



Georgia Bar Journal

April 2011 ■ Volume 16 ■ Number 6

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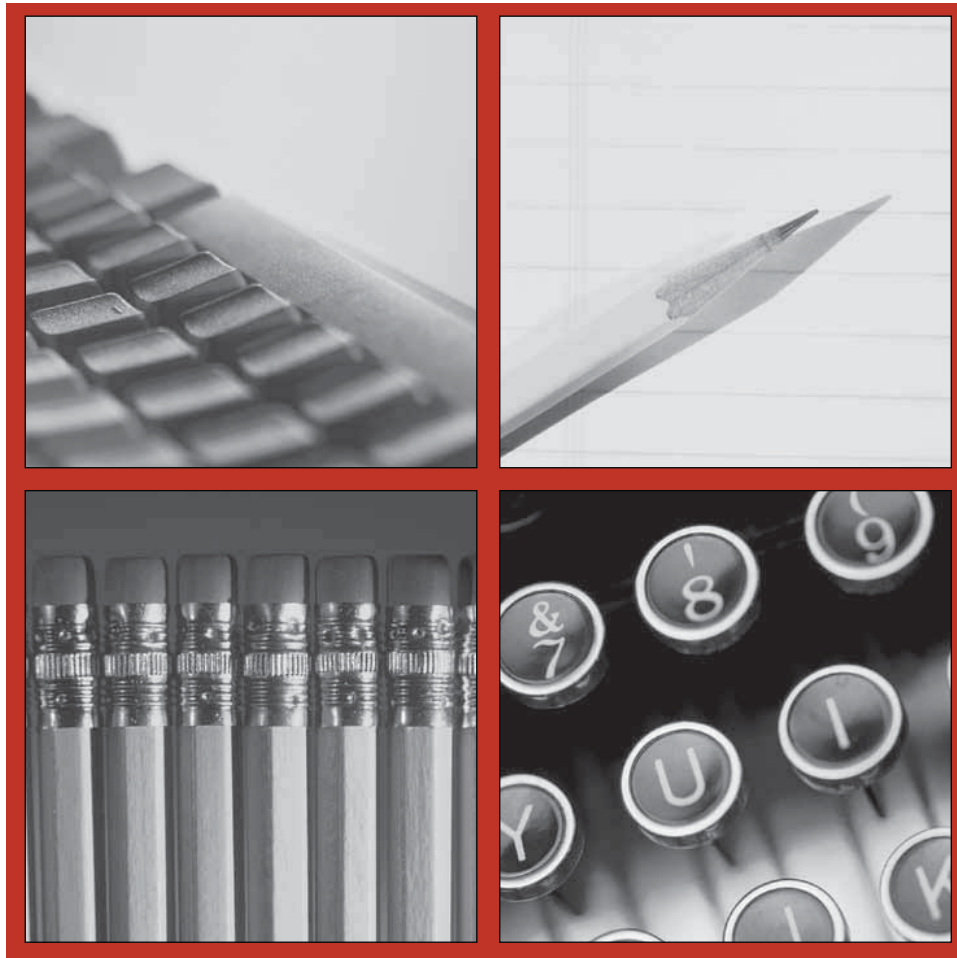
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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole,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

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by Lester Tate



Preaching the Cause of Justice Beyond the Choir

*O would some Power the gift to give us
To see ourselves as others see us!
Robert Burns, "To A Louse"*

For as long as I have been a member of the State Bar of Georgia, I have attended meeting after meeting at which my fellow lawyers and I have talked until we are blue in the face about the problems caused by the gradual weakening of the judicial leg of the so-called three-legged stool of government, problems that have been exacerbated in recent years by deep budget cuts brought on by the economic recession.

Of course, these internal sessions between lawyers and judges represent the classic case of preaching to the choir. We have learned that to reverse this declining public investment and resulting erosion of public

confidence in our court system, the legal profession must do more to reach out to those "others" referred to by Robert Burns:

People like my father, who lost his job while I was in college when the mill where he worked for 39 years shut down and who had never set foot in courtroom except as a juror. Or the business owner, large or small,

who has no idea how important a well-functioning court system is to his or her success until circumstances require them to learn. Or the budget writer in the executive or legislative branch of government whose job it is to balance the needs of the citizenry with a decidedly smaller pot of public revenue.

I have heard many times that there is more than one way to skin a cat, which I will have to accept at face value from those with experience in such matters.

I do know, however, that the same could apply to delivering our message about the importance of our justice system to the policy makers and opinion leaders, the business community and the general public.

**"I have heard many times
that there is more than one
way to skin a cat, which
I will have to accept at
face value from those with
experience in such matters."**

The State Bar's Cornerstones of Freedom® public awareness initiative encompasses a multi-pronged effort to reach these audiences, make them aware of current issues and enlist their support for a strong judicial branch. We have had many successes in doing so thanks to your strong support in the form of voluntary contributions to our Legislative & Public Education fund.

For the past several years, the State Bar has invested significant resources from this fund toward public service announcements broadcast on television and radio stations across the state. We have conducted surveys before and after these PSAs were aired, and the results have shown a steady, positive movement of the public opinion needle related to how Georgians view our justice system.

I have no doubt that our PSA that ran during the 2010 legislative session on television—augmented by a barnstorming tour of newspaper editorial boards around the state by Chief Justice Carol Hunstein and then-Bar President Bryan Cavan—got the attention of our lawmakers, and our judicial branch came out better in the current year's state budget than it otherwise would have.

This year, we have relied heavily on "earned media" to speak to policy makers and the public about these issues—with a most effective tool at our disposal. A statewide economic impact study commissioned by the State Bar and conducted by the Washington Economics Group was released to the news media and presented to the governor's office and every member of the Georgia General Assembly in early February.

The findings of the study presented clear and solid evidence that court delays resulting from judicial budget cuts and increased caseloads have cost Georgia thousands of jobs and hundreds of millions of dollars in annual economic impact. The judicial system was found to be one of the state's lead-

ing economic development foundations. Specifically, the study found that the efficient handling of "cases impacts both the business and social climate of Georgia." This is particularly true in the past decade when a massive increase in the number of cases filed in our state's courts was accompanied by an 8 percent overall decline in judicial funding.

With this information available, I was able to submit an op-ed column, published in the *Atlanta Journal-Constitution*, on Sunday, Feb. 13, and state the following:

"When courts become less efficient due to more cases and fewer dollars, Georgia businesses and individuals bear the cost of delays. The slowdowns lead to higher costs, more business uncertainty and reduced productivity. Time and money that should be put to use making goods, providing services and creating jobs instead gets spent waiting for justice."

"Using a widely accepted statistical methodology, the Washington Economics Group estimated court slowdowns cost Georgia between 3,457 and 7,098 jobs throughout the state. That's between \$176 million and \$375 million in annual wages for white-collar and blue-collar workers alike. Considering all factors, the total negative impact is between \$337 million and \$802 million on Georgia's economy each year."

"Such an economic loss has a profound effect on the lives of all citizens, from the single mother needing to collect child support to the corporate board of directors trying to decide whether Georgia or some other state is the best place to do business. Business, community and political leaders cannot afford to ignore the courts as an important component of our economic recovery."

"Certainly, elected officials at the state and local levels have

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struggled recently in trying to balance their budgets, particularly after three years of plummeting revenues. But judicial budget cuts have in fact unwittingly contributed to the economic decline responsible for these budget deficits. Between 2008 and 2009 revenue from fines and fees in Georgia courts declined by \$52 million due to slower courts, and the new study estimates annual lost income tax revenue due to court delays at between \$51 million and \$115 million annually. In other words, the cuts cost as much or more money than they saved, and that's only the direct result.

"The Bar's study shows that there are even deeper, more far ranging consequences. Somewhere a corporation is contemplating locating to Georgia, but it may not want to do business in a state where it can't get a speedy resolution to disputes. Somewhere in Georgia a small businessman may want to hire a new employee, but he can't afford to until a court rules that the money he's owed has to be paid.

"This means that judicial funding and the speedy, efficient operation of the courts is no longer a cause for just lawyers and judges. It's also the cause of folks like my father, who started working in the mill at age 15 and lost his job at that same mill at age 54. A functional court system is a rising tide that lifts all boats."


The release of the Washington Economics Group study also received substantial news coverage and newspaper editorial support from other media outlets around the state.

Meanwhile, having the opportunity to appear on Georgia Public Broadcasting's "Lawmakers" and "Prime Time Politics" programs alongside people like Chief Justice Hunstein and House Judiciary Committee Chairman Wendell Willard to discuss the need for sufficient funding of our courts has put the State Bar in front of a very important audience. While most people are tuned in to "Entertainment Tonight" or "Wheel of Fortune" at 7 p.m. on weeknights, guess who is watching "Lawmakers" and "Prime Time Politics": Georgia's opinion leaders, public officials, political junkies and, yes, the lawmakers themselves. This is a very effective approach toward reaching the people who can make a difference on matters affecting our judiciary.

Increasing public awareness and enlisting public support of our courts is also a major function of our newly established President's Advisory Council, which will be launched this month at the Spring Meeting of the Board of Governors. This is an effort to bring in non-lawyers who are leaders in their communities to get valuable feedback on how to strengthen the justice system, create an ongoing dialogue and hopefully generate greater grassroots support outside the Bar.

Keeping in mind that all politics are local, I hope you will take every opportunity at your disposal to promote the cause of justice in your hometown.

Reach out not only to your state House member and Senator, but your county commissioner as well. Write a letter or submit an opinion piece to your local newspaper. Talk to local business leaders and civic organizations. These are all effective "earned media" strategies. Delivering one's message to the right audiences does not have to involve an expensive marketing campaign.

There are resources at your fingertips on the State Bar's website. Go to www.gabar.org and find the economic impact study, current legislative updates and a host of other information that can help you play a major role in spreading "the gospel" about why maintaining a strong justice system is critical to the future of our state. 

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

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by Cliff Brashier



Leadership Academy Preparing Young Lawyers for Success

Fifty-five members of the State Bar's Young Lawyers Division, representing all geographic regions of Georgia and a wide variety of prac-

tice areas, are presently participating in the sixth annual YLD Leadership Academy.

Founded in 2006, the Leadership Academy is a program for young lawyers who are interested in developing their leadership skills as well as learning more about their profession, their communities and their state. The program is modeled on the programming of other leadership-training programs for young business, civic and community leaders and is specifically geared toward helping participants perform a lawyer's duty to serve both the profession and the public.

Since its inception, the Leadership Academy has sought to bring together young lawyers from across the state with leaders in various areas of legal prac-

tice. The Leadership Academy counts more than 200 alumni members, including solo practitioners, judicial staff attorneys, partners in large and small law firms, assistant district attorneys, public defenders, nonprofit lawyers, alternative dispute resolution specialists and in-house counsel for Fortune 500 companies.

Enjolique Aytch of Atlanta, a 2010 participant, said, "The Leadership Academy was one of the best experiences I've had in my legal career. It not only allowed an opportunity to meet and interact with heavy players in the Georgia legal community, it also served as my introduction to the many ways to get involved in the Bar in a meaningful way. I enthusiastically recommend it to every young lawyer!"

A significant, lasting benefit of the Leadership Academy is the opportunity for young lawyers to network with their peers from across the state as well as those who have already become leaders in various areas of legal practice. The benefits of having a friend and legal resource in practically every corner of the state and in any practice area cannot be overestimated.

**"The Leadership Academy
is one of our great success
stories, meeting its objective
to educate young lawyers
regarding salient issues facing
our state and nation..."**

"The YLD Leadership Academy was founded when it was determined there was a need for a leadership development program in the YLD that would bring together young lawyers from across the state with leaders in various areas of legal practice," said Sharri Edenfield of Statesboro, co-chair of the Leadership Academy Committee since its beginning. "This program is unique because it focuses on training members to serve as leaders within the legal profession as well as within their local communities."

The program consists of six sessions, one each month from January through June. Each session covers a different topic, and up to 12 CLE credit hours are available for the year to participants.

In January, State Bar President Lester Tate delivered remarks to the 2011 Leadership Academy class at its first session on "Becoming a Leader in the State Bar." YLD Immediate Past President and Commissioner of the Department of Juvenile Justice Amy V. Howell, a past Leadership Academy alumni, also spoke to the class about leadership opportunities in the YLD. Other speakers included W. Ray Persons of King & Spalding and Jonathan Pope of Hasty Pope LLP. After lunch, the participants traveled to Brasstown Valley Resort in Young Harris for an overnight retreat featuring team-building exercises.

The second session, "Lawyers as Leaders in State Government," was held in February. Participants visited the State Capitol, where they were able to observe the legislative process and have their picture taken with Gov. Nathan Deal. A luncheon was held for the participants, lawyers serving in the Georgia General Assembly, justices of the Supreme Court of Georgia and judges of the Court of Appeals of Georgia. A panel of speakers included Court of Appeals Chief Judge John J. Ellington, Senate Judiciary Committee Chairman Bill Hamrick and House Majority Whip

Edward Lindsey. After lunch, participants walked across the street to the Justice Building, where they were addressed and sworn in by Chief Judge Ellington at the Court of Appeals and Justice David E. Nahmias at the Supreme Court.

