar noted in aggravation that Mann wilfully disregarded the orders of courts, that he abandoned his clients' legal matters, that he had two more disciplinary cases involving similar misconduct and that he had received Investigative Panel reprimands in 2010 and 2012.

Carin Astrid Burgess

Marietta, Ga.

Admitted to Bar in 1992

Motion for reconsideration is pending at Supreme Court.

On Sept. 23 2013, the Supreme Court of Georgia disbarred attorney Carin Astrid Burgess (State Bar No. 095295). The following facts in six separate complaints are deemed admitted by default:

A client retained Burgess to represent him in a personal injury case. She settled the case and received a check for \$125,000 payable to Burgess and the client. Burgess did not give her client his full portion of the settlement; instead, she made partial payments that were infrequent and random. The client made trips to Atlanta to meet with Burgess to discuss settlement with no success and Burgess ceased communicating with her client.

A client retained Burgess to represent her in a divorce case. Burgess cancelled the hearing because she had not received certain documents from the opposing party. She had limited communication with her client for the next several months and did not inform her client when the divorce became final.

Burgess failed to timely pay her 2006-07 Bar dues until March 2007, which meant she was not a member in good standing with the State Bar when she represented a client in a custody case in September 2006.

Burgess represented a client in a divorce case and drafted some pleadings but had limited communication with the client. The client terminated the representation and hired new counsel.

Burgess represented a client in a personal injury case and a domestic relations case. As part of the personal injury case she received \$22,122 to hold in trust. A judge ordered Burgess to transfer all monies she held on behalf of the client to the court registry for child support arrearages but three months later she had not done so and she improperly disbursed funds from her trust account to herself and her client, so the court held her in contempt. Burgess filed a motion to set aside, to vacate and for new trial but she failed to appear at the hearing so the motion was dismissed. Burgess has not deposited the funds into the court's registry.

A client paid Burgess \$3,000 to represent him in a divorce case. Burgess did not communicate with the client and it was the client's wife, not Burgess, who told him about scheduled mediation. Burgess represented the client at the mediation but failed to communicate with him thereafter and the client retained new counsel. Burgess failed to return the client's file or refund the fee.

Creighton W. Sossomon
Highlands, N.C.

Admitted to Bar in 1970

On Sept. 23, 2013, the Supreme Court of Georgia disbarred attorney Creighton W. Sossomon (State Bar No. 667300) as reciprocal discipline for his disbarment in North Carolina. Sossomon used entrusted funds for the benefit of third parties without authorization from the beneficial owners of the funds.

Robert W. Cullen

Decatur, Ga.

Admitted to Bar in 1974

On Oct. 7, 2013, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of attorney Robert W. Cullen (State Bar No. 200338). Cullen failed to hold fiduciary funds separate from his own funds and failed to account promptly for fiduciary funds that belonged to his clients. Cullen has suffered from a significant number of physical and psychological health issues and is incapacitated to practice law at this time.

Henry Lamar Willis

Atlanta, Ga.

Admitted to Bar in 2006

On Oct. 7, 2013, the Supreme Court of Georgia disbarred attorney Henry Lamar Willis (State Bar No. 885497). The following facts are admitted by default: Willis represented a client as the plaintiff in a personal injury action. The parties settled the case, with the defendants to pay \$30,000 to Willis's client. The defendants sent the check to Willis, made payable to him and his client, but he converted the funds to his own use. When Willis failed to distribute the funds in accordance with the order of the court, the court ordered the defendants to pay the plaintiff directly, thus requiring them to pay twice and seek reimbursement from Willis. Willis has not reimbursed the defendants. In aggravation of discipline the Review Panel found multiple offenses, obstruction of the disciplinary process by not answering the complaint and indifference to making restitution.

Suspensions

Dale Anthony Calomeni

Roswell, Ga.

Admitted to Bar in 2000

On Sept. 23, 2013, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Dale Anthony Calomeni (State Bar No. 105311) and suspended him for six months. The

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



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petition was for conduct involving three clients. Calomeni mishandled funds held in trust for a client, exposed clients to improper contact with a disbarred lawyer and pressed forward with lawsuits in the courts contrary to the direction of his client. Calomeni has no prior discipline, has since reimbursed his clients in full and has terminated the disbarred lawyer.

Thomas Richard Topmiller

Marietta, Ga.

Admitted to Bar in 2008

On Sept. 23, 2013, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Thomas Richard Topmiller (State Bar No. 443008) and suspended him for 18 months, retroactive to Aug. 29, 2012, with conditions for reinstatement. On Aug. 29, 2012, Topmiller pled guilty to possession of more than an ounce of marijuana. Police discovered marijuana plants in Topmiller's home, which he grew for personal consumption. The special master found that Topmiller's conduct did not involve the representation of a client or the practice of law and did not cause

injury or potential injury to a client. The special master also found that Topmiller had no prior discipline; he did not act with a dishonest or selfish motive; he was experiencing marital, family and financial difficulties; he accepted full responsibility for his actions; he agreed to the entry of a consent order suspending him from practicing law pending the Supreme Court's resolution of this matter; he routinely received strong reviews from his employers; and he expressed sincere remorse. The special master also found that Topmiller has sought extensive treatment, is in a period of sustained rehabilitation and recovery, and he is unlikely to commit similar misconduct again. Upon successful completion of a drug court program which he voluntarily entered, he may seek reinstatement.

Ronald James Kurpiers II

Tampa, Fla.

Admitted to Bar in 2004

On Oct. 7, 2013, the Supreme Court of Georgia suspended Ronald James Kurpiers II, (State Bar No. 430474) for 91 days as reciprocal discipline for a suspension imposed in Florida. Kurpiers did not file a response to the notice of reciprocal discipline. Kurpiers notarized and filed an affidavit purporting to have been signed by his client, but which he knew had not been signed by the client. He also advised the court that he was representing the client pro bono despite having charged a substantial fee. The hearing referee in Florida accepted as mitigating evidence, (1) that Kurpiers had no prior discipline; (2) that he lacked a dishonest or selfish motive; (3) that he was prepared to offer several character witnesses who would testify as to his skills, integrity, commitment to clients, and professionalism; and (4) that he was prepared to offer the testimony of his psychiatrist that the misconduct was caused by side effects from anti-depressant medication. Kurpiers may seek reinstatement upon proof that he has been reinstated to the practice of law in Florida.

David Michael Shearer

New York, N.Y.

Admitted to Bar in 1988

On Oct. 7, 2013, the Supreme Court of Georgia suspended David Michael Shearer, (State Bar No. 639170) for 30 months as reciprocal discipline for a suspension imposed in New York. The New York appellate court found that in connection with a fee dispute with another lawyer, Shearer testified falsely before the trial court, the disciplinary committee and the disciplinary referee regarding the existence of a retainer agreement, made the same false claim in documents filed with the trial court and the Office of Court Administration, improperly notarized signatures and sought an infant's compromise order without informing the court of the fee dispute or giving notice to the other attorney involved in the dispute. Shearer is currently under administrative suspension in this state for failure to pay current bar dues.

Carol Chandler

Princeton, N.J.

Admitted to Bar in 1981

On Oct. 7, 2013, the Supreme Court of Georgia suspended Carol Chandler, (State Bar No. 120525) for one year as reciprocal discipline for a suspension imposed in Pennsylvania. This suspension shall run consecutively to the 18-month suspension imposed on March 4, 2013. The following facts are admitted by default: In connection with Chandler's representation of two separate clients in immigration matters, she was paid fees in advance, but failed to take action on behalf of the clients, failed to respond to her clients' requests for information, failed to refund unearned fees and failed to return the clients' files. Additionally, she was charged with the unauthorized practice of law in New Jersey. Prior to reinstatement Chandler must prove that she has been reinstated to the practice of law in Pennsylvania and has complied with the conditions for reinstatement imposed in connection with the 18-month suspension.

Review Panel Reprimand

Jack O. Morse

Atlanta, Ga.

Admitted to Bar in 1972

On Sept. 23, 2013, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Jack O. Morse (State Bar No. 525800) and ordered that he receive a Review Panel reprimand. While representing a client in a personal injury claim, Morse lent the client \$1,400 for the client's use in avoiding foreclosure and possible jail time for his violation of probation. Although Morse has prior discipline, in mitigation the Court considered his cooperative attitude and the fact that he was attempting to assist the client who was a longtime friend. Justice Blackwell concurred but wrote separately that providing financial assistance to a litigation client is not *always* a violation; Justice Hunstein concurred.

Reinstatements


Anson Andrew Adams

Gainesville, Fla.

Admitted to Bar in 2006

On Sept. 23, 2013, the Supreme Court of Georgia reinstated attorney Anson Andrew Adams (State Bar No. 143095) to the practice of law in Georgia.

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 Sept. 11, 2013, one lawyer has been suspended for violating this Rule and none have been reinstated. 



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



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Practice Management from the Rearview Mirror:

Key Technology Happenings from 2013 Likely to Affect Your Firm into the New Year

by Natalie R. Kelly

Typically, the final Law Practice Management article of the year is a checklist or outline on managing a law practice designed to be used for making a plan for the New Year. However, taking a look back at what has impacted law firms and their way of conducting business seems to be an equally fitting and helpful topic. Read on for a review of recent developments in the law office management and technology fronts that have likely already been dealt with in your practice or that raise concerns which could affect your law practice for the next year and beyond.

Social Media in the Mainstream

In two months, Facebook will turn 10. It only seems like yesterday that the Law Practice Management Program was helping lawyers figure out whether or not they should “friend” a judge, opposing counsel or their clients. In the same vein, additional social media services that allow conversation and online interaction of a like-minded community have forever changed the marketing of legal services. The communities and their interactions have made social media the breeding ground of lawsuits and business development at the



same time. Do you have a written social media policy in your firm for lawyers and staff alike? Do you know what to do about negative comments from online services about your law firm?

Tablets and Mobile Lawyering

Today's technology allows you to practice anywhere, and two of the more popular tools for mobil-

ity are tablets and smartphones. With some statistics finding one-third of American adults owning a tablet, it's no wonder lawyers have had to quickly learn how to use these devices more effectively in their work. Keeping up with the most useful apps and even getting over the fear of taking a mobile device into the heart of an office's workflow are just a couple of things the Law Practice Management Program has been helping Bar members with lately. Do you have a BYOD (Bring Your Own Device) policy for employees who work from their smartphones or tablets? Is your security policy effective and easy to manage for all mobile workers?

Data Security and Client Confidentiality

As national headlines buzzed about data security breaches occurring and causing the loss or exposure of confidential client information, IT firms seem to still be scurrying around trying to find the most suitable solutions. For smaller law offices, just getting to and sticking to the basics seems to be the order of the day. Do you have procedures in place to follow in the event of a data breach in your law office? What are you planning to disclose to clients if their information is exposed due to a data breach?

Technology Education for Lawyers

Comments to the competency area in the ABA Model Rules of Professional Conduct have changed and made it clear that lawyers must pay attention to technology. It is becoming more apparent that technology plays a key role in the effective delivery of legal services. To reach that goal, there has been a huge shift in CLE offerings toward programming which helps lawyers learn all they need to know about technology. See the full program grid for ABA TECHSHOW at www.techshow.com, for example.

You should ask yourself if your technology plan and budget are up to date.

Big Data and E-Discovery Advances

Litigators are faced with managing growing amounts of data as a part of e-discovery. The process has again taken off to address the old concerns of how to best and most cost-effectively cull and manage mountains of digital information. With this growth, the legal industry must now contend with the field of big data. According to Wikipedia, big data is "so large and complex that it becomes difficult to process using on-hand database management tools or traditional data processing applications." With no end in sight for the creation of digital information, and the exponential growth of data warehousing (storage) and related management fields, not only should litigators be concerned about the topic, but virtually all lawyers need to be aware of the potential issues. What are your policies and procedures for dealing with e-discovery requirements in the law office? Are your data management systems adequate for servicing your existing and anticipated matters, whether a part of litigation or not?

Online Work

Cloud computing, video marketing and online collaboration are all activities that lawyers engage in and are taking place over the Internet. Cloud computing has become a viable option for managing tasks and information outside of a traditional server and workstation setup. The Internet is delivering up "Software as a Service" and other models of work production solutions like online data backup and storage, and it's only natural to see the online models begin to encompass even more functionality and usefulness for lawyers. Lawyers have begun online marketing campaigns that feature short

video clips about legal subjects as well as advertising for the law firm. And when the firm has business that needs to happen between multiple parties in varied locales, the Internet provides an online meeting space where collaboration can happen. Have you instituted an online marketing program including short educational video clips on relevant subjects for your clients? Have you considered the cost savings of moving to cloud-based services for key functional areas in your practice—practice management, time billing, accounting, online backup and storage? Do you have the capability of conducting online meetings?

Paperless Office Revival

More and more firms are tiring of having so much paper to manage. With the ever-increasing amount of digital data to contend with in law offices, the double-duty of tracking and managing both versions of information is starting to be seen as a prime source of inefficiency. To combat this, many firms are now looking very seriously at taking on the paperless office model to make workflow more effective by removing redundant information and steps for managing the various forms of information in the law office.

The technological advances seen over the last year or so remain of vital importance to lawyers looking to effectively operate a law office today. If you need assistance in even getting through the basics, you can take advantage of the free and low-cost resources of the Law Practice Management Program, which is equipped to help with specific solutions and ideas for dealing with these newer technological developments bearing down on today's law practices. 



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.

Lunch, Learn and Celebrate

by Bonne Davis Cella

"If you're doing public service because you want to get rich, you're either going to get disappointed or get put in jail. But if you're doing public service because you love serving your fellow man, you are guaranteed to live a fulfilled life." – George T. Smith

State Bar President Charles L. Ruffin was the guest speaker at the Tifton Judicial Circuit Bar Association (TJCBA) meeting held at Abraham Baldwin Agricultural College (ABAC). ABAC President Dr. David Bridges welcomed the group to dine in the president's gallery in the newly renovated Tift Hall. Ruffin and the TJCBA were the first assembly to enjoy dining there since the extensive rehabilitation of the 1908 building, which was completed just in time to celebrate ABAC's 105th birthday.¹

In keeping with his initiative, Ruffin spoke about the history of the unified bar in Georgia and lauded the Georgia lawyers who worked tirelessly to create the 1963 bill for a unified bar based on the concept of regulated self-discipline. He noted the 50th anniversary of the State Bar of Georgia coincides with our nation's 225th year of constitutional law, making 2013 a year for Georgia lawyers to commemorate.

After the TJCBA luncheon, Bridges escorted the group downstairs to the George T. Smith Parlor. Smith, the only person in Georgia to win contested elections in all three branches of state government, served as president of the ABAC student body in 1940 and received the ABAC Distinguished Alumnus Award in 1969 and the ABAC Distinguished Service Award in 2007 (posthumously).



The newly renovated Tift Hall at Abraham Baldwin Agricultural College.

In 2012, Bridges and other ABAC representatives went to Atlanta to meet with former Gov. Carl Sanders, Smith's old friend and former law partner. They also visited Joan Smith, Smith's widow, and Deanie Woodie, his executive assistant for 45 years. From these meetings, the ABAC delegation secured much of the material now displayed in the George T. Smith Parlor.

Smith quit school in the eighth grade to help his family by plowing fields with his father's mules. He eventually returned to and graduated from Hopeful High School in Mitchell County at the age of 21. After serving five years in the U.S. Navy, Smith went to the University of Georgia and graduated with his law degree in 1948. His long tenure in Georgia politics included speaker of the House, lieutenant governor, judge of the Court of Appeals of Georgia and Supreme Court justice. Throughout his career, Smith kept a picture of two mules in his office to remind



Commemorative mule photo located in Tift Hall's George T. Smith Parlor at ABAC.

him that he never again wanted to spend his days at the "south end of a pair of north-bound mules." The commemorative mule picture now hangs in the parlor beside a desk with Smith's four stately nameplates.

Tift Hall at ABAC was a befitting location to host the TJCBA and Ruffin, who loves Georgia history. Abraham Baldwin, the college's namesake, was the first president of the University of Georgia and a Georgia signer of the U.S. Constitution. Baldwin served on George Washington's staff during the Revolutionary War and then studied law. He moved to Georgia in 1783 and began his law practice near Augusta. He was elected to the Georgia House of Assembly in 1787 and represented Georgia as a member of the Constitutional Convention. From 1785 until 1801, Baldwin served as the first chief executive of the University of Georgia, later serving Georgia as a member of the U.S. House of Representatives and the U.S. Senate. On July 1, 1933, Abraham Baldwin Agricultural College was named in Baldwin's honor.


If you are in the vicinity of Tifton, please visit Tift Hall at ABAC and discover more about revered Georgia lawyer, lawmaker and jurist George T. Smith, and



In this Dec. 2, 2004, photo taken at his Barnes Law Group office in Marietta, George T. Smith displays four office nameplates that call attention to his four state jobs over the years: 1) speaker of the House; 2) Supreme Court justice; 3) Court of Appeals judge; and 4) lieutenant governor.



(Left to right) Dr. David Bridges, president, ABAC; Hon. Render M. Heard, Juvenile Court, Tifton Judicial Circuit; Hon. Bill Reinhardt, chief judge, Tifton Judicial Circuit; Hon. Melanie Cross, Superior Court, Tifton Judicial Circuit; Charles L. Ruffin, president, State Bar of Georgia; Stephen Delk, president, TJCBA; and Hon. Larry Mims, State Court of Tift County—following the TJCBA meeting.

statesman, patriot and University of Georgia founder, Abraham Baldwin—two Georgia lawyers who made history and devoted their lives to public service. 



Bonne Davis 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. The Second District Agricultural and Mechanical (A&M) School opened in Tifton in 1908 with three buildings. The center building was Tift Hall, named for the founder of Tifton, Henry Harding Tift, who was instrumental in forming the college. As the years passed, the Second District A&M became the South Georgia A&M College, the Georgia State College for Men, and finally Abraham Baldwin Agricultural College in 1933.

A Report on the Activities of the State Bar's Access to Justice Committee

by Michael L. Monahan

This standing committee shall consider and make recommendations to the Board of Governors on: (1) promoting the growth of pro bono service to the poor by members of the State Bar; (2) operation of the Bar's efforts to facilitate the participation of Georgia's lawyers in the delivery of pro bono services through the Pro Bono Project; and (3) how best to give appropriate recognition to Georgia lawyers whose pro bono efforts inspire the members of the legal profession. It shall also promote the establishment and efficient maintenance of legal aid organizations equipped to provide free legal services to those unable to pay for such service. It shall study the administration of justice as it affects persons in low income groups, and shall study and report on methods of making legal service more readily available to persons of moderate means, and shall encourage and assist local bar associations in accomplishing this purpose.

The Bar's Access to Justice Committee has existed as a standing committee since the organization of the mandatory bar in 1964 with essentially the same mission, albeit under three guises over the years. The Access to Justice Committee, or the ATJ Committee, was formerly known as the Pro Bono Committee and later, the Civil Legal Services for Indigents Committee.

Over the years, the Committee has served as the key voice in the Bar on issues dealing with the development of resources, rules and programming that encourage and support lawyers to provide civil legal services on a pro bono basis to low-income Georgians. The committee also has worked to ensure proper funding and other support for civil legal aid and pro bono programs in Georgia and provided guidance for the adoption and continuing improvement of online legal information and referral resources for low-income Georgians as well as online volunteer lawyer support resources.

The current ATJ Committee, led by Mercer Law's Timothy Floyd and Bondurant Mixon's Jill Pryor (chair and vice-chair, respectively) has four working groups: Pro Bono, Collaborations, Law Schools and Access to Justice Commission Study Group.