The third session was held last month in Macon, where attendees heard from sitting judges at the federal courthouse, enjoyed a reception at the Macon Marriott City Center Hotel and participated in a "Simulated Society" workshop. A focus of the session was on learning to lead in the "real world" by acquiring problem-solving skills to tackle daily issues in governing society, by strengthening decision-making skills and by navigating the challenges of power, trust and leadership.

The fourth session is scheduled for April 14-15 in Savannah, featuring a cocktail reception co-sponsored by the Savannah YLD, a session on professionalism presented by Transition into Law Practice Director Douglas G. Ashworth at the State Bar's Coastal Georgia Office and a visit to the West Broad Street YMCA for a community service opportunity.

The fifth session will be May 6 in Atlanta. Participants will travel to the Russell Federal Building, where they will hear from U.S. district court judges on what it means to be a lawyer and a leader. After a tour and lunch, the group will travel to the 11th Circuit Court of Appeals for a tour and an opportunity to meet with appellate judges.

The final session of the program will take place June 3 in Myrtle Beach, S.C., during the State Bar's Annual Meeting. Family and friends are welcome to attend this closing session and graduation, where participants will attend a luncheon and receive a plaque of completion.


The Leadership Academy has received national acclaim for its programming and its diversity by the American Bar Association, placing first in the nation among YLDs in 2008 in the Minority Programs Division.

"Recently celebrating the fifth anniversary of the Leadership Academy was an important milestone for our organization," said YLD President Michael Geoffroy. "I encourage any young Georgia lawyer to apply for the 2012 Leadership Academy program so that they can experience the benefits of networking with their colleagues from across the state and leaders from various areas of practice, develop their leadership potential and obtain their required CLE credit for the year."

The application process for next year will take place this fall. Details will be published in upcoming editions of *The YLD Newsletter*. Applicants must be members in good standing with the State Bar who meet the "young lawyer" requirements as defined in the bylaws. Participants are selected through a competitive application process, and recommendations from employers and alumni of the program are encouraged and considered. Participants must attend at least four of the six sessions to graduate, be recognized at the graduation ceremony and be considered Leadership Academy alumni.

The Leadership Academy is one of our great success stories, meeting its objective to educate young lawyers regarding salient issues facing our state and nation, to help them develop and refine their leadership skills and to foster a mentoring relationship between the participants and the selected leaders.

For more information on the program, contact the YLD office at 404-527-8778 or marym@gabar.org.

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

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



by Michael G. Geoffroy

Expanding the Reach of the YLD Umbrella

Those of us in Young Lawyers Division leadership continuously strive to provide opportunities for young lawyers across Georgia to become involved and build relationships within the profession. However, we realize that taking advantage of them is not always convenient, due to conditions related to time, distance and financial commitment.

In response, the YLD has been reaching out in recent months to other bar associations and law-related organizations around the state in an effort to partner with them in service to their lawyer members and the community at large.

Additionally, this effort is a response to the feeling among many lawyers that, while they are active in their local or specialty bars, they are somewhat

detached from the State Bar. The only relationship many of our members have with the State Bar is their annual payment of mandatory dues. The YLD is trying to do a better job of working with these members, through their local and specialty bars, to make sure they are aware of the resources the State Bar offers and they are utilizing them.

“Even under our own umbrella, we have several local YLDs that are very active with their own programs and projects but are not involved or even aware of what’s going on at the state level.”

Even under our own umbrella, we have several local YLDs that are very active with their own programs and projects but are not involved or even aware of what’s going on at the state level. Obviously, in these cases, we have not communicated well enough with them. This is why we are making this effort to work with other groups and get things done together.

On March 5, the YLD hosted our second annual Affiliates Conference at the Bar Center. We welcomed a number of our geographic affiliates, including the Atlanta Council of Young Lawyers, Cobb YLD, Columbus YLD, Macon YLD and Savannah YLD. Additionally, young lawyers from regions without YLD affiliates were encouraged to attend and learn about ways to start one in their area.

At the conference, we discussed ways to improve our programming, continuing legal education opportunities, community service and pro bono projects. There was an opportunity for those in attendance to share and exchange ideas as well as learning about what the YLD can do for each local affiliate. Panelists and speakers talked about some of the issues affecting young lawyers regionally and statewide, in addition to sharing information about what each group does to encourage membership and provide professional development.

Our hope is that this initial dialogue will lead to our working jointly to expand the success of these projects. At the very least we want the message to go out to local and specialty bars that having a young lawyer affiliation is also a great way to recruit new members who are seeking to become more involved in the professional community.

In addition, we are working to revive our Law Student Committee. We recently held a summit meeting, inviting student Bar leaders from Georgia's five law schools. We successfully lobbied the State Bar to waive the \$25 dues for law school students next year, pending Supreme Court approval.

Currently, there are about 80 student members. To increase activity, we are gearing up to conduct membership drives in each law school next year when dues are eliminated and encourage more participation in our Law Student Committee.

We have also scheduled an upcoming CLE program and reception, presented by our Ethics & Professionalism Committee

and Women in the Profession Committee, in hopes that we can spur involvement among associates in the large and midsize firms. Contrary to popular belief, we do not have that many involved members from the 25 biggest firms in Atlanta.


This will be another opportunity to reach out to the metro area, where the state's largest concentration of young lawyers exists as somewhat of a silent majority. The largest law firms are actually underrepresented when compared to YLD involvement by members of smaller firms.

By joining forces with more local and specialty bar associations, the YLD can be even more successful in maximizing our resources and reaching out to Bar members who have not been as active as others. We are working to make more of Georgia's young lawyers aware of the benefits of involvement with the YLD, how it will help their careers and their communities.

As YLD Past President Andrew W. Jones wrote at the end of his 2003-04 term, "The YLD is a great organization that every younger lawyer in the state of Georgia should participate in. Not only do you get a chance to network with younger lawyers from around the state, you also have an opportunity to give something back to your community. Being a lawyer isn't just about billing hours and winning cases. There is a responsibility that goes with this noble profession which requires giving of your time to help others."

While the current Bar year is in the home stretch, I want to say how much I have enjoyed meeting so many other lawyers around the

state. This has been a great opportunity and rewarding experience to see first-hand the great work you are already doing in your communities. Whether it is raising money for the Georgia Legal Services Program as we did with our 2011 Signature Fundraiser, helping administer the High School Mock Trial competition for the next generation of Georgia lawyers or taking on a project in our local community, the YLD is meeting needs across the state—not to mention making new friends and having a lot of fun along the way.

In our remaining months, I hope we can take some steps toward ensuring future success over the long term for the YLD. The bottom line is we have more than 10,000 members, the vast majority of whom have never attended a single YLD meeting. We are working to change that, so that most of them are not only attending meetings but are active in our efforts to live up to our motto of "working for the profession and the public" for years to come. 

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

Correction:

Due to an editing error in his last article, Michael Geoffroy's hometown was inaccurately identified as Sparta. Michael is very proud of his actual hometown of Covington, home of "Duke Days," the "Dukes of Hazzard"® festival.

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Come join us!



by Daniel J. King, Brian A. White and Ryan J. Szczepanik

Georgia businesses are engaged in foreign direct investment and in international commerce on a grand scale. For example, in addition to the resources available to U.S. businesses generally, the Georgia Department of Economic Development notes that the state of Georgia is home to “the world’s busiest passenger airport, two deepwater ports and the most extensive surface transportation network in the country.”¹ In addition, Georgia is home to “consular, trade or chamber of commerce offices”

from 76 foreign countries² and has its own international offices in 11 foreign countries and the European Union. Simply put, Georgia businesses are part of the global economy, and Georgia is an attractive environment to foreign companies conducting business in the United States.

Cross-border commerce brings with it the possibility of cross-border disputes. Outside the United States, it is unusual to see a commercial agreement involving parties from more than one country that does not include an international arbitration agreement, and international arbitration agreements involving U.S. parties are increasingly common. Additionally, the use of inter-



International Arbitration in GEORGIA

national arbitration has expanded significantly in recent years. During the period from 1995 to 2005, three major arbitration institutions (the International Chamber of Commerce, the London Court of International Arbitration and the American Arbitration Association/International Centre for Dispute Resolution) reported an increase in their combined caseload from approximately 650 cases to more than 1,200 cases.³

International arbitration differs from domestic arbitration in a number of ways, and it is important for clients and practitioners to understand these differences. In addition, it is important to site

the arbitration in an appropriate forum. Georgia is unusual in the United States in that Georgia has a separate arbitration statute governing international arbitrations that respects the important differences between domestic and international cases. Thus, Georgia has a number of advantages as a place of arbitration that could lead to greater use of international arbitration in this state. This article will explore (1) the reasons why parties to international commercial transactions choose arbitration to resolve their disputes, (2) basic legal principles and procedural rules governing international arbitrations and (3) some advantages

that may be gained by choosing Georgia as the place of arbitration.

Why Choose International Arbitration?

International arbitration is an alternative to litigation for protecting contractual rights and enforcing contractual obligations. Arbitration should result in a final, binding award that can be enforced like a court judgment but without appeals on the merits of the dispute. Arbitration is viewed as particularly attractive in the context of any cross-border contract, any contract involving entities from different legal tra-

ditions (e.g., common-law versus civil-law traditions), transactions taking place in developing countries and contracts involving states and other government entities.

International arbitration agreements and international arbitration awards are enforceable in most countries pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). More than 140 countries (the “contracting states”), including the United States, have acceded to this treaty.⁴ Experience has shown that it is generally easier and quicker to enforce an international arbitration award issued in a developing country than it is to enforce a court judgment issued in a developed country, such as England, with a sophisticated legal system similar to our own.⁵

Parties also are attracted to international arbitration because the decision-maker can be a neutral third party sitting in a neutral forum rather than a court sitting in the home country of one of the parties. Generally, the parties will have some say in the selection of an arbitrator or an arbitral tribunal, and the parties can select arbitrators with relevant expertise.⁶ Finally, arbitration provides a level of procedural flexibility that can be tailored to the needs of individual cases, although there are a number of widely-accepted characteristics of international arbitration procedure that will not be familiar to most U.S. litigators.

The Legal Regime Governing International Arbitration

As the U.S. Supreme Court has explained, an international arbitration agreement “involves considerations and policies significantly different” from those in the domestic context.⁷ Thus, “the Court consistently has treated ‘truly international agreements’ differently than domestic transactions”⁸ and, in doing so, has developed a federal

policy dictating that the duty to enforce arbitration agreements is even greater in the context of international arbitration than in domestic arbitration.⁹

The most important considerations for parties considering entering into an arbitration agreement are (1) whether the arbitration agreement will be enforced by the courts, either in the place of arbitration or in the place where the counter-party resides; and (2) whether the final award will be enforceable in the appropriate court or courts. A party from Georgia needs to understand the answer to these questions under the Georgia Arbitration Code¹⁰ (the “GAC”); the Federal Arbitration Act¹¹ (the “FAA”); the New York Convention;¹² the law of the home country of the counterparty to the contract; and, possibly, the law of any jurisdiction where either party has assets.

The Georgia Arbitration Code

Georgia has taken heed of the federal policy favoring international arbitration and adopted its own international arbitration-friendly policy by implementing the GAC. Moreover, Georgia is one of the few states in the United States in which its arbitration code contains rules pertaining to international arbitrations.¹³ Thus, Part I of the GAC applies to both domestic and international arbitrations, and Part II includes specific rules applicable to international arbitrations only.