The ATJ Committee has been very proactive in the past several years on a number of fronts. Foremost among the committee's most recent achievements have been the production of an economic impact study of the benefits of civil legal aid for the Georgia economy, strong collaboration with the Administrative Office of the Courts for the funding and delivery of a statewide legal needs study and some key rules changes that support and enhance the delivery of pro bono legal assistance, such as the recently adopted Rule 6.5 which allows volunteer lawyers to participate in limited-assistance legal clinics

without checking conflicts. Many of you may remember the ATJ Committee's voluntary pro bono service reporting pilot project that began in 2000 and lasted for three years. The committee's work over the years has touched upon the development of Georgia Bar Rule 6.1 (pro bono), disaster legal services practice rules and a number of CLE programs focused on the profession's proper response to the growing civil legal needs of low-income Georgians.

For the past year and a half, the Committee has been supporting legal aid programs and law schools with the roll-out of a project that involves law students performing intake for legal aid programs. Both Georgia Legal Services Program and the Atlanta Legal Aid Society have suffered staffing shortages at the same time the poverty population in Georgia has increased significantly. The ATJ Committee spotted an opportunity for law students to become engaged in access to justice efforts that also benefited resource-starved legal aid programs.

The committee's energy this year will be spent on increasing new financial and other resources for civil legal aid and pro bono programs; developing programs to attract new and corporate counsel lawyers to the pro bono service ranks; inculcating law students with access to justice values and identifying opportunities to put those values into practice; and tying together legal aid programs, the growing number of court-based help centers and lawyer referral programs. Importantly, the ATJ Committee has a goal to implement an annual statewide conference to bring together pro bono program leaders, bar leaders, volunteer lawyers and law students to promote dialog, discuss emerging service delivery and practice issues, and generally highlight pro bono service across the state. The committee also intends to improve the recognition of Georgia lawyers for their pro bono service.

To secure a stronger footing for access to civil justice in the future, the ATJ Committee secured a grant last year from the ABA Resource Center for Access to Justice Initiatives to develop a proposal to re-establish a state access to civil justice commission, the role of which would be to elevate the discussion of access to civil justice for low-income Georgians and, among other things, build a collaborative approach among the Bar, the courts, the legislature and local communities to secure proper and steady funding for civil legal aid and pro bono programs, support advances in technology to assist low-income Georgians who have critical legal needs, and maintain quality legal services delivery.

To learn more about the committee's work, please feel free to contact committee members or Mike Monahan, Pro Bono Project director and the committee staff contact, at mikem@gabar.org.



Michael L. Monahan is the director of the Pro Bono Project for the State Bar of Georgia and can be reached at mikem@gabar.org.

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Awards, Institutes and an App . . . Oh My!

by Derrick W. Stanley

As 2013 comes to a close, many section events have just concluded or will be by mid-December. A number of sections tend to honor award recipients and participate in programs during the holiday season.

In the August 2013 issue of the *Georgia Bar Journal*, the "Section News" article featured a recap of section awards presented at the Annual Meeting, in addition to those sections who present their own awards to their members. At the time of printing, the Creditors' Rights Section had not chosen the recipient for its Morris W. Macey Lifetime Achievement Award, presented to an individual who has displayed an unerring commitment to the community and to the professionalism of the section. The 2013 award was presented on Oct. 31, to Lewis N. "Woody" Jones. Jones was the keynote speaker at the lunch program where he shared his wealth of knowledge with the attendees. Also present were his wife, daughter and past award recipients. Janis Rosser, section co-chair commented, "Woody has demonstrated throughout his 40 years of practice that he is dedicated to service to the Bar, the Creditors' Rights Section and the community. He continuously shares his knowledge and wisdom with those in need. These traits come naturally to Woody, as both his parents were attorneys. (His mother serving as a pioneer for female attorneys during the 60s.) He has continued this tradition by passing these traits to his daughter, Liz Pope. We

congratulate Woody for being the third recipient of this honor."


In November, the 25th annual North American Entertainment, Sports and Intellectual Property Law Conference was held in Montego Bay, Jamaica. The Institute, co-sponsored with ICLE, returned to the island where more than 25 years ago, 12 people gathered together and developed the institute concept. Over the years, it has grown into an event that draws speakers and attendees from across the United States. This year's program featured federal judges, entertainment executives and attorneys who are at the top of the industry. It is generally held the first full week of November and generally travels to locations in the Caribbean, Mexico and Central America. As with most ICLE institutes, participants receive a full year of CLE from the program. ICLE sponsors or co-sponsors these programs throughout the year in various locations and on many practice areas. A list of 2014 institutes is below, and more information on the programs is listed at www.iclega.org/programs/institute.html.

2014 Institutes

- Jan. 27-30
Update on Georgia Law
Ritz-Carlton Bachelor Gulch
Avon, Colo.
- Feb. 7-8
Estate Planning Institute
UGA Conference Center and Hotel
Athens, Ga.
- Feb. 27-29
Winter Tropical Seminar
St. Martin

- Feb. 20-21
Social Security Law Institute
Atlanta, Ga.
- March 13-15
General Practice and Trial Institute
Callaway Gardens
Pine Mountain, Ga.
- May 15-17
Real Property Law Institute
Omni Amelia Island Plantation
Amelia Island, Fla.
- May 22-24,
Family Law Institute
Ritz-Carlton, Amelia Island
Amelia Island, Fla.
- June 26-29
Gary Christy Memorial Trial
Skills Clinic
UGA Law School
Athens, Ga.
- June 26-28
Southeastern Admiralty Law
Institute
New Orleans, La.

In early November, Randy Kessler, past chair of the Family Law Section, announced the release of a free Georgia Child Support Calculator App for smartphones. This app is meant to provide a starting point to help estimate child support based upon key factors including income, health insurance and number of children. Please see the boxout for more information.

Sections contribute to the practice of law and recognition of lawyers through the presentation of awards, educational opportunities, newsletters and by co-sponsoring institutes where members can meet and learn more about areas of practice. Be the first to know about upcoming events by joining a section. You can start 2014 by joining a section for half the annual dues. Simply log in to your account at www.gabar.org and select "Join a Section." 



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



Photo by Derrick W. Stanley

(Left to right) Hariett Isenberg, section co-chair; Lewis N. "Woody" Jones, award recipient and author of "Georgia Legal Collections;" Jones' wife, Jane; Janis Rosser, section co-chair; and Jones' daughter Elizabeth "Liz" Pope, at the presentation of the Morris W. Macey Lifetime Achievement Award.

Georgia Child Support Calculator App

The one question all lawyers get, not just family lawyers, is "How does child support work?" Or "How is the amount of child support determined?" Whether it's a friend of ours, or someone we just met, people seem to always want us to be able to quickly give them a thumbnail response about how child support works, or how much it should be in a certain (usually "their") situation.

To help simplify the answer, Kessler & Solomiany Family Law has developed the Georgia Child Support Calculator app, the first of its kind in Georgia. It is available for iPhones, Android phones and on the web (iPad version is forthcoming). The app certainly should not and does not substitute for legal advice or for using the official calculator and worksheets, but it was designed to give a broad, initial projection so that people who need it can have a general idea of the possible child support result in their case. If you want a very general idea of what child support should be in a given situation, the app can provide you with that information. Of course, there are many factors that the app does not take into consideration, such as other support obligations, extremely high income, unusual parenting time arrangements, etc. But we hope that this app will provide a modest amount of comfort and knowledge to those who don't have any prior knowledge about potential child support amounts and enabling them to be more prepared for the actual number once they hire an attorney or use the official child support worksheets.

Try it; there's no cost and no ads. We just hope it provides a little bit of help for an often difficult to understand issue. And if you like it, please rate it and share it.

To locate the app in the iTunes App Store, search "GA Child Support" or click: <https://appsto.re/us/9GxPPi>. The Android version can be found in the Play Store or Google Play by searching "GA Child Support" or by clicking: <https://play.google.com/store/apps/details?id=ks.child.support>.

Bad Blogs: Whatcha Gonna Do If No One Comes To You?

by Bryan O. Babcock

Blogs are now a widely accepted business development tool, with many law firms creating a blog to generate more traffic to their websites. “Blawging,” as it is sometimes referred, can be an informal and creative form of legal writing. Whether you are blogging for your current clients or to your prospective clients, the content, the style and your credibility as a blogger will weigh on whether your blog is successful. This installment of “Writing Matters” explores the writing of a legal blog by first detailing your Miranda rights (so to speak) for effective blogging, and second, by sharing five simple tips to guide you once you begin.

You Have the Right to Remain Silent

Lots of professions use blogging as a means of reaching out to potential clients and informing the public of their work. The legal field is no exception. Information pertaining to the legal field is already accessible to the public. The content of a successful blog should demonstrate a unique level of analysis or share a fresh perspective. You may choose to remain silent on a popular topic if you feel you cannot provide such a perspective.



Anything You Blog Can Be Used Against You

Blogging can attract new clients—and lose potential clients. A blog could undermine the blogger’s credibility. Any content delivered through the blog will be a published statement of the attorney’s and the firm’s competence. Rule 1.1 of the Model

Rules of Professional Conduct states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." If a blog's content lacks thoroughness, or shows a lack of legal knowledge, the lawyer's reputation may suffer. So, thoroughly research the chosen topic. This includes researching the layman's interpretation of the law to understand the misconceptions some readers may have. In fact, the blog post may need to focus on addressing the misconception more so than an explanation of the law itself.

You Have the Right to Provide Candid Feedback in Your Blog and Respond to Reader Comments

Blogging is a conversation between the author and the intended audience. A blogger regularly updates his or her blog to become a trusted source of candid information. An update can be as simple as highlighting a case decision that was pending at the time of the original post or analyzing a newly enacted statute. A more interactive update is replying to reader comments and questions with a deeper analysis that applies to the readers' individual concerns (disclaimed, of course, because you are not giving legal advice). In general, the blog should aim to both answer questions and suggest questions without answers to prompt reflection and discussion. Many bloggers choose to answer the big questions, such as what are the overall pictures of the topic, and the broader applications of the particular law. The questions left to prompt discussion might draw on a local impact, a current event, a personal reaction or a hypothetical scenario.

You have the right, if you cannot blog, to appoint someone, at your

expense and without cost to them, to blog for you.

Many bloggers fail to invest the time, money and research into making their blogs successful. Consider whether you want to outsource some of the work to a legal blogger. A legal blogger is a person, an attorney, a law school graduate or even a current law student, who contributes to a law blog site as a content writer. Legal bloggers can provide a steady stream of postings for readers. Many charge relatively low fees (such as \$38 per posting for 500 words). Thus, even when you are busy, new content will appear on your blog to maintain reader interest.

Time to Start Blogging

Here are five tips for better blogging:

Choose a Title that is Eye-Catching to the Reader

When writing your post, be sure that the title of your blog is one that will not only catch the eye of the reader but is relevant to the topic of your blog. Many writers choose titles that are witty, playful or even shocking. For instance, the title of this installment is meant to be a witty play on the theme song for the show "Cops." Yet, the title is also relevant to the discussion at hand: how to avoid writing a bad blog.

Introduce Your Topic to Ensure Continued Reading

After you have caught the attention of the reader with the title, you must convince that reader to read your post. The introductory paragraph should entice your reader to invest the time and energy into engaging in a legal discussion with the author.

Find Your Own Style and Voice

Blog readers enjoy more informal writing. Readers are not looking for content that drones on, simply stating facts and dry analyses. A blog post should not remind

the reader of long days in lecture halls with Ben Stein ("Bueller . . . Bueller . . ."). Give each blog post your own personal stamp. For example, consider how you would explain your topic to a friend at a party. What language would you use? Use your unique way of communicating to gain an audience who appreciate your style.

Post Blogs and Comment Often

Develop a schedule for blogging. This can be a weekly blog post, bi-weekly, monthly and so on. Whatever your schedule, be sure to follow it because your readers will develop their readership based on that schedule. Do not forget to schedule time to comment on your readers' comments. Many readers comment to engage in further dialogue from the author.

Profread, Proofread, PROOFREAD

Were you bothered by the beginning of this tip? Your readers would be as well. Triple check your work for spelling and grammatical errors before posting. You may even want to re-read your published posts for any errors missed.

You are now free to blog . . . proceed with competence. 



Bryan O. Babcock practices in the areas of estate, gift and fiduciary income taxes. He is also chief creative officer of Babcock

Brodnex LLC, a company which operates a legal discussion forum on internet radio. Babcock serves as host of the radio show, "The Fine Print: We're Calling 'B.S.'" As a part of the show, he contributes to its blog page, providing witty and informative commentary on the show's current topics of discussion. Babcock can be heard live bi-weekly on BlogTalkRadio at <http://www.blogtalkradio.com/thefineprint>, and read anytime at <http://thefineprintbs.blogspot.com>.

A. James Elliott— A Man of Purpose, Professionalism and Commitment to Access to Justice

by Avarita L. Hanson

This year, the Chief Justice's Commission on Professionalism (the Commission) is celebrating its 25th anniversary. This is both a time of reflection and a time for recommitment to the purposes and ideals of the Commission. It is a distinct opportunity to pay tribute to those persons who created the model institution of lawyer professionalism in Georgia and the nation and who exemplify those ideals. One such person is A. James Elliott, co-founder of the Commission—a man of purpose, professionalism and commitment to access to justice.

Supreme Court of Georgia Justice Robert Benham often articulates the pillars of professionalism as: competence, civility, community and public service, and commitment to ensuring access to justice. These qualities and involvements make a consummate professional, and Elliott is just that. He has held many titles in his 47-year career as an attorney, including: practitioner, partner, professor, dean, chair and president. His rich experiences and contributions to the



A. James "Jim" Elliott, associate dean, Emory University School of Law

Photo courtesy of Emory Law

profession, bar and community reflect his commitment to professionalism. He has been the pilot and the pilot light for some of the most significant initiatives affecting lawyers and Georgians in the last four decades.

Elliott, a Georgia native, grew up in Atlanta where he attended J. C. Murphy High School. He recalls spending his Sundays attending church and enjoying suppers afterwards where he shared values and stories with friends and family. He enjoyed summers with relatives in Rutledge, developing his character, personal history and values. Elliott's values are evident, simple, yet strong. To him it is important to achieve and continue to strive for professional excellence. It is important to help your neighbors, especially those less fortunate. It is important to recognize the humanity in and be kind to all you encounter. Perhaps, it is most important to treat others as you would like to be treated—a basic biblical tenet and the premise of profession-

alism. Elliott brought his direction—his moral compass—to the legal profession.

Elliott developed his professional competence by receiving his B.A. in Economics from Emory University in 1963. He honed his leadership skills in college as a member of the Senior Honor Society, serving on the College Council (student government) and as president of his fraternity, Sigma Chi. He continued his education at Emory where he received his J.D. in 1966. In law school he was named to the Bryan Honor Society and served as associate editor of *The Journal of Public Law*, as vice president of the Student Bar Association and on the Honor Council. He has remained a strong supporter of Emory, serving on the Emory University Board of Visitors, chair of the Coca-Cola Challenge (University Annual Fund), chair of the Law School Council, board member of the Association of Emory Alumni, chair of the Law School Fund and president of the Law School

Alumni Association. In 1997, Elliott received his MBA from Kennesaw State University and was named to Beta Gamma Sigma.

Admitted to the State Bar of Georgia in June of 1966, Elliott embarked on a stellar career, practicing 28 years with the Atlanta law firm of Alston & Bird, from 1967-95. He was named a partner in 1971 and specialized in commercial real estate with an emphasis on foreign investment in U.S. real estate while chairing the real estate department and professional personnel committee.

Since 1996, Elliott has been the associate dean at Emory Law where he teaches professional responsibility, banking and commercial real estate finance. While practicing, he began to use his skills as a teacher and scholar, serving as an adjunct professor at Emory University School of Law from 1972-82. He has chaired or served on the panels of approximately 30 CLE seminars sponsored by the American Law Institute/American Bar Association, Practicing Law

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

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The Chief Justice's Commission on Professionalism will celebrate its 25th anniversary with a dinner and tribute to Co-Founder A. James Elliott, on Tuesday, March 25, from 6-9 p.m. at the Commerce Club, 191 Peachtree St., Atlanta. This event will benefit the Georgia Legal Services Program.

Sponsorships and tickets are available. Please contact Executive Director Avarita L. Hanson, at 404-225-5040, or professionalism@cjcpga.org for more information.



Annual Fiction Writing Competition

Deadline January 17, 2014



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

Rules for Annual Fiction Writing Competition



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




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

Officers of Georgia Indigents Legal Services, Inc., meeting with Family and Children Services Director Jim Parham and Deputy Director Herschel Saucier, in the GILS offices in Atlanta. (Left to right) John Myer (staff), John Cromartie (staff), Phil Heiner, Nancy Cheves, Jim Parham, Bill Ide, Betsey Neely, Herschel Saucier, Bettye Kehrner (staff); Jim Elliott and Ben Shapiro (with backs to camera).

Institute, Warren, Gorham & Lamont Publishing Company, Georgia Institute of Continuing Legal Education and Atlanta Bar Association. This practitioner turned law school administrator and educator is an avid advocate and exemplar for students learning practical skills and serving their communities. Elliott is concerned about the future of legal education and would like to see law schools reduce the number of students admitted, so that the schools do not produce 40 percent more graduates than for whom there are available jobs. He believes that recent law school graduates need to be assured that there is good opportunity for them to obtain a full-time legal position. He would also like law schools, especially higher-ranked institutions, to fully appreciate that they need to do more to prepare graduates to be ready to practice law. Elliott would encourage the Supreme Court of Georgia—in its role of regulating the legal profession and approving lawyers to become licensed—to

consider a dual track for approval to take the bar examination. In addition to the traditional track of fitness plus competency evidenced by completion of a three-year law school curriculum, Elliott would propose that after fitness determination, law students complete two years of the law school curriculum and a one-year practical skills internship. He posits that the new track could reduce the students' law school debt by one-third, while maintaining their competency to take the bar examination.

This leader from Emory has also been a leader of Georgia's legal community. He served the State Bar of Georgia in its highest capacities, first as president of the Younger Lawyers Section (now Young Lawyers Division) in 1976, then as president of the State Bar from 1988-89. He served on its Executive Committee (1975-80; 1984-90), Board of Governors (1976-90), State Disciplinary Board (1976, 1987-90) and chaired its Real Estate Section (1974) and Legal Aid Committee and the Institute of

Continuing Legal Education Board of Trustees.

As State Bar president, Elliott emphasized the need to assist lawyers with personal issues that interfered with their ability to practice law competently. This resulted in the development of the Lawyers Assistance Program (LAP) as an in-house Bar program. LAP addresses issues such as alcohol and drug use, depression, mental illness and lawyer suicide. This program continues to provide a resource for lawyers to meet their needs for rehabilitation and restoration of their competence.

The 15th annual Justice Benham Awards for Community Service will be presented on Tuesday, Feb. 25, at 6 p.m. at the Bar Center. This event is free and open to the public. Please contact Nneka Harris-Daniel at 404-225-5040, or professionalism@cjcpga.org for more information. An RSVP is required.

It is clear that Elliott is a champion for justice and professionalism. His purpose in life has been to uplift justice. His direction has been to ensure justice not only for those with easy access, but also for those who could not afford it.

His other Bar-related activities include chairing the Supreme Court Commission to Evaluate Disciplinary Enforcement from 1994-96 and the governor's select Commission for Judicial Selection from 1987-91. He is a fellow of the American College of Real Estate Lawyers, American College of Mortgage Attorneys and the American and Georgia Bar Foundations. Other bar association memberships include: the American Bar Association, International Bar Association, Atlanta Bar Association, Old War Horse Lawyers Club (president) and Lawyers Club of Atlanta.