In particular, the GAC applies “to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced,” with the exception of certain enumerated agreements.¹⁴ O.C.G.A. § 9-9-3 requires Georgia courts to enforce agreements to arbitrate, and O.C.G.A. §§ 9-9-12 through 9-9-15 require the Georgia courts to enforce arbitration awards with few exceptions. The GAC goes on to explain that its international arbitration rules were devised “to encourage the use of

arbitration in the resolution of conflicts arising out of international transactions effectuating the policy of the state to provide a conducive environment for international business and trade.”¹⁵

There are several important differences between the GAC’s international arbitration rules and the GAC’s domestic arbitration rules of which Georgia practitioners should be aware. For example:

- In a domestic arbitration, the arbitrator(s) “shall notify the parties [of the hearing] in writing, personally or by registered or certified mail or statutory overnight delivery, *not less than ten days before the hearing*.”¹⁶ In an international arbitration, that notice period is extended to 30 days.¹⁷
- In a domestic arbitration, a demand for arbitration shall specify that the party served with the demand “shall be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court unless he makes application to the court *within 30 days* for an order to stay arbitration,” and “the party served must make application *within 30 days* to the court for a stay of arbitration or he will thereafter be precluded from denying the validity of the agreement or compliance therewith or from asserting limitation of time as a bar in court.”¹⁸ In an international arbitration, the referenced 30-day time periods are doubled to 60 days.¹⁹
- In a domestic arbitration, an application to the arbitrators for a change in the award “shall be made by a party *within 20 days* after delivery of the award to the applicant,” and the arbitrator(s) “shall dispose of any application made [for a change in the award] in a written, signed order *within 30 days* after service upon them of objection to change or upon the expiration of the time for



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service of this objection.”²⁰ In an international arbitration, the referenced 20-day and 30-day time periods are doubled to 40 days and 60 days, respectively.²¹

- While in a domestic arbitration an award shall be made within 30 days following the close of the hearing if the agreement does not otherwise specify or the court does not impose another deadline,²² there is no time limitation for making an award in an international arbitration.²³

Georgia practitioners likewise should be aware that the GAC incorporates the well-established international legal principle of *Kompetenz-Kompetenz*, which provides that arbitrators have jurisdiction to resolve questions about their own jurisdiction without referring the matter to a court.²⁴ The GAC articulates the *Kompetenz-Kompetenz* principle as follows: “The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.”²⁵

The Federal Arbitration Act

The key arbitration statutes under federal law are set forth in the FAA, which applies to any arbitration involving a transaction in interstate or foreign commerce.²⁶ Section I of the FAA governs domestic arbitrations, and Section II governs international arbitrations. The FAA pre-empts any state law that conflicts with its provisions.²⁷ The FAA requires both federal and state courts to enforce arbitration agreements.²⁸ Section I of the FAA does not confer federal subject matter jurisdiction for purposes of domestic cases while Section II does confer federal subject matter jurisdiction in international cases.²⁹

The U.S. Supreme Court explained that Congress declared a national policy favoring arbitration when it enacted the FAA.³⁰ Thus, where the contract contains an arbitration clause, there is a presumption in favor of arbitrability.³¹ Indeed, as

the U.S. Court of Appeals for the Eleventh Circuit further explained, “[u]nder the FAA, upon motion of a party, district courts must compel arbitration of all claims subject to arbitration.”³² Section 10(a)(4) of the FAA further states that a court may make an order vacating an arbitration award “where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”³³ Notably, the U.S. Court of Appeals for the Eleventh Circuit has stated that lawyers who bring meritless challenges to arbitration awards may be subject to sanctions.³⁴

The New York Convention

The U.S. Supreme Court has held that this presumption in favor of arbitration under the FAA applies with special force to international disputes.³⁵ The starting point for further examining the strong federal policy in favor of arbitration for international disputes is the New York Convention, which the United States ratified in 1970. The New York Convention is incorporated into the FAA by virtue of Section II of the FAA and applies where there is a reasonable relation with one or more foreign states.³⁶

Article II of the New York Convention states that, “[e]ach Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. . . . The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration”³⁷ Pursuant to this provision, when presented with a motion to compel arbitration under the New York Convention, a court

conducts “a very limited inquiry.”³⁸ The court must order arbitration if the following “four jurisdictional prerequisites” are satisfied:

- (1) there is an agreement in writing within the meaning of the Convention;
- (2) the agreement provides for arbitration in the territory of a signatory to the Convention;
- (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial;
- and (4) a party to the agreement is not an American citizen or . . . the commercial relationship has some reasonable relation with one more foreign states.³⁹

Only where the four jurisdictional requirements are not met or one of the convention’s affirmative defenses applies (namely, fraud, mistake, duress or waiver) can a district court not order arbitration.⁴⁰

Because of this heightened presumption in favor of arbitration in the context of international agreements, courts have held that issues that would not be arbitrable in a domestic context are subject to arbitration where the parties are from different countries. For example, the U.S. District Court for the Northern District of Georgia held that the New York Convention required arbitration of a claim brought under an international arbitration clause in an insurance agreement despite the U.S. Court of Appeals for the Eleventh Circuit’s and Supreme Court of Georgia’s holdings that the federal McCarran-Ferguson Act “expressly directed” that arbitration clauses in insurance contracts are unenforceable in Georgia. The court concluded that none of the affirmative defenses recognized by the New York Convention applied and “the importance of international comity and ensuring predictability and orderliness in international commerce warrant the enforcement of international agreements to arbitrate, even in contexts where a similar agreement would be unenforceable in the domestic context.”⁴¹

With respect to recognition and enforcement of awards, Article III of the New York Convention provides that, “[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.”⁴² Recognition and enforcement of an arbitration award may be refused only on very limited grounds, for example, where the party against whom the award is invoked was not given proper notice of the arbitration proceedings, where the award contains decisions on matters beyond the scope of the submission to arbitration, or where the recognition and enforcement of the award would be contrary to the public policy of that country.⁴³ Moreover, courts have drawn a distinction between “primary” and “secondary” jurisdictions for enforcement under the FAA. The primary jurisdiction is the jurisdiction where the award was rendered.⁴⁴ Courts in the primary jurisdiction may set aside or vacate an arbitral award under that jurisdiction’s domestic arbitration law.⁴⁵ Secondary jurisdictions are any other countries whose courts may have jurisdiction over the parties, but their powers are limited to staying or refusing enforcement of the award.⁴⁶

Arbitration Laws in Other Countries—The UNCITRAL Model Law

The United Nations Commission on International Trade Law (“UNCITRAL”) is a commission formed by the United Nations “with the general mandate to further the progressive harmonization and unification of the law of international trade.”⁴⁷ In 1985, UNCITRAL promulgated a model arbitration law that has gained wide acceptance throughout the world (the “Model Law”). Unlike the FAA, the Model Law contains detailed provisions that not only provide for enforcement of agreements to arbitrate and arbitral awards, but also sets forth detailed procedures to be followed during the course of an arbitration.

These include provisions concerning drafting an enforceable arbitration agreement;⁴⁸ the relationship between local courts and the arbitration;⁴⁹ composition of the arbitral tribunal;⁵⁰ rules governing procedural fairness, including an obligation to provide the parties with equal treatment;⁵¹ and applications for interim measures (that is, temporary injunctive relief) from either courts or the arbitral tribunal.⁵²

The Model Law has been adopted as—or used as the basis for—the arbitration laws in more than 60 countries plus the states of California, Connecticut, Florida, Illinois, Louisiana, Oregon and Texas.⁵³

When drafting an arbitration agreement or commencing an arbitration, it is important to consider the arbitration law of the country in which the arbitration is to be conducted. For example, the 1996 English Arbitration Act (the “English Arbitration Act”), which is based on the Model Law, states that “[t]he provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland.”⁵⁴ Many parties selecting England as the seat of arbitration might be surprised to learn that Chapter 69 of the English Arbitration Act contains provisions not found in the Model Law and which run counter to the usual expectations of the parties to an arbitration taking place in the United States, for example: “Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.”⁵⁵ Thus, it is important to make informed decisions concerning the place of arbitration even in states that have adopted variations of the Model Law.

International Arbitration Practice

The usual practices followed in international arbitration generally are significantly different from the normal practice in U.S. litigation or arbitration. This is due in part to

the fact that international arbitrations often involve one party from a common-law background and one from a civil-law background. Common-law lawyers place great stock in live witness evidence, including direct and cross-examination. Civil-law lawyers often place little stock in live evidence (particularly direct examinations), and in many countries’ court systems testimony from employees of a party is inadmissible altogether.

In addition, while practitioners in the United States and, to a lesser extent, in other common-law countries, are accustomed to broad-ranging discovery and strict document retention requirements, in many countries an employer may not be permitted to search records such as e-mail accounts belonging to employees. Many companies do not have a system for imposing centralized control on document retention and it can even be a violation of a lawyer’s ethical duty to produce documents that could be used against a client in civil litigation. Thus, discovery in international arbitration generally is much narrower than discovery in the United States.

The International Bar Association has promulgated Rules on the Taking of Evidence in International Commercial Arbitration (the “IBA Rules”) that have gained wide acceptance by international arbitrators and practitioners. Article 3 of the IBA Rules calls, for example, for the production of specific documents or narrow categories of documents which must be described in detail and be accompanied by “a statement that the documents requested are not in the possession, custody or control of the requesting Party,” and “of the reason why that party assumes the documents to be in the possession, custody or control of the other Party.”⁵⁶ Article 4 calls for the production of direct testimony from all witnesses to be submitted in advance of the hearing in written form and then for the witnesses to appear at the hearing to be cross-examined.⁵⁷

The Rules of Leading Arbitration Institutions

Parties to an international arbitration agreement must decide whether they wish to have their arbitration administered by an institution or to proceed “ad hoc.” Leading institutions have promulgated rules to govern the arbitration. In addition, UNCITRAL has promulgated rules that may be used in an ad hoc arbitration or in an arbitration administered by an institution. The below will highlight some important differences among the international and domestic rules of leading arbitration institutions.

The American Arbitration Association’s International Centre for Dispute Resolution

The international arm of the American Arbitration Association (“AAA”), called the International Centre for Dispute Resolution (“ICDR”), headquartered in New York, is a popular dispute resolution choice for commercial disputes, particularly where at least one party is located in the Americas. The AAA generally will refer a case to the ICDR where it appears that the parties are from different countries. The ICDR panel will apply the ICDR or “International” rules (“ICDR Rules”) unless the parties have selected other AAA rules.

A comparison of the ICDR Rules to the AAA rules for domestic disputes (the “Commercial Arbitration Rules”) highlights certain differences between international and domestic U.S. arbitration practice. For example, in recognition of the fact that punitive damages are rare outside the United States, the ICDR Rules contain the following waiver on punitive damages: “Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.”⁵⁸ The Commercial

Arbitration Rules do not contain any such punitive damages waiver provision. Thus, the U.S. Court of Appeals for the Eleventh Circuit has held that, where the arbitration agreement incorporates the Commercial Arbitration Rules, the arbitrator is authorized to award punitive damages.⁵⁹ Further, the ICDR Rules provide that, in arbitrations involving the application of contracts, the arbitral tribunal shall take into account usages of trade applicable to the contract, and that the arbitral tribunal shall state the reasons upon which the award is based unless the parties agree otherwise.⁶⁰ There are no such corresponding provisions in the Commercial Arbitration Rules.

On a point of agreement, the Commercial Arbitration Rules and the ICDR Rules both allow for the arbitrator to rule on his or her own jurisdiction.⁶¹ Under U.S. Supreme Court precedent, however, unless the parties “clearly and unmistakably” provide otherwise, the ques-

tion of whether the parties have agreed to submit a particular dispute to arbitration is “for judicial determination.”⁶² The U.S. Court of Appeals for the Eleventh Circuit resolved this conflict by holding that, “[b]y incorporating the AAA Rules . . . into their agreement, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid.”⁶³

Finally, the primary administrative function of the ICDR is to appoint arbitrators and address any challenges to arbitrators on the basis of lack of independence from a party.⁶⁴

The International Court of Arbitration of the International Chamber of Commerce

The Rules of Arbitration of the International Chamber of Commerce (the “ICC Rules”) are promulgated by the International Chamber of Commerce (“ICC”), which is an international non-gov-

ernmental organization headquartered in Paris, France. In addition to handling arbitrator appointments and challenges, the ICC provides a number of services that other institutions do not. These include substantive consideration of the qualifications of arbitrators, including those nominated by a party; a “prima facie” review of any challenge to the jurisdiction of the arbitral tribunal; approval of the terms of reference drawn up by the arbitral tribunal to summarize the issues in the arbitration, unless all parties agree to and sign the terms of reference; and scrutiny of the award before it is issued.⁶⁵

The ICC also differs from other institutions in how it charges fees for its services. While many other institutions use an hourly rate for arbitrators’ time, and some use an hourly rate for administrators’ time, the ICC charges a flat fee based on its determination of the amount in controversy and the complexity of the case.⁶⁶

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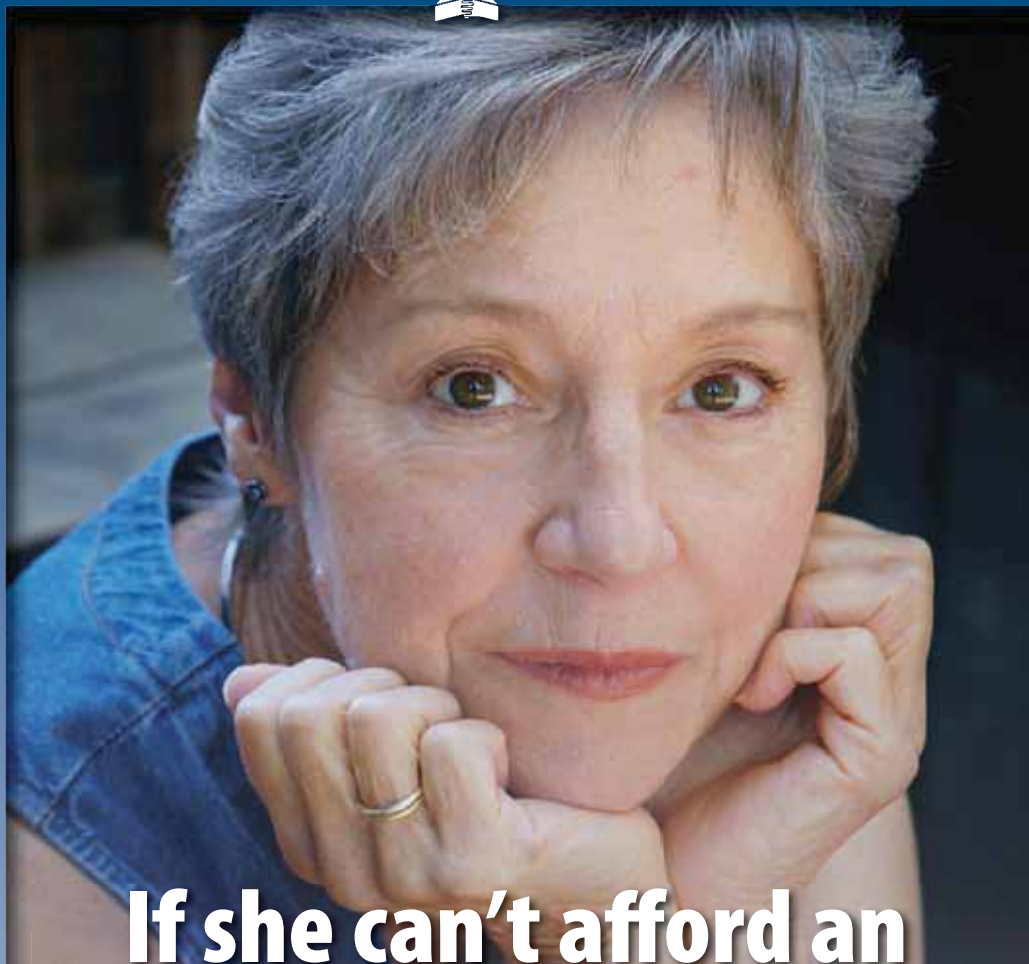
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The London Court of International Arbitration

The London Court of International Arbitration (the "LCIA"), based in London, is one of the world's oldest arbitration institutions. The LCIA recently has opened affiliated institutions using the LCIA's arbitration rules in Dubai and in India.

The LCIA appoints the arbitrators. If the parties have agreed to nominate arbitrators themselves, the LCIA will consider those nominations when making appointments but reserves the right to decide who the arbitrators will be. In cases of exceptional urgency, the LCIA will expedite the formation of an arbitral tribunal. The LCIA does not participate in setting terms of reference nor does it review the substance of the award. Unlike many institutions, the LCIA sets time limits for pre-hearing activities, although those time limits can be varied by the parties or by the tribunal.⁶⁷ In an interesting twist, the LCIA's rules provide that, when there are three arbitrators, if there is no majority on any particular point the chair of the tribunal is free to decide that issue on his or her own.⁶⁸

The UNCITRAL Model Law

UNCITRAL has promulgated arbitration rules that may be used in ad hoc arbitrations and which various institutions will apply (including the AAA, the LCIA and the ICC). The Model Law contains the rules of preference in ad hoc arbitrations, that is, where an arbitral tribunal is established for a single dispute only and is not associated with any arbitral institution.⁶⁹ The predominant differences between the Model Law and other domestic and international arbitration rules are that, under the Model Law, it is up to the tribunal and the parties to organize any meetings and proceedings given that there is no arbitral institution available to assist,⁷⁰ and, in the event the arbitral tribunal rejects a party's challenge to replace an arbitrator, the challenging party may ask a court to decide the mat-

ter.⁷¹ Further, whereas the ICC's rules place a presumption in favor of a sole arbitrator if the parties have not agreed on the number of arbitrators, the Model Law defaults to three arbitrators if the parties have not otherwise agreed.⁷²

International Arbitration in Georgia

Because most international arbitration proceedings are subject to an expectation of confidentiality, many practitioners may be unaware of the volume of international arbitration activity that either takes place in Georgia or that involves one or more parties from Georgia. For example, pursuant to the ICDR's statistics, 13 international cases with a Georgia locale currently are pending and 21 international cases with at least one party from Georgia currently are pending.⁷³

As discussed above, there are numerous reasons why parties from Georgia should consider using arbitration to resolve cross-border disputes. There are also good reasons why companies from Georgia and elsewhere should consider selecting Georgia as the place of arbitration in their arbitration agreement.

Georgia is an arbitration-friendly state, and it is one of the few U.S. states with its own international arbitration code. The GAC contains a number of provisions that favor the use of international arbitration in Georgia to resolve conflicts arising out of international transactions. Moreover, federal courts in the Eleventh Circuit and state courts in Georgia have a good track record of enforcing agreements to arbitrate and in enforcing arbitration awards, both of which are critical to achieving credibility with the international arbitration community. As one recent example, the Georgia General Assembly passed a statute invalidating any agreement to arbitrate a medical malpractice claim unless the agreement is reached after the alleged malpractice has occurred.⁷⁴ Although this provision is likely to apply in the domestic context, it is


the sort of carve-out that the U.S. Supreme Court has condemned in warning of a "parochial refusal by the courts of one country to enforce an international arbitration agreement."⁷⁵ In late 2009, however, the Court of Appeals of Georgia struck down the ban on pre-dispute agreements to arbitrate medical malpractice claims on the grounds that this provision was preempted by the FAA.⁷⁶ International observers pay attention to these issues as an indicator of whether a particular forum is "pro-arbitration" or hostile to arbitration.

Moreover, numerous Georgia companies, from Fortune 500 companies to family farms, engage in substantial international commerce. And, the University of Georgia School of Law is host to The Dean Rusk Center for International, Comparative, and Graduate Legal Studies, which publishes the *Georgia Journal of International and Comparative Law*. It counts among its professor ranks Peter B. "Bo" Rutledge, who currently serves as part of the AAA's delegation to the UNCITRAL Working Group on Arbitration and is a member of the Academic Council of the Institute for Transnational Arbitration. Emory University School of Law publishes the *Emory International Law Review* and counts among its professors Tibor Varady, who is a member of the Permanent Court of Arbitration located at The Hague and is on the list of arbitrators of eight arbitral institutions, including institutions in the former Yugoslavia, in Hungary and in Egypt. Georgia State University College of Law co-sponsors the Summer Academy in International Commercial Arbitration, a cooperative educational venture emphasizing international commercial arbitration, and counts among its faculty members E.R. Lanier, an associate member of the International Academy of Comparative Law, as well as Douglas H. Yarn, the executive director of the Consortium on Negotiation and Conflict Resolution. J. Shand Watson is a

member of the faculty at Mercer University School of Law. He is a member of the American Society of International Law and has published articles in the *American Journal of International Law*.

Moreover, Georgia is home to the world's busiest airport, Hartsfield-Jackson Atlanta International Airport as well as two deep-water ports, and it boasts extensive conference and convention room space, including the Georgia World Congress Center. Further, it is much less expensive to conduct an international arbitration proceeding in Georgia than in traditional international arbitration sites, such as New York City, Washington, D.C., London or Paris.

Conclusion

No longer is arbitration only a domestic alternative to litigation in the courts; international arbitration has become integral to the operation of our global economy, and its importance will continue to accelerate. The impact of the skyrocketing growth in international arbitration is being felt here in Georgia as Georgia-based and foreign companies alike have taken notice of the benefits of international arbitration. Diligent and forward-thinking practitioners in Georgia new to international arbitration would be wise to take this cue by staying aware of the latest developments in this burgeoning field. 



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King served as the leader of the firm's Business Litigation Practice Group from 2003-08. He also is former chairman of King & Spalding's Training Committee. He has significant litigation and trial experience in a wide range of commercial litigation and international arbitration matters. King is included in the *International Who's Who*

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White has represented clients in arbitration disputes under the rules of the London Court of International Arbitration, the International Chamber of Commerce, the International Arbitral Centre of the Austrian Federal Chamber, the World Intellectual Property Organization, the AIDA Reinsurance and Insurance Arbitration Society (U.K.), the Santiago Arbitration and Mediation Center, the American Arbitration Association's International Centre for Dispute Resolution, the United Nations Commission on International Trade Law and the International Centre for the Settlement of Investment Disputes. He currently represents clients from North and South America, Europe, the Middle East and Australia in a variety of international arbitrations. White also has litigated cases in state and federal courts throughout the United States.



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for Dispute Resolution. He also has represented clients in commercial litigation matters in various federal and state courts.

Endnotes

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6. *See, e.g.*, Int'l Chamber of Commerce, Rules of Arbitration, art. 8 (Jan. 1, 1998) [hereinafter ICC Rules], available at http://www.iccwbo.org/uploadedFiles/Court/Arbitration/other/rules_arb_english.pdf (last visited Feb. 22, 2011).
7. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 515 (1974).
8. *Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285, 1293-94 (11th Cir. 1998) (quoting *Scherk*, 417 U.S. at 515).
9. Lindsay Biesterfeld, *Parties to International Commercial Arbitration Agreements Beware: Bankruptcy Trumps Supreme Court Precedent Favoring Arbitration of International Disputes*, 2006 J. DISP. RESOL. 273, 273 (2006) (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)).
10. O.C.G.A. §§ 9-9-1 to 9-9-43 (2007).

11. 9 U.S.C. §§ 1-307 (2010).
12. *See also* Organization of American States, Inter-American Convention on International Commercial Arbitration (Jan. 30, 1975) (the "Panama Convention"), O.A.S.T.S. No. 42, 14 I.L.M. 336.
13. Amina Dammann, *Vacating Arbitration Awards for Mistakes of Fact*, 27 REV. LITIG. 441, 471 n.105 (2008).
14. O.C.G.A. § 9-9-2(c) (2007).
15. *Id.* § 9-9-30.
16. *Id.* § 9-9-8(a) (emphasis added).
17. *Id.* § 9-9-43(3).
18. *Id.* § 9-9-6(c), (d) (emphasis added).
19. *Id.* § 9-9-43(1).
20. *Id.* § 9-9-11(b)(1), (3) (emphasis added).
21. *Id.* § 9-9-43(1).
22. *Id.* § 9-9-10(b).
23. *Id.* § 9-9-43(2).
24. *See* W. MICHAEL REISMAN ET AL., INTERNATIONAL COMMERCIAL ARBITRATION 524-25 (1997).
25. O.C.G.A. § 9-9-34 (2007).
26. 9 U.S.C. §§ 1-2 (2010); *see also* Bernhardt v. Polygraphic Co. of Am., 350 U.S. 198, 201 n. 3 (1956) ("Section 1 [of Title 9] defines 'commerce' as: ' . . . commerce among the several States or with foreign nations . . . '").
27. Langfitt v. Jackson, 284 Ga. App. 628, 634-35, 644 S.E.2d 460, 465 (2007).
28. Southland Corp. v. Keating, 465 U.S. 1, 14-15 (1984) (interpreting 9 U.S.C. § 2).
29. 9 U.S.C. § 203.
30. *Southland Corp.*, 465 U.S. at 10.
31. AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986).
32. Am. Express Fin. Advisors, Inc. v. Makarewicz, 122 F.3d 936, 940 (11th Cir. 1997).
33. 9 U.S.C. § 10(a)(4) (2010).
34. B.L. Harbert Int'l, LLC v. Hercules Steel Co., 441 F.3d 905, 913-14 (11th Cir. 2006), *abrogated in part by* Frazier v. Citifinancial Corp., LLC, 604 F.3d 1313 (11th Cir. 2010).
35. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 631 (1985).
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41. *Goshawk Dedicated*, 466 F. Supp. 2d at 1307-10.
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44. Gulf Petro Trading Co., Inc. v. Nigerian Nat'l Petroleum Corp., 512 F.3d 742, 746 (5th Cir. 2008).
45. *Id.*
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47. UNCITRAL, http://www.uncitral.org/uncitral/en/about/origin_faq.html (last visited Feb. 18, 2011).
48. United Nations Comm'n on Int'l Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 With Amendments as Adopted in 2006, 27-29 (2008) [hereinafter Model Law], *available at* http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf (last visited Feb. 18, 2011).
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62. Granite Rock Co. v. Int'l Bhd. of Teamsters, 130 S. Ct. 2855-56 (2010) (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)).
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71. Dominique Hascher, *A Challenge to National Legislation: The UNCITRAL Model Law*, 2 CROATIAN ARBITRATION Y.B. 27, 29 (1995) (citing Model Law, *supra* n. 47, art. 13(3)).
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The Renewed Significance of Title in Dividing Marital Assets

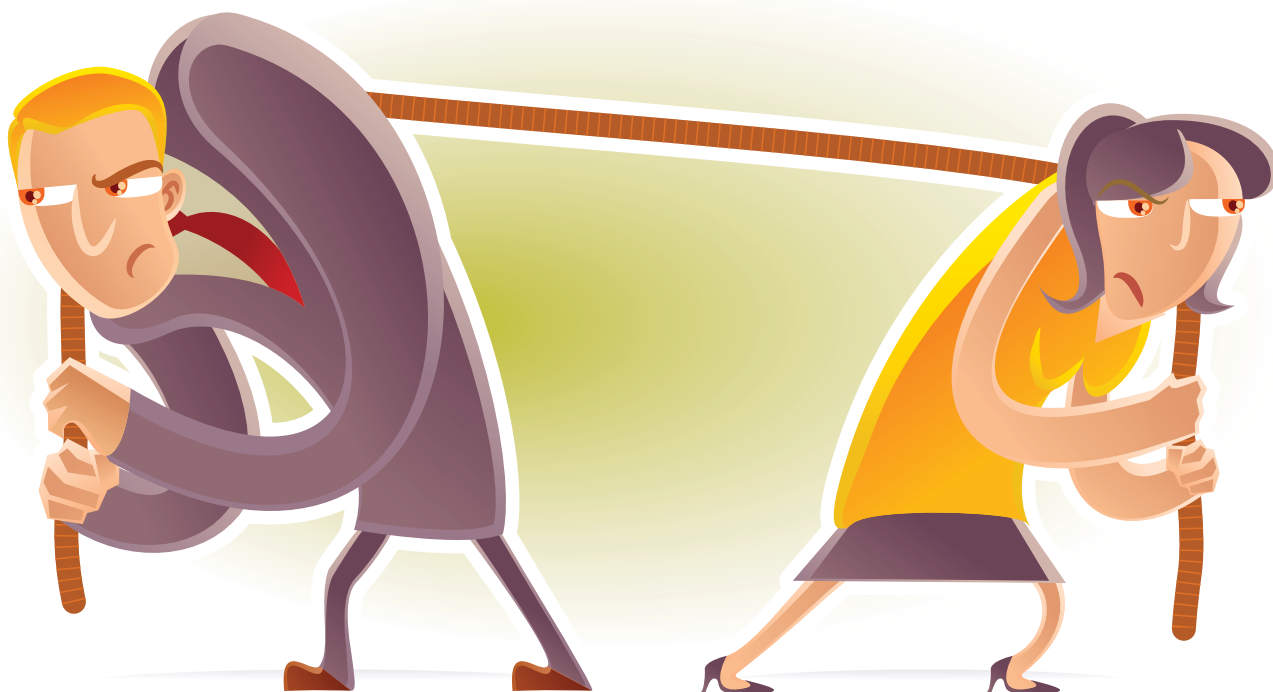
by John C. Mayoue and Michael P. Hodes

Divorce actions in Georgia require the finder to equitably divide marital property.¹ “The purpose behind [this] doctrine of equitable division is to assure that property accumulated during the marriage be fairly distributed between the parties.”² In adopting the concept of equitable division, the Supreme Court of Georgia implicitly rejected the former practice of dividing property based simply on title.³ Recent decisions, however, place renewed emphasis on title-based considerations. This article examines the evolution of property division and the uncertain significance of title in distributing marital assets.