A Legacy for the Legal Community

In the legal community, Elliott has been an effective leader and innovator. When he sees a need, he seeks to fill it efficiently, effectively and pragmatically. Elliott considers what he accomplished in his Bar leadership roles his most significant professional achievements. His legacy in the legal community is threefold: he is a co-founder of the Georgia Legal Services Program; he is a co-founder of IOLTA; and he is a co-founder of the Commission.

Co-Founder of Georgia Legal Services Program

Elliott has consistently been a creative leader in efforts in Georgia to ensure access to justice for all Georgians. While president of the Younger Lawyers Section, he co-founded the Georgia Indigents Legal Services Program and served as its board president. This public interest law firm later became the Georgia Legal Services Program,

which has provided legal services to close to 1 million Georgians. In 1991, Elliott received the Arthur Von Briesen Award, which is given annually by the National Legal Aid and Defender Association to one lawyer in private practice for substantial volunteer contributions to the legal assistance movement for the poor.

Architect of IOLTA for Funding Civil Legal Aid

Seeing the need for reliable, permanent funding for civil legal aid, Elliott, along with Cubbedge Snow Jr., orchestrated the development of the State Bar's mandatory IOLTA Program. As president of the State Bar, he played a pivotal role in Georgia's adoption of the IOLTA Program. Today, the Georgia Bar Foundation is responsible for allocating IOLTA funds and has distributed more than \$100 million to organizations like Atlanta Legal Aid Society and Georgia Legal Services Program. "Without that money, these legal services organizations could have not provided anything like the amount of service they have provided," Elliott says. "It's nice to be able to look back and see that you were a part of something that has provided a lot of help to a lot of people."

Co-Founder of the Chief Justice's Commission on Professionalism

During his Bar presidency, Elliott was one of five men, including Supreme Court of Georgia Justices Thomas O. Marshall, Charles Weltner and Harold Clarke, and then Emory University President James Laney, that co-founded the Chief Justice's

Commission on Professionalism after determining that the antidote to growing unprofessional behavior in the State Bar was for the Supreme Court of Georgia to institutionalize professionalism by creating a professionalism organization. The Commissions' mission is "to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system." In regard to the Commission's overall effectiveness, Elliott says "from the beginning we recognized that no empirical data would show well that Georgia lawyers were professional or unprofessional." However, from anecdotal evidence over the years from Georgia lawyers, he finds that "lawyers who were initially forced by mandatory CLE to attend a professionalism program and who were tempted to leave early, often found themselves engrossed in the subject matter and exchange of the participants." That the Commission was the first statewide commission founded by a court to address lawyer professionalism is of itself a significant fact. Encouraged by Georgia's bold first step, judges and lawyers in other states followed and established commissions on professionalism.

Commitment to Inclusion

Elliott was recently recognized by the State Bar of Georgia's Diversity Program during the 2013 Fall CLE and Luncheon Opening

Program. The seminar provided a dialogue on the historical and practical perspective of diversity in the State Bar of Georgia, particularly in its leadership. As president of the Younger Lawyers Section, Elliott appointed a number of women to leadership positions and encouraged their involvement with the State Bar. While serving as Bar president, he appointed the first African-American female lawyer to serve on the Board of Governors. This appointment was a catalyst for more diverse lawyers to participate with the Bar at all levels, for positive changes in the Bar programs and policies, and for more fairness and inclusion in the courts. It also served to improve the public perception of access and fairness in Georgia courts and its judicial system. This action, taken by Elliott just 25 years ago, is perhaps even more significant as the State Bar of Georgia will welcome its first African-American president, Patrise Perkins-Hooker, in June.

Community Service


One aspect of professionalism is community and public service. In addition to his Bar and legal

services activities, Elliott has had a longtime involvement with community organizations and institutions. Beneficiaries of Elliott's service include: the American Heart Fund, Canadian-American Society of the Southeastern United States, Atlanta Chamber of Commerce-Environmental Task Force, Georgia Committee for Ethical Judicial Campaigns, Woodruff Arts Center, Trinity Presbyterian Church, Leadership Atlanta, Leadership Georgia, United Way and Emory University. Elliott has served on the corporate boards of: U-K American Properties, Crescent Banking Company and Crescent Mortgage Company.

Elliott advises today's new lawyers that they are not precluded from giving time and financial support to those needing but unable to pay for legal representation. He recognizes that it is difficult to be a lawyer, yet he advocates that wise choices can be made to achieve some life balance and lots of professional satisfaction.

At the other end of the career spectrum, Elliott posits that senior lawyers will be able to adjust to the situation when they can no longer do what they may have done for

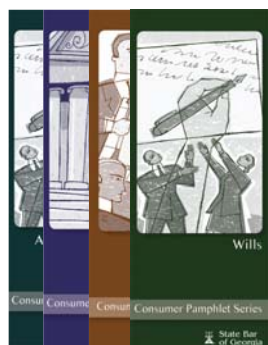
30, 50 or more years. Senior lawyers have the opportunity to use their great talents and experiences as volunteers and mentors, if only for one day a week at a legal aid office and for the benefit of others.

It is clear that Elliott is a champion for justice and professionalism. His purpose in life has been to uplift justice. His direction has been to ensure justice not only for those with easy access, but also for those who could not afford it. This gentleman, esteemed practitioner, leader, community servant and law professor has a lifetime of purpose that has positively affected thousands of Georgians. Sometimes the power of one and the use of that power makes changes for many. In Georgia, we are fortunate to have Elliott in our lawyer ranks and we all owe him a wealth of gratitude for his courage, efforts, purpose and direction. 



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

Consumer Pamphlet Series



The State Bar of Georgia's Consumer Pamphlet Series is available at cost to Bar members, non-Bar members and organizations. Pamphlets are priced cost plus tax and shipping. Questions? Call 404-527-8792.

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

Aaron I. Alembik

Atlanta, Ga.
George Washington University
Law School (1956)
Admitted 1958
Died November 2013

Tyrus R. Atkinson Jr.

Asheville, N.C.
University of Georgia School
of Law (1965)
Admitted 1964
Died September 2013

Braxton Allen Bladen

Decatur, Ga.
American University Washington
College of Law (1987)
Admitted 1974
Died October 2013

Dean Booth

Atlanta, Ga.
Emory University School of Law
(1964)
Admitted 1963
Died October 2013

Wayne B. Bradley

Milledgeville, Ga.
Atlanta's John Marshall Law
School (1972)
Admitted 1972
Died October 2013

Milton F. Brown Jr.

Virginia Beach, Va.
University of Georgia School
of Law (1941)
Admitted 1941
Died October 2013

Edmund B. Burke

Hartwell, Ga.
Emory University School of Law
(1977)
Admitted 1977
Died October 2013

John Francis Campbell

Atlanta, Ga.
University of Miami School of
Law (1952)
Admitted 1956
Died May 2013

Charles L. Carnes

Atlanta, Ga.
Woodrow Wilson College of Law
(1962)
Admitted 1962
Died October 2013

Joseph E. Cheeley Jr.

Buford, Ga.
University of Georgia School
of Law (1950)
Admitted 1950
Died October 2013

Betty Garrett Cline

Decatur, Ga.
University of Georgia School
of Law (1951)
Admitted 1950
Died November 2013

Adlai S. Grove Jr.

Atlanta, Ga.
Emory University School of Law
(1949)
Admitted 1949
Died March 2013

Herman L. Hazen

Decatur, Ga.
Woodrow Wilson College of Law
(1953)
Admitted 1953
Died April 2013

Ronald Lewis Jones II

Atlanta, Ga.
Mercer University Walter F.
George School of Law (1990)
Admitted 1992
Died April 2013

Walter E. Leggett Jr.

Macon, Ga.
University of Georgia School
of Law (1977)
Admitted 1977
Died October 2013

Herman O. Lyle

Tifton, Ga.
Woodrow Wilson College of Law
(1952)
Admitted 1952
Died September 2013

John D. McLanahan

Athens, Ga.
Emory University School of Law
(1963)
Admitted 1962
Died October 2013

Charles B. Mikell Jr.

Atlanta, Ga.
University of Georgia School
of Law (1976)
Admitted 1976
Died November 2013

Homer Dean Minor

Decatur, Ga.
 Atlanta Law School (1948)
 Admitted 1947
 Died July 2013

Jon A. Nixon

Warner Robins, Ga.
 Samford University Cumberland
 School of Law (1969)
 Admitted 1970
 Died October 2013

Joseph C. Pendergrass Jr.

Athens, Ga.
 University of Georgia School
 of Law (1979)
 Admitted 1979
 Died October 2013

John Penny

Atlanta, Ga.
 Wake Forest University School
 of Law (2002)
 Admitted 2002
 Died July 2013

Melvin Robinson Jr.

Atlanta, Ga.
 Indiana University Robert H.
 McKinney School of Law (1970)
 Admitted 1973
 Died November 2013

Leroy W. Robinson Jr.

Gainesville, Ga.
 Mercer University Walter F.
 George School of Law (1973)
 Admitted 1973
 Died October 2013

Allan Lash Shackelford

Kalamazoo, Mich.
 University of Georgia School
 of Law (1973)
 Admitted 1973
 Died August 2013

Wayne E. Spiva

Douglasville, Ga.
 Atlanta's John Marshall Law
 School (1968)
 Admitted 1969
 Died November 2013



Wayne B. Bradley was a native of Greene County but had made his home in Milledgeville. In 1966,

he received his bachelor's degree in economics from the University of Georgia. He received his J.D. from John Marshall School of Law in 1972. After law school, he served as assistant district attorney with the Oconee Circuit before opening his private practice in 1976. He was an active member of the State Board of Georgia and served on the Board of Governors for 19 years. He was a cattle farmer and loved to quail hunt with his dog, Billybob.