The Old Rule: Title is Determinative

Divorce litigants possess two means of achieving an award of property: alimony and equitable division.⁴ Alimony originated in ecclesiastical courts as a requirement that husbands support their wives when they were legally separated.⁵ Because husbands assumed full control over all property of the marriage, courts found it “flagrantly unjust, as well as morally impolitic” for husbands to retain such property without an obligation to support the former wife.⁶ Georgia law provided two methods by which a husband paid alimony: a personal obligation to pay a specific, generally periodic, sum from future earnings or a lump sum allowance from the husband’s estate.⁷

Property division historically has been more limited than alimony. The modern concept of property division is derived from a partition remedy to resolve conflicts over management, use or possession of land between disputing cotenants.⁸ Ultimately, courts began using property division in divorce not only for partitioning of jointly owned property, but also to determine who owns property when title is disputed.⁹ In order for a divorcing spouse to make a property division claim,



however, he or she was formally required to show title.¹⁰

A non-titled spouse nonetheless had viable alternative legal arguments. A spouse could seek ownership of the asset as lump sum alimony or claim equitable title through resulting trust and inceptive fraud.¹¹ A spouse claiming ownership through a resulting trust could show that he or she purchased the subject asset; however, the spouse making a resulting trust claim was required to rebut the presumption that the property was gifted to the titled spouse.¹²

The Emergence of Equitable Division

The doctrine of equitable division was first recognized by the Supreme Court of Georgia in *Stokes v. Stokes*. *Stokes* involved the division of a homeplace titled solely in the name of the wife.¹³ The husband argued at trial that “the purchase money for the house and the property and all mortgage payments were furnished by the joint efforts of the parties” and that, consequently, “the property should be equally divided.”¹⁴ In approv-

ing an award of one-fourth of the marital home to the husband, the *Stokes* Court found “jurisdiction to determine the equitable interest of either spouse in the real or personal property owned, either in whole or in part, by the other spouse.”¹⁵ In *Stokes*, the Supreme Court of Georgia expressly overruled *Hargrett* and its progeny, which limited property division to cases involving ownership of property when the title is in dispute.¹⁶

Tracing Under *Thomas v. Thomas*: The Georgia Approach

Cases involving appreciation of non-titled assets and equitable awards of assets containing both marital and non-marital components further emphasized the limited significance of title. In *Halpern v. Halpern*, the Supreme Court of Georgia adopted an active/passive appreciation test in which a non-titled spouse could claim that a separate asset appreciated due to marital efforts, thereby creating an equitable division claim to the appreciation.¹⁷ In *Thomas v. Thomas*, the Supreme Court of

Georgia adopted the “source of funds” rule in apportioning claims to a pre-marital homeplace to which marital contributions had been made.¹⁸ The *Thomas* Court expressly found that the “source of funds” rule, which allows a spouse who contributes non-marital property to claim an interest in the ratio of the non-marital investment to the total non-marital and marital investment, a “reliable method for classifying property of this sort.”¹⁹ In applying the “source of funds” rule in the *Thomas* case, the trial court found that the marital unit would be entitled to claim an interest in the home equal to the amount of marital funds that were used to reduce the principal mortgage balance, as well as a proportionate interest in the home’s appreciation.²⁰ In adopting the “source of funds” rule, *Thomas* explicitly rejected both the inception of title theory, which provides that the status of property as marital or separate is fixed at the time of acquisition and the transmutation of property theory, which holds that separate property becomes marital whenever marital funds are contributed.²¹

There are three different and distinct applications that may be made of *Thomas*. One is simply *Thomas* applies only to a home brought into the marriage by one spouse subject to a mortgage that was paid during the marriage with marital funds.²² Another is the “source of funds” rule applies to any property that contains both marital and separate property components. There is at least some support for this second and broader view in the case of *Wilson v. Wilson*.²³ A third view is the “source of funds” rule applies to any property purchased or acquired over time.²⁴

Thomas has not been extended to all commingled assets. The tracing of commingled accounts, for example, is a notoriously difficult task that has led a number of jurisdictions to create special tracing rules to resolve disputes concerning such assets. A minority of jurisdictions prohibit the tracing of commingled banking accounts.²⁵ In other jurisdictions, the common law creates a presumption about withdrawals. Of jurisdictions creating a presumption, some presume marital funds are withdrawn before separate property, and in other jurisdictions, the reverse is true.²⁶ Some jurisdictions employ the “family expense” method to each withdrawal; if the withdrawal went toward a family expense, then it is credited against the marital or community interest.²⁷ Others apply the “clearinghouse” or “identical sum inference” method to examine similarities between the dates and amounts of deposits and withdrawals.²⁸ Under the clearinghouse method, if a withdrawal from a commingled account is made at approximately the same time and in an amount similar to a recent deposit, then courts will presume that the withdrawn funds are of the same character as the funds deposited.²⁹

Although the methodology is unclear,³⁰ Georgia appears to permit some form of tracing with regard to commingled accounts. In *Bloomfield v. Bloomfield*, the wife

claimed a \$10,000 gift as separate property although such funds had been deposited into a joint account with her husband.³¹ The \$10,000 was awarded to the wife as her separate property. The Supreme Court of Georgia affirmed, noting that the husband did not permit the wife to hold an individual banking account and thus she had no other account in which to place the funds.³²

The New Rules: Issues Raised by *Lerch*, *Grissom*, *Coe* and *Miller*

Four recent Supreme Court of Georgia decisions have arguably resurrected the significance of title in dividing marital assets.

Lerch v. Lerch

Lerch involved the division of a home that the husband purchased prior to the parties’ marriage.³³ Although the parties entered into a prenuptial agreement stating that the wife would not make any claims to the husband’s property (which would have included the home), the trial court nonetheless found that the wife had an interest in the home by virtue of a gift from the husband.³⁴ In 1999, the husband executed and recorded a gift deed transferring ownership of the home to both him and his wife as “tenants in common with right of survivorship.”³⁵ Relying on the gift deed, the trial court found that the husband had made a gift to the marital unit and thus determined that half of the home was marital property and half of the home was the husband’s separate property.³⁶ On appeal, the Supreme Court of Georgia reversed, holding that the entire home should have been treated as marital property subject to equitable division.³⁷

Although the *Lerch* decision has been interpreted by many family law attorneys to represent a sea change from the equitable division principles set forth in *Stokes*, it might reasonably be interpreted as simply observing Georgia’s law on gifts: a gift is made if the

donor intended to give the gift, and there is acceptance and delivery.³⁸ In *Lerch*, the Supreme Court of Georgia determined the intent prong of the gift test was satisfied because the husband “manifested an intent to transform his separate property into marital property” by transferring title to the home in joint tenancy with the wife.³⁹ Because there is no indication the wife ever refused title and the gift deed was fully executed, the acceptance and delivery requirements may have been satisfied.⁴⁰

Georgia law does provide that gifts between spouses will remain marital property and do not become the separate property of the donee spouse.⁴¹ Therefore, Georgia does not appear to allow transmutation by gift of marital property into separate property. The *Lerch* decision could simply be viewed as affirming that Georgia’s general gift laws apply to interspousal gifts of separate property.

Lerch does not state whether transmutation of separate property into marital property is analyzed under Georgia’s general gift laws or whether, like interspousal gifts of marital property, there is some unique marital rule that applies. It is not entirely clear from the *Lerch* opinion whether a finding of transmutation requires a showing of the traditional gift elements of donative intent, acceptance and delivery, or whether transmutation can be found based upon title alone. Although the *Lerch* Court specifically referenced the husband’s “intent to transform his separate property into marital property,” the Court did not state that a finding of “intent to transform” is necessary for transmutation.⁴² Moreover, even if “intent to transform” were required under *Lerch*, the decision provides no indication as to how such a requirement would be deemed satisfied. The *Lerch* Court appears to infer donative intent by change in title, but it is not clear to what extent such inference is rebuttable. For instance, if both parties in *Lerch* testified that the husband

transferred title to the home for estate planning purposes, then would this testimony be permitted to rebut the finding of a gift? At least one jurisdiction has expressly held that a deed of gift is conclusive evidence of donative intent.⁴³

Grissom v. Grissom

The Supreme Court of Georgia indirectly addressed some of the questions left unresolved by *Lerch* in *Grissom v. Grissom*.⁴⁴ *Grissom* involves the division of a home and brokerage account, both of which the husband had owned prior to the marriage.⁴⁵ The husband and wife in *Grissom* entered into a prenuptial agreement that provided that each party has the right "to transfer, give or convey to the other any property or interest therein" and that such transferred property "shall become the separate property of the recipient."⁴⁶ During the course of the parties' marriage, the husband refinanced the home and conveyed it to the parties as joint tenants with right of survivorship.⁴⁷ The husband also transferred his premarital Merrill Lynch brokerage account into an American Express account on which the wife was designated as "co-account holder."⁴⁸

At trial, the wife argued that the husband's conveyance of the home and transfer of the brokerage account into the parties' joint names evidenced a desire to transfer such property to the marital unit.⁴⁹ Relying on both the prenuptial agreement and *Lerch*, the wife argued that she was entitled to a marital interest in both the home and brokerage account.⁵⁰ In contrast, the husband claimed that he had no intention of transferring the disputed property to the marital unit and that the changes in title to such property had occurred without his knowledge.⁵¹ The *Grissom* Court observed that "[w]ithout findings of fact regarding the circumstances surrounding the changes [in ownership of the disputed property] at issue; however, it is not clear that the

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conveyances were legitimate.”⁵² Accordingly, the Court remanded to the trial court to make the necessary findings of fact.⁵³

The wife in *Grissom*, in effect, made two arguments for transmutation, one rooted in contract (the prenuptial agreement) and one rooted in law (*Lerch*).⁵⁴ While *Lerch* involved a finding of transmutation based upon a gift implied from the form of title,⁵⁵ the *Grissom* decision contemplates that transmutation could occur through either implied gift or contract.⁵⁶ The *Grissom* Court did not state whether the transmutation argument raised by the wife was being analyzed under the gift or contract-based transmutation theory, or whether the analysis would be the same for both.⁵⁷ Thus although the *Grissom* Court required a finding that a conveyance is legitimate before making a determination as to transmutation, it is not clear whether such legitimacy requirement pertains to transmutation by contract, transmutation by implied gift or both.⁵⁸

Moreover, the *Grissom* decision does not identify what constitutes a legitimate conveyance.⁵⁹ A legitimate conveyance could simply require the husband have actual knowledge of the change in ownership of the properties or it could impose a higher burden of the husband intending to convey an interest to his wife.⁶⁰ If a conveyance requires intent to convey an interest to the transferee to be considered legitimate under *Grissom*, then could a spouse avoid transmutation by arguing that he or she transferred title for other purposes and that there was no intention to convey an actual property right?

Coe v. Coe

Perhaps the most instructive Georgia case regarding transmutation is *Coe v. Coe*.⁶¹ *Coe* involved an appeal from a jury verdict that stated the marital home should be divided evenly.⁶² The marital home at issue was purchased during the parties’ marriage, but the husband alleged the home was purchased

with his separate funds from a personal injury claim.⁶³ Despite title to the home being placed in the parties’ joint names, the husband argued he should have been awarded the home as his separate property because the home was purchased with his separate funds.⁶⁴ The Court found “[t]he gist of husband’s position is that the conveyance of legal title to wife gave rise to an equitable trust and was not a gift.”⁶⁵ In essence, the Court found that husband’s argument was one of a purchase money resulting trust under former O.C.G.A. § 53-12-92(c), which provides that “[i]f the payor of consideration and transferee of the property are husband and wife . . . , a gift shall be presumed, but this presumption is rebuttable by clear and convincing evidence.”⁶⁶ Consequently, the Supreme Court of Georgia found the trial court did not err in its jury instruction regarding the marital house which paraphrased the language regarding the gift presumption of O.C.G.A. § 53-12-92(c).⁶⁷

In characterizing the husband’s argument regarding his separate property claim to the marital home as one of an equitable trust, the *Coe* Court provided a framework for analyzing transmutation claims. Interestingly, the framework *Coe* adopted was the very same doctrine pre-*Stokes* litigants used to circumvent the form of title presumption in property division.⁶⁸ The Supreme Court of Georgia in *Coe* essentially found if the husband had purchased the marital home with his separate funds but placed title to the home in the couple’s joint names, then the Court would be entitled to find transmutation unless the husband could show that he held equitable title through a purchase money resulting trust.⁶⁹ This reliance upon the purchase money resulting trust doctrine may be the harbinger of a renewed significance of title as a spouse providing the consideration for a jointly titled asset must presumably argue for equitable title and not equitable division.

The most significant aspect of *Coe* is that the decision implicitly permits the use of an implied gift transmutation claim in cases in which there has been no transfer of title. In *Coe*, the gift claim arose from the fact that the husband had initially taken joint title in an asset he claimed to have purchased with his separate property. While the distinction appears technical in nature, it has far-reaching implications with regard to the doctrine of equitable division. The *Coe* decision is contrary to law in other jurisdictions that “[t]ransmutation by implied gift, without a change in title, must be proven like any other gift” and that “[t]he spouse claiming a gift has the burden of proof.”⁷⁰ Although an affirmative change in title may signify an intention of transferring property from one spouse to the other, merely purchasing an asset with separate funds and taking joint title does not necessarily carry the same weight with regard to the contributing spouse’s intentions. If a spouse must now rebut the presumption of a gift whenever separate property is contributed toward a jointly titled asset, then what is the status of the “source of funds” rule? Is it limited to assets that remain separately titled?

Miller v. Miller

Further expanding the transmutation doctrine in Georgia is the case of *Miller v. Miller*.⁷¹ *Miller* involved the equitable division of a marital residence.⁷² The husband in *Miller* argued funds used to purchase the marital residence, as well as a lot in Amelia Island, came from sale of his premarital residence,⁷³ and therefore, the marital residence and lot were his separate property.⁷⁴ On appeal, the Supreme Court of Georgia affirmed the trial court’s rejection of the husband’s separate property argument,⁷⁵ relying on no less than three separate instances of transmutation showing the husband had transformed his separate property interest in the marital home and lot into marital interests.⁷⁶

First, the *Miller* Court noted that after the marriage, the husband conveyed his premarital residence into the parties' joint names.⁷⁷ Second, the husband commingled the proceeds of the sale of the premarital residence with marital funds by depositing the proceeds into the parties' joint operating account.⁷⁸ Finally, the parties took title to the marital residence and lot in the parties' joint names.⁷⁹ The *Miller* Court found the trial court was authorized to conclude the marital residence and lot were marital property.⁸⁰

The *Miller* opinion illustrates two different types of transmutation by implied gift: the *Lerch*-type transmutation based upon a change in title (the premarital residence) and the *Coe*-type transmutation based upon the form of title (the marital residence and lot). In addition, *Miller* offers support for transmutation based upon commingling marital and separate property. The *Miller* opinion does not explain whether the commingling of assets necessarily transmutes separate property into marital property or whether such commingling merely creates a rebuttable presumption of transformation. Moreover, if commingling does, indeed, create only a rebuttable presumption of transmutation, then how do litigants rebut this presumption? Which tracing methodologies could litigants employ to reclaim their separate property interests?

As *Lerch*, *Grissom*, *Coe* and *Miller* illustrate, an asset's categorization as "marital" or "separate" property is not necessarily fixed at the time of acquisition. Instead, parties can transform or transmute separate property into marital property. The various ways in which property can be transmuted depend upon the particular jurisdiction but include: (1) express or implied gift of one spouse's separate property to the other spouse or to the marital unit;⁸¹ (2) express contract;⁸² (3) commingling of marital and separate property;⁸³ (4) retitling of separate property into the joint

names of both spouses;⁸⁴ or (5) use of separate property for family purposes.⁸⁵

Unanswered Questions

Numerous questions arise from the unresolved tension between the "source of funds" rule and burgeoning issues of transmutation. The *Thomas* "source of funds" analysis considers separate and marital contributions⁸⁶ as opposed to title-based considerations. *Coe*, conversely, places significant weight on title, requiring the spouse opposing transmutation to rebut the form of title by proving equitable title.⁸⁷ A common situation occurs when a spouse applies proceeds from the sale of his or her premarital home toward the purchase of a subsequent marital home titled in the parties' joint names. The "source of funds" rule would seemingly apply in such a situation.⁸⁸ In light of *Coe*, however, would the court now require the spouse claiming a separate property interest to prove equitable title by rebutting the gift presumption before permitting a "source of funds" tracing analysis?

Under which circumstances are non-marital assets transmuted? What is the standard of proof and who bears the burden? Are the requirements for proving or rebutting transmutation different for each type of transmutation (i.e. transmutation by implied gift, transmutation by contract, transmutation by commingling, transmutation by use)? May a spouse transform a partial separate property interest into marital property or does transmutation only encompass an entirely separate property interest into an entirely marital interest? For example, if the husband in *Coe* purchased only a portion of the jointly titled home with his separate property funds, then would he still be required to rebut the gift presumption of partial separate property or could the husband simply apply the "source of funds" tracing rule? May an asset such as a homeplace be transmuted merely through marital occupan-

cy? Can other assets be transmuted through marital use?

Conclusion

Characterization of assets as separate or marital is now acutely challenging in Georgia. Assets that are transmuted move from the separate property column into the marital property column while some hybrid assets contain elements of separate and marital property, thereby demanding either a definitive classification or an approved method for "separating" the marital from separate property claims.

The underlying bases of the "source of funds" rule and transmutation rely upon different equitable considerations when attempting to categorize property as marital or separate. The *Thomas* "source of funds" rule relies upon equitable principles in determining a spouse should maintain a separate property interest in an asset that has benefited from marital contributions. Transmutation under *Coe*, however, relies upon title in concluding a

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spouse contributing separate funds to purchase a jointly titled asset bears the burden of rebutting the presumption the asset was gifted.⁸⁹

Coe makes clear that title, whether actual or equitable, does have significance in property division. Until equity-based tracing of *Thomas* is further clarified and transmutation rules are set forth, the status of title in regard to property division will necessarily remain unclear and subject to arguably inconsistent policy considerations.

In contrast, other jurisdictions address these conflicting concerns through presumptions with shifting burdens of proof to determine if tracing or transmutation is applicable.⁹⁰ In Missouri, for example, when separate property is contributed toward a jointly titled asset, the separate property contribution is deemed a gift to the marital unit and is transmuted into marital property.⁹¹ The contributing spouse would be entitled to rebut the gift presumption only upon a showing of clear and convincing evidence to the contrary.⁹² Only after the contributing spouse successfully rebuts the gift presumption would the spouse be entitled to trace his or her separate property interest by applying an approved tracing methodology through the “source of funds” rule.⁹³

The use of such construct, coupled with the adoption of a defensible tracing methodology for hybrid assets and guidelines for transmutation, would provide needed clarity in dividing contested assets in Georgia. It would further serve to make property division analysis uniform and, ultimately, equitable. 



John C. Mayoue is the author of *Protecting Your Assets from a Georgia Divorce* (PSG Books 2007), Georgia

Jurisprudence, Family Law (West Group 2006) and *Balancing Competing Interests in Family Law: How to Handle Alternative Relationships, Third Party*

Interests, Interspousal Torts, Privilege and Privacy Rights (American Bar Association 2003). He is a Fellow of the American Academy of Matrimonial Lawyers and an associated faculty member of the Center for Law and Religion at Emory University.



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Endnotes

1. See, e.g., *Stokes v. Stokes*, 246 Ga. 765, 771, 273 S.E.2d 169, 174 (1980) (per curiam) (Hill, J., concurring) (stating that “[t]he opinion of this court verifies that over the years this court has recognized the doctrine of equitable division of property in numerous cases”).
2. *Payson v. Payson*, 274 Ga. 231, 232, 552 S.E.2d 839, 841 (2001) (quoting *Campbell v. Campbell*, 255 Ga. 461, 462, 339 S.E.2d 591, 593 (1986)).
3. See, e.g., *Hargrett v. Hargrett*, 242 Ga. 725, 728, 251 S.E.2d 235, 238 (1978) (stating that “ ‘property settlement’ and ‘property division’ are terms used to refer to the determination of who owns property when its title is disputed . . . they do not create a means for awarding a husband property the title to which is in the wife”).
4. See *Coleman v. Coleman*, 240 Ga. 417, 424, 240 S.E.2d 870, 875 (1977) (Hill, J. dissenting) (citing *McLane v. McLane*, 224 Ga. 748, 164 S.E.2d 821 (1968) “A wife can recover in a divorce case in two ways: (1) permanent alimony, and (2) property division”).
5. *Davis v. Davis*, 134 Ga. 804, 68 S.E. 594, 595 (1910).
6. See *McGee v. McGee*, 10 Ga. 477, 483, 1851 WL 1398, *4 (1851).
7. See, e.g., *Berry v. Berry*, 208 Ga. 285, 288, 66 S.E.2d 336, 338 (1951).
8. W. Henry Parkman, *The Significance of Stokes v. Stokes: An Examination of Property Rights Upon Divorce in Georgia*, 16 GA. L. REV. 695, 696 (Spring 1982).
9. See *Hargrett*, 242 Ga. at 728, 251 S.E.2d at 238.
10. *Id.* (stating that property division and property settlement “do not create a means for awarding a husband property the title to which is in the wife”).
11. See *Berry*, 208 Ga. at 288, 66 S.E.2d at 338 (stating that alimony could take the form of an allowance out of the husband’s separate estate); *Hargrett*, 242 Ga. at 727-28, 251 S.E.2d at 237-38.
12. See *Hargrett*, 242 Ga. at 727, 251 S.E.2d at 237.
13. See *Stokes*, 246 Ga. at 767, 273 S.E.2d at 170-71.
14. *Id.*
15. *Id.* at 771, 273 S.E.2d at 173.
16. *Id.*; see *Hargrett*, 242 Ga. at 728, 251 S.E.2d at 238.
17. 256 Ga. 639, 640, 352 S.E.2d 753, 754 (1987).
18. 259 Ga. 73, 77, 377 S.E.2d 666, 670 (1989).
19. *Id.*
20. *Id.*
21. *Id.* at 76-77, 377 S.E.2d at 669.
22. See *Janelle v. Janelle*, 265 Ga. 116, 454 S.E.2d 133 (1995); *Horsley v. Horsley*, 268 Ga. 460, 490 S.E.2d 392 (1997); *Hubby v. Hubby*, 274 Ga. 525, 556 S.E.2d 127 (2001); *Snowden v. Alexander-Snowden*, 277 Ga. 153, 587 S.E.2d 54 (2003); *Maddox v. Maddox*, 278 Ga. 606, 604 S.E.2d 784 (2004); *Pollard v. Pollard*, 279 Ga. 57, 609 S.E.2d 354 (2005); *Crowder v. Crowder*, 281 Ga. 656, 642 S.E.2d 97 (2007); *Windham v. Araya*, 286 Ga. 501, 690 S.E.2d 168 (2010).
23. 277 Ga. 801, 805, 596 S.E.2d 392, 395 (2004) (upholding the trial court’s determination that the corporate interest at issue was “marital in part and separate in part under the source of funds rule”).
24. See, e.g., *Moore v. Moore*, 111 S.W.3d 530, 535 (Mo. Ct. App. 2003) (finding that “[u]nder the ‘source of funds’ rule applied in Missouri, property is considered to be acquired as it is paid for, and incremental property values are allocated proportionately to either marital or nonmarital estates according to the source of funds used to purchase or improve the property”); *Melrod v. Melrod*, 574 A.2d 1, 3 (Md. Ct. Spec. App. 1990) (clarifying that under the “source of funds” theory, “property that is paid for in installments is ‘acquired’ [. . .] not when title is taken but as an on-going process as payments are made for it”).