Hon. Charles B. Mikell Jr. was born in Savannah in December 1941. He attended public schools and graduated from Savannah

Country Day School in 1959 and from Princeton University in 1963. He attended graduate school in European History at the University of North Carolina at Chapel Hill and graduated from the University of Georgia School of Law with honors in 1976. Between Princeton and graduate school, Mikell served as an Army intelligence officer, leaving active duty as a captain in 1969. After service in Massachusetts, California and Germany, he was stationed for one year at Pleiku in the Central Highlands of Vietnam, where he was attached to the Central Intelligence Agency, and later advised South Vietnamese forces. He was awarded the Bronze Star and the Republic of Vietnam's Gallantry Cross, First Class. After law school, he began private practice in Savannah as an associate and later a partner with the firm of Brannen, Wessels, and Searcy. He specialized in litigation, especially insurance, products liability and architects and engineers malpractice defense. He also practiced in South Carolina in the field of trusts and estates.

In 1985, he was appointed judge of the State Court of Chatham County by Gov. Joe Frank Harris. He was elected to that post in 1986 and served as chief judge of that court from 1990-92. He was president of the Georgia Council of State Court Judges from 1989-90. In 1992, he was elected judge of Superior Court of the Eastern Judicial Circuit, and was re-elected in 1996. He served as administrative judge of the First Judicial District, a member of the Judicial Council of Georgia and the Executive Committee of the Georgia Council of Superior Court Judges. In 2000, he was appointed a judge of the Court of Appeals of Georgia by Gov. Roy Barnes, was elected to that post in 2002 and re-elected in 2008. He served as chief judge of the Court of Appeals in 2011-12 and retired in August.

His community activities included service as vice president and later chairman of the board of the King-Tisdell Cottage Foundation, a museum of African History and Culture, president of the Neighbor-to-Neighbor Justice Center and service on the local boards of United Way, the Arthritis Foundation, the Boy Scouts and the Devereaux Foundation. He taught Sunday School, served as a vestryman, and sang in the choir at Christ Church.

In 2006, he was awarded the Chief Justice Thomas O. Marshall Professionalism award by the State Bar of Georgia. He was given special recognition for his service by the King-Tisdell Foundation in 2007. In 2011, he was awarded a certificate of appreciation by the NAACP. In 2013, he became an honorary diplomate of the American Board of Trial Advocates.

He was a member of the Rotary Club of Savannah, the Commerce Club of Atlanta, the Lawyers Club of Atlanta, the Old War Horse Lawyers' Club, the Princeton Clubs of Savannah and New York, and the Army and Navy Clubs of Washington, D.C., the Society of Colonial Wars and the Sons of Revolution. 

Typography for Lawyers: A (Surprisingly) Transformative Guide that Will Improve Your Written Work Product

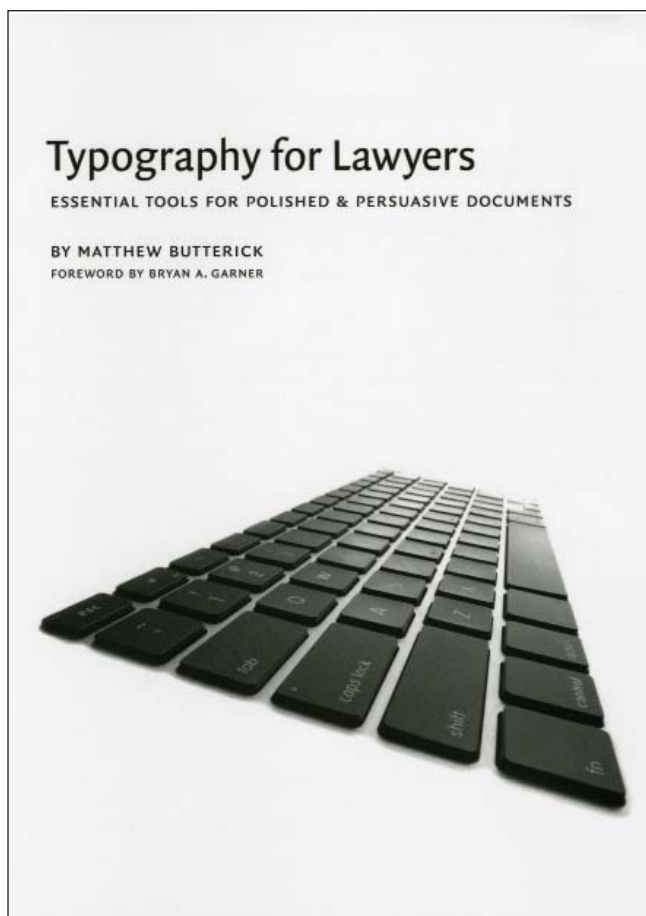
by Matthew Butterick, 220 pages, Jones McClure Publishing

reviewed by Edward A. Marshall

I approached Matthew Butterick's instructional guide, *Typography for Lawyers*, with a healthy degree of skepticism.

I was introduced to the book by a good friend (and a self-proclaimed unapologetic nerd) as he bounded into my office enthusiastically waving around a book about typography. Yes, typography: the appearance of typeset, such as font selection, page margins and line spacing. My initial reaction was, to put it mildly, subdued. Sure, I appreciate great books about legal writing. Justice Scalia and Bryan Garner's *Making Your Case* enjoys a prominent place on my desk. So too does Ross Guberman's *Point Made*. But a book about the appearance of legal writing had me wondering, why bother? Times New Roman worked just fine, and I had grown accustomed to double-spaced paragraphs, one-inch margins and two spaces after periods. They were staples. I had better things to do with my billable time than monkey around with the more nuanced functions of Microsoft Word. Persuading your reader was about the content of your writing. Typography was a triviality.

As I began reading Butterick's work, however, I gradually realized that I was wrong. And I was not alone. Without fail, when I now blather on to my colleagues about the book, I am consistently met with skepticism (and a fair degree of mockery). But, like those I have persuaded to crack the spine on *Typography for Lawyers*, my reaction to the book quickly transitioned from bemused disbelief, to begrudging acceptance, to unalloyed zealotry.



As Butterick persuasively argues (and, to be clear, his tone is unabashedly strident), many of the prevailing norms in legal typography flow from the age of typewriters and lawyers' reflexive conformity to the habits

of those who precede us. We do it this way because that is what we observed as young lawyers. And those we observed did the same—dating back to the days when briefs were assembled by dutiful legal assistants on typewriters from the dictated brilliance of their bosses. The technology they had was limiting, and they were accordingly unable to compose papers that reflected the professional attributes achievable by publishing houses and book printers. Today, we are not so limited. With nothing more than Microsoft Word or Apple's Pages, we have the ability to compose papers that are every bit as professional looking as those once achieved only by those with access to a printing press.

So, why does that matter? The reasons, as Butterick explains, are effectively twofold.

First, typography can significantly affect how readable a work is and, thus, how much attention your reader will devote to your papers. Bad typography is distracting (and often exhausting to digest). So as we struggle to capture the attention of our audience—including that of a busy judiciary with multiple demands on its time—why should we ignore any toolset that may make our submissions more palatable and, perhaps, more likely to prompt our readers to linger even slightly longer over the papers we put before them?


Second, as professional writers (and, given the hefty rates we charge our clients to compose our papers, we are undoubtedly that), we should strive to produce professional-looking work product. After all, your reader's initial impression of your work will, at least in part, be a matter of appearance. You likely would not show up to court to argue a motion wearing a cheap suit, so why put together a brief that is the functional equivalent of such slovenliness? Why not use every means reasonably available to you to make that impression a favorable one?

And, as recent studies have shown, something as simple as

font selection objectively *does* affect your reader's assessment of your work. For example, an experiment conducted by Errol Morris of *The New York Times* demonstrated that readers (there, a sample set of 40,000) found an article presented in certain fonts (e.g., Baskerville) inspired more confidence, and was perceived to be more believable, than when presented in others. The content of the article was the same. But the font itself altered how credible the readers viewed the work to be. Why surrender such an advantage in a profession focused on the relative persuasiveness of dueling briefs—particularly when the advantage can be realized with a few clicks of your mouse?

In addition to convincing his readers of the importance of typography, Butterick presents his advice on how to improve legal writing in a remarkably engaging and comprehensible format, not least of which is a 28-point "summary of key rules" on the opening page of the book. And, like any good advocate, he anticipates his readers' resistance to certain advice (e.g., the use of a single space after a period, rather than two) and immediately bolsters his argument with sound authority (ranging from Bryan Garner, who wrote the introduction to Butterick's book, to the Seventh Circuit's *Requirements and Suggestions for Typography in Briefs and Other Papers*, to the observation that all professionally typeset materials—including books and magazines—use the single space). *Typography for Lawyers* goes on to give practical and easy-to-implement guidance on everything from line length (45 to 90 characters), to point size (10 to 12 points), to font selection (lambasting most system fonts), to underlining (don't), to first-line indents and spaces between paragraphs (belt and suspenders: pick one).

Ultimately, Butterick's work leaves its readers with only two frustrations: (i) the inability to suffer bad typography as it continues to roll across their desks; and (ii)

the existence of local rules that bind writers to employing outdated and inferior typography in submissions to the courts. The former frustration is likely incurable. Bad writers are everywhere; bad typographers are, too. But the latter frustration is susceptible to being addressed as the persuasiveness of Butterick's work (or the lobbying of those he has persuaded) ultimately leads more courts to abandon the conventions that were thrust upon writers in the age of typewriters and to embrace rules (or at least flexibility) that will permit counsel to submit professional-looking work to chambers. We would all be the better for it. 



Edward A. Marshall, a member of the *Georgia Bar Journal* Editorial Board, is a partner in the litigation and

employee benefits practices at Arnall Golden Gregory LLP.