25. See, e.g., *Struble v. Struble*, 787 So. 2d 48, 50 (Fla. Dist. Ct. App. 2001) (stating that “[o]nce the sales proceeds were deposited into the joint account, their nonmarital character was lost”); *In re Marriage of Ford*, 879 N.E.2d 335, 341 (Ill. App. Ct. 2007) (finding that when the husband deposited nonmarital rent payments into a bank account containing marital funds, the rent payments were transmuted into marital property); *Asgari v. Asgari*, 533 S.E.2d 643, 648 (Va. Ct. App. 2000) (stating that “husband deposited his separate funds into a joint account with wife, commingling separate and marital assets, unspecified sums of marital funds were thereafter deposited and withdrawn from the account, the balance regularly ebbing and flowing for months [. . .] the identity of husband’s separate funds had been lost in countless unspecified transactions involving marital funds, resulting in the irreversible transmutation of separate into marital property”).
26. See, e.g., *Hill v. Hill*, 971 S.W.2d 153, 158 (Tex. Civ. App. 1998) (applying the presumption that marital funds are withdrawn first from a commingled account and that separate funds “sink to the bottom”); *Cutting v. Cutting*, 625 So.2d 1112, 1115 (La. Ct. App. Cir. 1994) (applying the presumption that separate property funds are withdrawn from a commingled account before marital funds).
27. See Richard J. Armstrong, *Rebutting the Pro-Community Presumption by Way of Total Recapitulation: Zemke v. Zemke*, 31 IDAHO L. REV. 1123, 1131 (1995).
28. See, e.g., *Estate v. Hanau*, 730 S.W.2d 663, 667 (Tex. 1987).
29. *Id.*
30. See *Bloomfield v. Bloomfield*, 282 Ga. 108, 110, 646 S.E.2d 207, 211 (2007).
31. *Id.*
32. *Id.*
33. 278 Ga. 885, 608 S.E.2d 223 (2005).
34. *Id.* at 885, 608 S.E.2d at 223.
35. *Id.*
36. *Id.*
37. *Id.*
38. See O.C.G.A. § 44-5-80 (2010).
39. See *Lerch*, 278 Ga. at 885, 608 S.E.2d at 224.
40. *Id.*
41. See *McArthur v. McArthur*, 256 Ga. 762, 763, 353 S.E.2d 486, 488 (1987).
42. See *Lerch*, 278 Ga. at 885, 608 S.E.2d at 224.
43. See *Utsch v. Utsch*, 581 S.E.2d 507, 509 (Va. 2003) (applying the parol evidence rule and finding that a deed of gift was unambiguous with respect to donative intent and could not be disproved by outside evidence of the parties’ intentions).
44. 282 Ga. 267, 647 S.E.2d 1 (2007).
45. *Id.* at 267, 647 S.E.2d at 2.
46. *Id.* at 269, 647 S.E.2d at 3.
47. *Id.*
48. *Id.* at 267-269, 647 S.E.2d at 2-3.
49. *Id.* at 269, 647 S.E.2d at 3.
50. *Id.*
51. *Id.*
52. *Id.* at 270, 647 S.E.2d at 4.
53. *Id.* at 269, 647 S.E.2d at 3.
54. *Id.*
55. See *Lerch*, 278 Ga. at 885, 608 S.E.2d at 223-24.
56. See *Grissom*, 282 Ga. at 269-70, 647 S.E.2d at 3-4.
57. *Id.*
58. *Id.*
59. *Id.* at 270, 647 S.E.2d at 4.
60. *Id.* at 269, 647 S.E.2d at 3 (stating the husband’s claim that the changes in ownership to the home and brokerage account occurred without his knowledge and that he had no intention of conveying any interest in either asset to his wife).
61. 285 Ga. 863, 684 S.E.2d 598 (2009).
62. *Id.* at 863, 684 S.E.2d at 599.
63. *Id.* at 864, 684 S.E.2d at 600.
64. *Id.*
65. *Id.* at 865, 684 S.E.2d at 600.
66. *Id.*, O.C.G.A. § 53-12-131 (2010) [recodifies former O.C.G.A. § 53-12-92 (2009)].
67. *Coe*, 285 at 865, 684 S.E.2d at 600.
68. See, e.g., *Scales v. Scales*, 235 Ga. 509, 510, 220 S.E.2d 267, 268 (1975).
69. See *Coe*, 285 Ga. at 865, 684 S.E.2d at 600.
70. Laura W. Morgan & Edward S. Snyder, *When Title Matters: Transmutation and the Joint Title Gift Presumption*, 18 J. AM. ACAD. MATRIM. LAW 335, 347 (2003).
71. Nos. S10F1703, S10A1707, 2010 WL 4704326 (Ga. Nov. 22, 2010).
72. *Id.* at *5.
73. *Id.*
74. *Id.*
75. *Id.* at *6.
76. *Id.* at *5.
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at *6.
81. See, e.g., *In re Marriage of Looney*, 286 S.W.3d 832, 838 (Mo. Ct. App. 2009) (stating that “[u]nder the theory of transmutation, an item of nonmarital property can be converted into marital property by gift or a spouse’s express or implied agreement”).
82. See *Morgan & Snyder* at 342-43 (noting that in both community property and equitable distribution states, parties can change the character of property by express agreement).
83. See, e.g., *Powell v. Powell*, 110 S.W.3d 290, 292-93 (Ark. Ct. App. 2003) (finding that the commingling of premarital and marital funds creates the rebuttable presumption of a gift of the premarital funds to the marital unit).
84. See *De Liedekerke v. De Liedekerke*, 635 A.2d 339, 343 (D.C. Ct. App. 1993) (finding that “putting even separate property in joint names ‘for whatever reason’ subjects it to [equitable] division”).
85. See *T.K.T. v. F.P.T.*, 716 So.2d 1235, 1240 (Ala. Civ. App. 1998) (awarding the wife a one-half interest in the husband’s separate farm property because “[i]t is well settled that when making a property settlement, the trial court may consider property that is acquired through inheritance or gift if that property was regularly used for the common benefit of the parties during their marriage”).
86. See *Thomas*, 259 Ga. at 77, 377 S.E.2d at 669-70.
87. See *Coe*, 285 Ga. at 865, 684 S.E.2d at 600.
88. See *Janelle* 265 Ga. at 117, 454 S.E.2d at 134 (stating that the jury should be instructed on the “source of funds” rule to determine the extent to which the final marital residence constitutes marital property where the husband purchased the final marital residence with the proceeds of the sale of a series of residences originating with the husband’s premarital home).
89. See *Coe*, 285 Ga. at 865, 684 S.E.2d at 600.
90. See, e.g., *Kettler v. Kettler*, 884 S.W.2d 729, 732 (Mo. Ct. App. 1994).
91. *Id.*
92. *Id.*
93. *Id.*

Attorneys Advise on Effective Business Development Strategies

by Marian Cover Dockery

The State Bar Diversity Program's annual Business Development Symposium on Feb. 3, sponsored by Alston & Bird LLP, featured some of Georgia's best and brightest attorneys. The general counsels who presented advised attorneys that if they "want to develop business with a company or municipality, they need to know what we do." David Ware, Fulton County attorney; Tamra Toussaint, chief global counsel for KCP Global, of Kimberly Clark; and Cathy Hampton, city of Atlanta attorney, joined a panel moderated by Rick Goerss, chief privacy and regulatory counsel at Equifax.

Ware stated that he is not impressed with fancy websites and great resumes. Although credentials are not overlooked, he seeks attorneys who are capable of showcasing their talents as it pertains to the work of the county. Two participants in last year's conference accomplished this task and successfully secured work. Ware added that he has an expectation of diversity and researches the track record of firms.

Ware began his career at Kilpatrick Stockton, which was the first firm in the city to hire a woman, a person of the Jewish faith and an African-American. His posi-



Photos by Stephanie J. Wilson

(Left to right) Rick Goerss, chief privacy and regulatory counsel for Equifax; Tamra Toussaint, chief global counsel for KCP Global, Kimberly Clark; and David Ware, Fulton County attorney, before the general counsel panel discussion begins.

tion is that a firm representing Fulton County should reflect the diversity of the county.

Toussaint stated that diversity of outside counsel is essential as Kimberly Clark's customers are diverse, and the company serves a global market. She echoed Ware's premise that outside counsel must mirror their diverse customer base and must also have diverse thoughts, experiences and perspectives. She also emphasized that Kimberly Clark seeks firms with diverse partners as well as associates. She pointed out that diversity cannot be purchased; a firm must do more than buy a table at the diversity conference to convince Kimberly Clark of its commitment.

Firms with diverse partners and associates are sought by the city as well, but Hampton also stated

that as city attorney, she encourages outside counsel from firms of all sizes to seek business opportunities with the city. All the panelists agreed that diversity in hiring outside counsel is important. They also stated that an attorney's ability to produce an excellent work product and demonstrate an understanding of the company's culture are two criterion that outside counsel mandate when attorneys make their pitch for business.

Partners' Advice

On Feb. 23, members of the Partners Panel convened to share their tips on successfully building a business and discussed how diversity plays a role in that process. The panelists included: R. Lawrence Ashe, Ashe Rafuse & Hill LLP; Philippa Ellis, Owen, Gleaton, Jones, Egan & Sweeney; and Brynda Rodriguez Insley, Insley & Race. Sam Woodhouse, of The Woodhouse Law Firm, moderated the panel.

All of the panelists are founding partners of their firms, which is a testament to their entrepreneurial skills. The consensus of the group was that first and foremost, attorneys must deliver an excellent work product—a point also emphasized in the general counsels program. Insley's philosophy is to showcase her associates and provide them with the opportunity for visibility with her clients. She recounted how one client was so pleased with one of her associate's work that the client requested the associate to work on all of his future cases. Insley also advised the attorneys to be cautious when taking on new clients to ensure they are a proper fit with your firm. Insley stated that although it is important to generate revenue for her firm, it is also important to have a good relationship with your clients and enjoy your work.

Ashe and Ellis advised the attendees to stay active in their bar associations. Both were able to secure work because of their participation in ABA subcommittees; however, landing the client takes patience.



(Left to right) Law firm partners Brynda Insley, Insley & Race; Sam Woodhouse, The Woodhouse Law Firm; Philippa Ellis, Owen, Gleaton, Jones, Egan & Sweeney; and R. Lawrence Ashe, Ashe Rafuse & Hill, share their tips with the attendees at Part II of the Business Development Symposium.


In one case, it was 10 years before Ellis secured a client, a Fortune 500 company. A relationship that she had with another attorney in the ABA, who eventually rose up the ranks, invited Ellis to meet with her company's team of lawyers.

Woodhouse emphasized the importance of knowing your client before making the pitch. Understand the culture of your client's company, and once you secure work, continue to communicate with that client. Ashe, a runner, jogs with a client and stated that attorneys at his firm also invite clients to golf and spa dates. Ashe discussed why diversity is important, as his named partners represent the diversity that firms should strive for: a woman, an African-American and a white male. All partners are in high demand because of their outstanding skills and experience; however, the diversity of the partnership is the added value that these partners bring to their clients and sets Ashe's firm apart from other Georgia firms.

The general counsels and the partners shared valuable advice to the attendees. All of the participants left both sessions with effective strategies to develop business for their firms.

Meetings With General Counsels

Part III of the Symposium will be held at the Bar Center on April 21, where in-house counsel from the City of Atlanta, Georgia-Pacific, UPS and Fulton County will meet

with attorneys selected from applications completed and submitted online at the State Bar of Georgia Diversity Program's webpage. These meetings are designed to provide attorneys with a unique opportunity to meet in-house counsel and take the critical steps to build a business relationship in the future. To register, visit www.gabar.org/news/diversity_program_presents_the_business_development_symposium/. 



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

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

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**State Bar of Georgia
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Georgia Bar Media & Judiciary Conference Celebrates 20 Years

by Stephanie J. Wilson

For 20 years the Georgia Bar Media & Judiciary Conference has provided a forum for judges, lawyers and media professionals to discuss emerging First Amendment issues and their influence on the law. This annual ICLE event is a full day of panel discussions that affords attorneys an opportunity to earn six hours of CLE credit, including one ethics and one professionalism hour. This year's conference was held on Feb. 26 at the State Bar of Georgia.

The first panel of the day, "Surviving the Spotlight: When Your Case or Court is in the News," was moderated by Shawn McInstosh, public editor, *Atlanta Journal-Constitution*. The panelists included Chief Justice Carol W. Hunstein, Supreme Court of Georgia; B. J. Bernstein, The Bernstein Firm, P.C.; Jeff Dickerson, president, Dickerson Communications; and Dale Russell, reporter, WAGA-TV FOX 5. This panel served as a primer for judges and lawyers on dealing with the media.

Chief Justice Hunstein offered advice to the judges in the audience regarding cameras in the courtroom. "It is



Photos by Stephanie J. Wilson

Georgia Attorney General Sam Olens answered questions from the audience during "Georgia and Open Government: An Open Discussion with the Attorney General."

important for a judge to keep control of the courtroom," she said. "Make sure lawyers are not playing to the cameras." Also, she does not allow jurors' faces to be



CNN's Richard Griffiths appeared as interlocutor for the panel "Image and the Internet: A Case Study."



(Left to right) Attorney B. J. Bernstein and Supreme Court of Georgia Chief Justice Carol W. Hunstein served as panelists for "Surviving the Spotlight: When Your Case or Court is in the News."

shown. Chief Justice Hunstein also said that "judges should avoid comments on substantive law and their feelings on how a case should come out." Bernstein reminded the audience that "lawyers cannot control the media—only the message they are sending out." Dickerson stated that the rules within the court of public opinion are very different than in a court of law. "There is often a presumption of guilt rather than innocence," he explained. He recommended that attorneys hire a media counsel to guide them during a big case. "'No comment' is a comment. The public interprets that as something to hide."

Following the first panel, audience members were given special one-on-one opportunities for "Surviving the Interview: Tips and Coaching from the Experts." Media professionals Kathy Brister, KB Media; Drue Miller, *Atlanta Journal-Constitution*; David Poston, Poston Communications LLC; and Debbie Wetherhead, Wetherhead Communications, offered individual 15-minute coaching sessions. Many judges and attorneys in attendance took advantage of this unique chance to get answers to specific questions or general tips, like what to say or not say in a media interview, or what to wear on camera.