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December-March

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Abusive Litigation
Atlanta, Ga.
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6 CLE

FEB 6 ICLE
Georgia Foundations/Objections Update
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December-March

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59th Estate Planning Institute
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 10 CLE

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 6 CLE

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FEB 19 ICLE
Attorneys First Aid Kit
 Atlanta, Ga.
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FEB 19 ICLE
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 of Law, Graduate Tax Program
The Florida Tax Institute
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 6 CLE

FEB 21 ICLE
Georgia Appellate Practice
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 6 CLE

FEB 21 ICLE
Elder Law
 Statewide Broadcast
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 6 CLE

FEB 21 ICLE
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 on Ethics and Professionalism*
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 6 CLE

FEB 27 ICLE
Negotiated Corporate Acquisitions
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 6 CLE

FEB 27 ICLE
Elder Law
 Statewide Rebroadcast
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 6 CLE

FEB 27-MAR 1 ICLE
24th Annual Tropical Seminar
 St. Marten
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 12 CLE

FEB 28 ICLE
Georgia Insurance Claims Law
 Atlanta, Ga.
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 6 CLE

FEB 28 ICLE
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 6 CLE

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 6 CLE

MAR 5 ICLE
Nuts and Bolts of Local Government Law
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 6 CLE

December-March

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MAR 20 ICLE
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Notice of Filing Formal Advisory Opinion in Supreme Court of Georgia

Second Publication of Proposed Formal Advisory Opinion No. 10-R2 Hereinafter known as "Formal Advisory Opinion No. 13-1"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after December 30, 2013.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultane-

ously served upon the Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

Second Publication of Proposed Formal Advisory Opinion No. 10-R2

Hereinafter known as “Formal Advisory Opinion No. 13-1”

STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION BOARD
PURSUANT TO RULE 4-403 ON OCTOBER 23, 2013
FORMAL ADVISORY OPINION NO. 13-1

QUESTIONS PRESENTED

1. Does a Lawyer¹ violate the Georgia Rules of Professional Conduct when he/she conducts a “witness only” real estate closing?
2. Can a Lawyer who is closing a real estate transaction meet his/her obligations under the Georgia Rules of Professional Conduct by reviewing, revising as necessary, and adopting documents sent from a lender or from other sources?
3. Must all funds received by a Lawyer in a real estate closing be deposited into and disbursed from the Lawyer’s trust account?

SUMMARY ANSWER

1. A Lawyer may not ethically conduct a “witness only” closing. Unless parties to a transaction are handling it pursuant to Georgia’s *pro se* exemption, Georgia law requires that a Lawyer handle a real estate closing (see O.C.G.A. § 15-19-50, UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 86-5).² When handling a real estate closing in Georgia a Lawyer does not absolve himself/herself from violations of the Georgia Rules of Professional Conduct by claiming that he/she has acted only as a witness and not as an attorney. (See UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 04-1).
2. The closing Lawyer must review all documents to be used in the transaction, resolve any errors in the paperwork, detect and resolve ambiguities in title or title defects, and otherwise act with competence. A Lawyer conducting a real estate closing may use documents prepared by others after ensuring their accuracy, making necessary revisions, and adopting the work.
3. A Lawyer who receives funds in connection with a real estate closing must deposit them into and disburse them from his/her trust account or the trust

account of another Lawyer. (See Georgia Rule of Professional Conduct 1.15(II) and Formal Advisory Opinion No. 04-1).

OPINION

A “witness only” closing occurs when an individual presides over the execution of deeds of conveyance and other closing documents but purports to do so merely as a witness and notary, not as someone who is practicing law. (UPL Advisory Opinion No. 2003-2). In order to protect the public from those not properly trained or qualified to render these services, Lawyers are required to “be in control of the closing process from beginning to end.” (Formal Advisory Opinion No. 00-3). A Lawyer who purports to handle a closing in the limited role of a witness violates the Georgia Rules of Professional Conduct.

In recent years many out-of-state lenders, including some of the largest banking institutions in the country, have changed the way they manage the real estate transactions they fund. The following practices of these lenders have been reported. These national lenders hire attorneys who agree to serve the limited role of presiding over the execution of the documents (i.e., “witness only” closings). In advance of a “witness only” closing an attorney typically receives “signing instructions” and a packet of documents prepared by the lender or at the lender’s direction. The instructions specifically warn the attorney NOT to review the documents or give legal advice to any of the parties to the transaction. The “witness only” attorney obtains the appropriate signatures on the documents, notarizes them, and returns them by mail to the lender or to a third party entity.

The Lawyer’s failure to review closing documents can facilitate foreclosure fraud, problems with title, and other errors that may not be detected until years later when the owner of a property attempts to refinance, sell or convey it.

A Lawyer must provide competent representation and must exercise independent professional judgment in rendering advice. (Rules 1.1 and 2.1, Georgia Rules of Professional Conduct). When a Lawyer agrees to serve as a mere figurehead, so that it appears there is a Lawyer “handling” a closing, the Lawyer violates his/her obligations under the Georgia Rules of Professional

Conduct (Rule 8.4). The Lawyer's acceptance of the closing documents or signature on the closing statement is the imprimatur of a successful transaction. Because UPL Advisory Opinion No. 2003-2 and the Supreme Court Order adopting it require (subject to the *pro se* exception) that only a Lawyer can close a real estate transaction, the Lawyer signing the closing statement or accepting the closing documents would be found to be doing so in his or her capacity as a Lawyer. Therefore, when a closing Lawyer purports to act merely as a witness, this is a misrepresentation of the Lawyer's role in the transaction. Georgia Rule of Professional Conduct 8.4(a)(4) provides that it is professional misconduct for an attorney to engage in "conduct involving . . . misrepresentation."

The Georgia Rules of Professional Conduct allow Lawyers to outsource both legal and nonlegal work. (See ABA Formal Advisory Opinion 08-451.) A Lawyer does not violate the Georgia Rules of Professional Conduct by receiving documents from the client or elsewhere for use in a closing transaction, even though the Lawyer has not supervised the preparation of the documents. However, the Lawyer is responsible for utilizing these documents in compliance with the Georgia Rules of Professional Conduct, and must review and adopt work used in a closing. Georgia law allows a title insurance company or other persons to examine records of title to real property, prepare abstracts of title, and issue related insurance. (O.C.G.A. § 15-19-53). Other persons may provide attorneys with paralegal and clerical services, so long as "at all times the attorney receiving the information or services shall maintain full professional and direct responsibility to his clients for the information and services received." (O.C.G.A. § 15-19-54; also see UPL Advisory Opinion No. 2003-2 and Rules 5.3 and 5.5, Georgia Rules of Professional Conduct).

The obligation to review, revise, approve and adopt documents used in a real estate closing applies to the entire series of events that comprise a closing.

(Formal Advisory Opinions No. 86-5 and 00-3, and UPL Advisory Opinion No. 2003-2). While the Supreme Court has not explicitly enumerated what all of those events are, they may include, but not be limited to: (i) rendering an opinion as to title and the resolution of any defects in marketable title; (ii) preparation of deeds of conveyance, including warranty deeds, quitclaim deeds, deeds to secure debt, and mortgage deeds; (iii) overseeing and participating in the execution of instruments conveying title; (iv) supervising the recordation of documents conveying title; and (v) in those situations where the Lawyer receives funds, depositing and disbursing those funds in accordance with Rule 1.15(II). Even if some of these steps are performed elsewhere, the Lawyer maintains full professional and direct responsibility for the entire transaction and for the services rendered to the client.

Finally, as in any transaction in which a Lawyer receives client funds, a Lawyer must comply with Georgia Rule of Professional Conduct 1.15(II) when handling a real estate closing. If the Lawyer receives funds on behalf of a client or in any other fiduciary capacity he/she must deposit the funds into, and administer them from, a trust account in accordance with Rule 1.15(II). (Formal Advisory Opinion No. 04-1). It should be noted that Georgia law also allows the lender to disburse funds. (O.C.G.A. § 44-14-13(a)(10)). A Lawyer violates the Georgia Rules of Professional Conduct when he/she delivers closing proceeds to a title company or to a third party settlement company for disbursement instead of depositing them into and disbursing them from an attorney escrow account.

Endnotes

1. Bar Rule 1.0(j) provides that "Lawyer" denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia, including persons admitted to practice in this state *pro hac vice*.
2. The result is to exclude Nonlawyers as defined by Bar Rule 1.0(k), Domestic Lawyers as defined by Bar Rule 1.0(d), and Foreign Lawyers as defined by Bar Rule 1.0(f), from the real estate closing process.

Notice of Filing Formal Advisory Opinion in Supreme Court of Georgia

Second Publication of Proposed Formal Advisory Opinion No. 11-R1 Hereinafter known as "Formal Advisory Opinion No. 13-2"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia

approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after December 30, 2013.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia. The

petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simultaneously served upon the Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which

is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

Second Publication of Proposed Formal Advisory Opinion No. 11-R1 Hereinafter known as "Formal Advisory Opinion No. 13-2"

**STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION
BOARD
PURSUANT TO RULE 4-403 ON OCTOBER 23, 2013
FORMAL ADVISORY OPINION NO. 13-2**

QUESTIONS PRESENTED

1. May a lawyer representing a plaintiff personally agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds?
2. May a lawyer seek to require, as a condition of settlement, that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds?

SUMMARY ANSWER

1. A lawyer may not ethically agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds. Such agreements violate Rule 1.8(e) of the Georgia Rules of Professional Conduct, which prohibits

a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation.

2. Further, a lawyer may not seek to require, as a condition of settlement, that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds. Such conduct violates Rule 8.4(a)(1) of the Georgia Rules of Professional Conduct, which prohibits a lawyer from knowingly inducing another lawyer to violate the Georgia Rules of Professional Conduct.

OPINION

Lawyers often represent clients in civil actions, such as personal injury or medical malpractice, who have incurred substantial medical bills as a result of their injuries. These lawyers are required to work diligently to obtain a fair settlement for these clients. Obtaining a settlement or judgment can sometimes take years.

The proper disbursement of settlement proceeds is a tremendous responsibility for a lawyer who receives

such proceeds. Clients are often in need of funds from the settlement. Lawyers need payment for their services. And third persons such as medical providers, insurance carriers, or Medicare and Medicaid seek reimbursement of their expenses from the settlement.

Increasingly, lawyers who represent plaintiffs are being asked to personally indemnify the opposing party and counsel from claims by third persons to the settlement proceeds. Lawyers are concerned not only about whether it is ethical to enter into such an agreement but also whether it is ethical to seek to require other lawyers to enter into such an agreement.¹

1. A lawyer may not ethically agree, as a condition of settlement, to indemnify the opposing party from claims by third persons to the settlement funds.

The first issue is governed by Rule 1.8(e) of the Georgia Rules of Professional Conduct, which provides as follows:

“A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or
2. a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.”

Comment 4 provides further guidance:

“Paragraph (e) eliminates the former requirement that the client remain ultimately liable for financial assistance provided by the lawyer. It further limits permitted assistance to court costs and expenses directly related to litigation. Accordingly, permitted expenses would include expenses of investigation, medical diagnostic work connected with the matter under litigation and treatment necessary for the diagnosis, and the costs of obtaining and presenting evidence. Permitted expenses would not include living expenses or medical expenses other than those listed above.”

Financial assistance can take many forms. Such assistance includes gifts, loans and loan guarantees. Any type of guarantee to cover a client’s debts constitutes financial assistance. Rule 1.8(e) provides narrow exceptions to the prohibition on a lawyer providing financial assistance to a client in connection with litigation. Those exceptions do not apply when a lawyer enters into a personal indemnification agreement. Because a lawyer,

under Rule 1.8(e), may not provide financial assistance to a client by, for example, paying or advancing the client’s medical expenses in connection with pending or contemplated litigation, it follows that a lawyer may not agree, either voluntarily or at the insistence of the client or parties being released, to guarantee or accept ultimate responsibility for such expenses.²

Moreover, any insistence by a client that the lawyer accept a settlement offer containing an indemnification agreement on the part of the lawyer might require the lawyer to withdraw from the representation. The lawyer may otherwise be in violation of Rule 1.16(a)(1), which provides that “a lawyer shall . . . withdraw from the representation of a client if . . . the representation will result in violation of the Georgia Rules of Professional Conduct.”³

2. A lawyer may not seek to require, as a condition of settlement, that a plaintiff’s lawyer make a personal agreement to indemnify the opposing party from claims by third persons to the settlement funds.

The second issue is governed by Rule 8.4(a)(1), which provides that “It shall be a violation of the Rules of Professional Conduct for a lawyer to . . . violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or *induce another to do so*, or do so through the acts of another.” (emphasis added). Comment 1 to Rule 8.4 also provides direction:

“The prohibitions of this Rule as well as the prohibitions of Bar Rule 4-102 prevent a lawyer from attempting to violate the Georgia Rules of Professional Conduct or from knowingly aiding or abetting, or providing direct or indirect assistance or inducement to another person who violates or attempts to violate a rule of professional conduct. A lawyer may not avoid a violation of the rules by instructing a nonlawyer, who is not subject to the rules, to act where the lawyer cannot.”

In light of the conclusion that plaintiff’s counsel may not agree to indemnify the opposing party from claims by third parties, it is also improper for a lawyer representing a defendant to seek to require that a plaintiff’s lawyer make a personal agreement to indemnify the opposing party from claims by third parties to the settlement funds. Nor can the lawyer representing the defendant avoid such a violation by instructing his client or the insurance company to propose or demand the indemnification.⁴

Endnotes

1. This opinion is intended to address the ethical concerns associated with a lawyer’s agreement to indemnify. This opinion does not address the legal or ethical issues involved in the disbursement of settlement funds.

2. This opinion is consistent with advisory opinions from other states holding that an agreement by a client's lawyer to guarantee a client's obligations to third parties amounts to guaranteeing financial assistance to the client, in violation of Rule 1.8(e) or its equivalent. *See, e.g.*, Alabama State Bar Ethics Opinion RO 2011-01; Arizona State Bar Ethics Opinion 03-05; Delaware State Bar Association Committee on Professional Ethics Opinion 2011-1; Florida Bar Staff Opinion 30310 (2011); Illinois State Bar Association Advisory Opinion 06-01 (violation of Illinois Rule 1.8(d), which is similar to Rule 1.8(e)); Indiana State Bar Association Legal Ethics Opinion No. 1 of 2005 (non-Medicare and Medicaid settlement agreement that requires counsel to indemnify opposing party from subrogation liens and third-party claims violates Indiana rules); Maine Ethics Opinion 204 (2011); Missouri Formal Advisory Opinion 125 (2008); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Formal Opinion 2010-3; Supreme Court of Ohio Opinion 2011-1; Philadelphia Bar Association Professional Guidance Committee Opinion 2011-6 (2012); South Carolina Ethics Advisory Opinion 08-07; Utah Ethics Advisory Opinion 11-01; Virginia Legal Ethics Opinion 1858 (2011); Washington State Bar Association Advisory Opinion 1736 (1997); Wisconsin Formal Opinion E-87-11 (1998).

Many of these jurisdictions also hold that an agreement to guarantee a client's obligations to third

parties also violates Rule 1.7(a) or its equivalent regarding conflicts of interest. In reaching its decision, the Board does not consider it necessary to address that issue here.

3. The mere suggestion by the client that the lawyer guarantee or indemnify against claims would not require withdrawal by the lawyer, only the client's demand that the lawyer do so would require withdrawal. *See* Rule 1.16(a)(1) ("A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Georgia Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.").
4. This opinion is consistent with advisory opinions from other states holding that a lawyer's demand that a plaintiff's lawyer make a personal agreement to indemnify the opposing party from claims by third parties to the settlement funds violates Rule 8.4(a)(1) or its equivalent. *See, e.g.*, Alabama State Bar Ethics Opinion RO 2011-01; Florida Bar Staff Opinion 30310 (2011); Missouri Formal Advisory Opinion 125 (2008); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Formal Opinion 2010-3; Supreme Court of Ohio

NOTICE OF AND OPPORTUNITY FOR COMMENT ON AMENDMENTS TO THE RULES OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

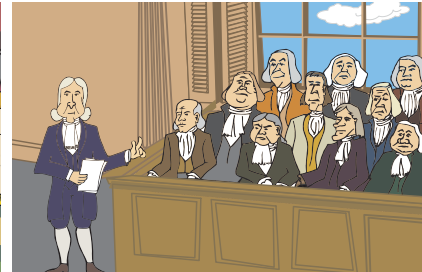
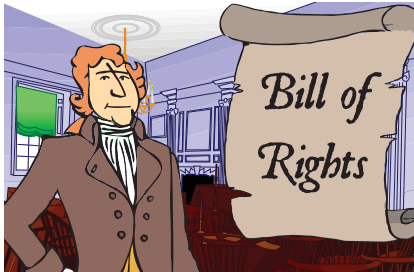
Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after Dec. 2, 2013, from the court's website at

www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by Jan. 3, 2014.

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

Trial By Jury: What's the Big Deal?

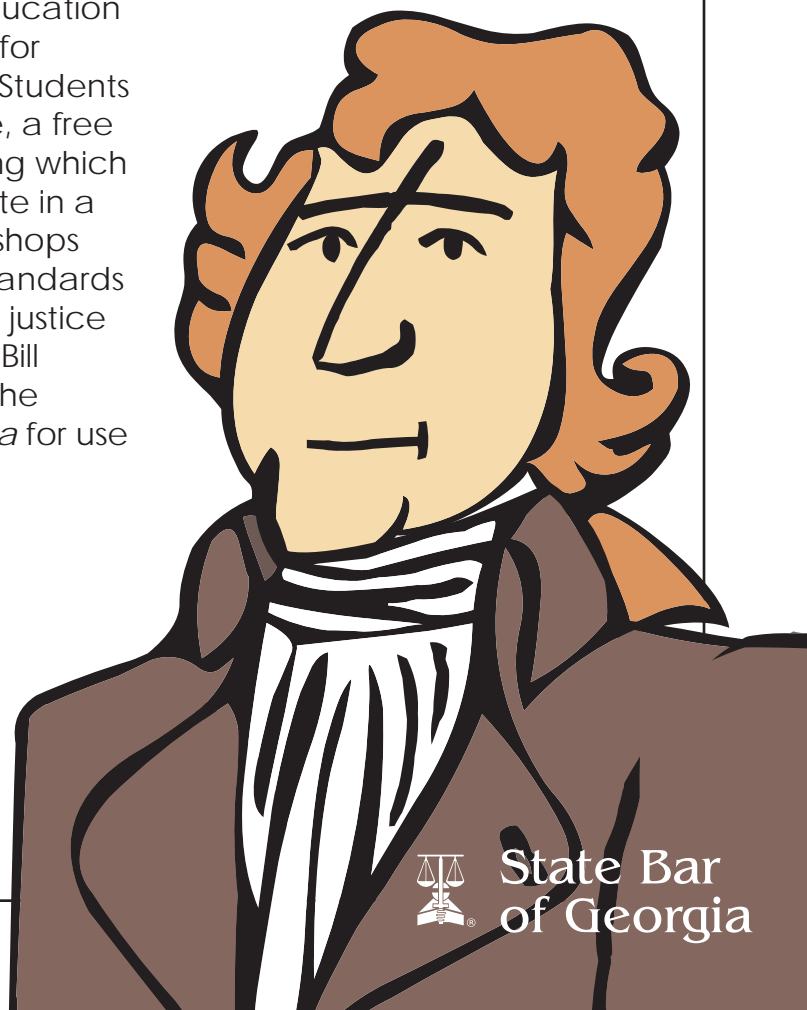


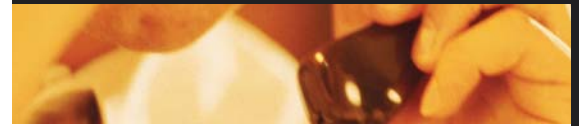
"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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

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

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

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





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