Moderator Hyde Post, president, Georgia First Amendment Foundation, and Attorney General Sam Olens sat down with the audience for the second panel, "Georgia and Open Government: An Open Discussion with the Attorney General." Olens gave a breakdown of the current attempts to clean up the open records and open meetings laws, making them more accessible to the public. He also answered a variety of questions from the audience. He touched on topics such as the national health care case, "water wars" with neighboring states, electronic filing in Georgia courts, open records requests for metadata and access to text or e-mail conversations between public officials occurring in a public meeting.

"Courts and New Media," the third panel of the day, was moderated by Don Plummer, former public information officer, Fulton County Superior Court. Panelists included Christopher Davey, Office of Public Information, Supreme Court of Ohio; Caren Myers Morrison, assistant professor, Georgia State University College of Law; and Paige Oliver Taylor, regional editor, Patch.com.

Davey told the audience that laws regarding cameras in the

courtroom need to be updated to include smartphones, not just television cameras. Morrison discussed new media as it relates to juries. She shared that the majority of states have redrafted jury instructions to include research and access to social media sites. In addition, potential jurors are being investigated through social media prior to voir dire. All the panelists agreed that the law is reactive rather than proactive to changes in technology and new media.

Former Georgia Bar Media & Judiciary Conference Co-Chair Stephen Wermeil was the featured speaker for the luncheon program. Wermeil, who teaches constitutional law and a seminar on the Supreme Court at American University

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Washington College of Law, co-authored *Justice Brennan: Liberal Champion*, considered by many to be the definitive study of William Jr. Brennan Jr. During his research for the book, Wermeil was given unprecedented access to Brennan's office, files and records. He was even allowed to tape 60 hours of Justice Brennan on the bench. Wermeil shared many insights into Brennan. "He didn't personally like reporters *but* his commitment to the role of the press in our democratic society didn't waiver one bit."

Once again Richard Griffiths, editorial editor, CNN, ably served as interlocutor for the Fred-friendly panel of the day. Panelists for "Image and the Internet: A Case Study" were Lee Echols, The Echols Group; Jim Walls, editor, Atlanta Unfiltered, LLC; Grayson Daughters, president, WaySouth Media; Bert Brantley, communications director, Office of Gov. Sonny Perdue; Alan Judd, reporter, *Atlanta Journal-Constitution*; and

Myles E. Eastwood, Law Offices of Myles E. Eastwood.

Griffiths presented the panel with two "ripped-from-the-headlines" scenarios. The first involved a fictional happily married Georgia Gov. Snodgrass who had been tweeted to be "hiking on the Appalachian Trail." (Think South Carolina Gov. Mark Sanford.) The panelists used their varying areas of specialty to walk the audience through the projected public reaction to the story. Echols, whose firm offers crisis management, media training and issues management services, shared that the best way to diffuse the situation is to slow down the sharing of inaccurate information by "putting the right stuff out there."

The second scenario concerned Biff "Big Chicken" Bojangle, executive director of the Georgia Chicken Advisory Board. Bojangle's public undoing comes at the hands of a chicken rights group who publishes a cleverly edited video on the Internet of "Big Chicken" giving

a speech. (Think Shirley Sherrod, formerly of the U.S. Department of Agriculture.) With his words and thoughts taken completely out of context, what actions should Bojangle take to renew his good name? The panelists described what their professional responses would be. Don't worry. In the end, the unabridged video was posted and Bojangle's reputation was restored.

Next on the agenda was "Appearance of Impropriety: Judging Judges in Georgia" moderated by Ed Bean, editor, *Fulton County Daily Report*. Hon. John D. Allen, chair, Judicial Qualifications Commission, and superior court judge, Chattahoochee Judicial Circuit; Hon. Robert W. Chasteen Jr., superior court judge, Cordele Judicial Circuit, and past president, State Bar of Georgia; and Jeffrey R. Davis, director, Judicial Qualifications Commission served as panelists.

Bean had the panel begin with a discussion on the Judicial



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Qualifications Commission and their rules. He then posed the question, "Is the public served by the efficiency of the Judicial Qualifications Commission confronting judges instead of just going straight to a formal complaint?" "Our paramount duty, we feel, is to protect the public," answered Davis.

Jim Galloway, reporter, "Political Insider," *Atlanta Journal-Constitution*, moderated the final panel of the day, "Judicial S/Election in Georgia: Lessons Learned from Another Round." Panelists Justice David Nahmias, Supreme Court of Georgia; Hon. Edward Lindsey (R-Atlanta), Georgia House of Representatives; J. Randolph Evans, McKenna Long & Aldridge LLP; and Alyson M. Palmer, reporter, *Fulton County Daily Report*, touched on topics such as providing candidate information to voters, judicial campaign funding and recusal and the pros and cons of partisan judicial elections. Evans outlined the non-merit factors voters use when casting their

votes: gender, race, incumbency and placement on ballot. Evans shared his opinion that judicial elections "should be partisan, just like congressional elections," and that partisan judicial elections would help voters to determine if a candidate's philosophies are similar to their own. Lindsey argued, "Party labels would do more harm than good. Judges don't make laws — they interpret them. Party labels could be misinterpreted by voters." Justice Nahmias added his concern about the public's "perception of partisan elections, since judges are supposed to be nonpartisan."

The Georgia First Amendment Foundation's 10th annual Weltner Freedom of Information Banquet, often held the night of the Bar Media & Judiciary Conference, will be held on the evening of Tuesday, April 12. A highlight of the banquet will be the presentation of the Weltner Award, honoring the memory of Charles L. Weltner, a champion of open

government. This year's Weltner Award honoree will be Vernon Keenan, director, Georgia Bureau of Investigation. U.S. Attorney Sally Yates will introduce Director Keenan and Attorney General Sam Olens will be a special guest and featured speaker. For sponsorship information, and to order banquet tickets, contact the Georgia First Amendment Foundation at www.gfaf.org or by telephone at 404-525-3646, by fax at 404-377-0486 or via e-mail at info@gfaf.org.

For more information about past, present or future Bar Media & Judiciary Conferences, please visit www.gfaf.org/BarMediaConference.htm. 



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

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>  **Burr & Forman LLP** announced that partner **John R. Chiles** was elected as a fellow of the **American College of Consumer Financial Services Lawyers**. The College was founded in 1996 and is a professional association of lawyers particularly skilled and experienced in handling consumer financial services matters. Membership is by invitation only and limited to those lawyers whose principal practice is in the field of consumer financial services law, who have achieved preeminence in the field of consumer financial services law and who have made repeated and substantial contributions to the promotion of learning and scholarship in consumer financial services law through teaching, lecturing and published writings.

> **Christine D. Hanley** presented “ABC’s of Employment” in January at the Chamber of Commerce of the Palm Beaches. The workshop provided participants with the tools and techniques to get the most from employment applications; conduct background checks; identify candidates and write offer letters; discipline and document problem employees; and conduct effective terminations and exit interviews.

> **Morris, Manning & Martin, LLP**, announced that **John Yates** co-published an eBook, *Super Rainmaking: 10 Secrets To Raising the Bar In Your Law Practice*. It contains business development strategies that can be applied by any business professional. Yates is chair of Morris Manning & Martin’s technology practice and a member of the firm’s management committee.

>   **Freeman Mathis & Gary, LLP**, announced that **Murray J. Weed** presented “E-Discovery, Public Records and Metadata” to the Government and Public Sector Lawyers Division at the American Bar Association’s Midyear Meeting in Atlanta. Weed is of counsel in the government law practice group.

Managing Partner **Ben Mathis** was appointed a **special assistant attorney general** by Georgia Attorney General Sam Olens to assist in representing the state of Georgia in the legal challenge to the Federal Healthcare Reform Act. See *State of Florida, State of Georgia et al. v. United States Department of Health and Human Services, et al.* Mathis joined the team of attorneys working at no cost to the state



in its efforts in the lawsuit over the constitutionality of The Patient Protection and Affordable Healthcare Reform Act, otherwise known as the Federal Healthcare Reform Act.

>   **Kilpatrick Townsend** announced that partner **Phillip Street** was named **chairman** of the **Atlanta Board of Directors of the American Heart Association**. Street has volunteered his leadership with the Heart Association for several years including serving as chairman of the Atlanta Heart Ball—the organization’s biggest annual charitable event.

Associate **Mark Reeves** was elected to serve as **president** of the **Young Lawyers of Augusta**. The Young Lawyers of Augusta consists of approximately 80 attorneys in the Augusta Judicial Circuit who are 40 years of age or younger or newly admitted to the bar. The organization seeks to promote camaraderie and professionalism within the bar and to provide younger lawyers with opportunities to come together in casual, non-adversarial settings. It also actively promotes and participates in service projects, both on its own and in conjunction with the Augusta Bar Association, in an effort to give back to the greater Augusta community.


Kilpatrick Townsend & Stockton was recently honored as **Law Firm of the Year** at the **Pro Bono Partnership (PBP) of Atlanta’s** annual awards reception. The firm was honored for its work on behalf of PBP and the client organizations it serves.


Lawyers from Kilpatrick Townsend & Stockton LLP were awarded the 2011 **American Bar Association Tort Trial & Insurance Practice Section Pursuit of Justice Award** for their efforts in the historic class action lawsuit of *Cobell v. Salazar* that remedied years of discrimination against American Indians. The award was presented during the 2011 ABA Midyear Meeting.


>   **Litigation Counsel of America (LCA) Fellow Tommy Malone**, of Malone Law in Atlanta, presented **outgoing LCA President Jack Williams**, of Womble, Carlyle, Sandridge & Rice, also of Atlanta, with the society’s **2010 Distinguished Service Award** at a recent ceremony. LCA is an invitation-only trial lawyer honorary society whose elite membership includes less than one-half of 1 percent of American lawyers.


> **John G. (Sonny) Morris** was elected to a two-year term as **chairman** of the **Buckhead Coalition**. With a membership limited to 100 chief executive officers of major area firms, it is considered on the Atlanta's most influential associations. Morris is a senior partner with Morris, Manning & Martin, LLP.

> **Robbins Geller Rudman & Dowd LLP** announced that **Ryan K. Walsh** was elected **president** of the **Atlanta Legal Aid Society**. The Atlanta Legal Aid Society represents low-income Atlantans in civil legal cases. Walsh, a founding partner of Robbins Geller's Atlanta office, is an experienced litigator of complex commercial disputes, whose practice focuses primarily on protecting the rights of innovators in patent litigation and related technology disputes.


>  **Derick C. Villanueva**, principal and founding attorney of The Law Offices of D. Villanueva, LLC, in Atlanta, was selected as a **supply corps officer rank O-1** for the **U.S. Navy Reserve** by the Secretary of the U.S. Navy. Out of 300 applicants who had applied nationally, only 22 officers were selected. Villanueva's primary duties as a supply corps officer will be the procurement and distribution of military supplies, weapons and ammunition for the armed services at home and oversees in combat zones. Prior to law school, Villanueva, a second generation naval officer, worked as a government contracting officer for the Department of Defense.


>  **Miller & Martin PLLC** attorney **Curtis J. Martin II** was sworn in as **president** of the **Gate City Bar Association** in January. Established in 1948, the Gate City Bar Association is the oldest African-American bar association in the state of Georgia and is an affiliate chapter of the National Bar Association.


>  **Larry D. Thompson**, former deputy attorney general for the U.S. Department of Justice and current senior vice president of government affairs, general counsel and secretary for PepsiCo, joined the **University of Georgia School of Law** as a **visiting professor** this spring. Thompson teaches a course titled, "Corporate Responsibility."


>  **Patrick T. O'Connor**, managing partner of **Oliver Maner LLP**, was appointed by Gov. Nathan Deal to a term on the **Judicial Nominating Commission of Georgia**. O'Connor is a civil trial lawyer and a member of the State Bar of Georgia

Board of Governors. He also co-chairs the State Bar's Bench and Bar Committee.


>  **Amy E. Loggins**, assistant vice president and employment counsel for Crawford & Company, was presented with the **Jonathan A. Silber Outstanding Committee Member of the Year Award** from the **Association of Corporate Counsel (ACC)** for individual excellence, leadership and major contributions made by a member of an ACC committee. The ACC is the world's largest organization of in-house counsel, with more than 26,500 members in 75 countries. The award recognizes Loggins' contributions to the ACC, the Employment and Labor Law Committee (which consists of more than 5,400 members), the legal profession generally and in-house practice specifically. She also received the award for her contributions to the community through volunteer work and pro bono activities.

>  **Kristen M. Van der Linde** of **Boyd & Jenerette, P.A.**, in Jacksonville, Fla., co-authored the chapter on Florida law in **Insurance Bad Faith-2010: A Compendium of State Law** published by the Defense Research Institute. Van der Linde practices in the area of insurance coverage and bad faith. The book covers the law of bad faith and extra-contractual liability in U.S. jurisdictions and under Canadian common law. Each chapter discusses the causes of action, damages, elements of proof, practice and procedure, defenses and counterclaims.

>  **Cobb County Police Chief John Houser** honored attorney **Lance LoRusso** with the title of "**Honorary Major**." This is the first such award given by the Cobb County Police Department. Chief Houser, Deputy Chief Ron Storey and Detective Bob Pierce presented "Major" LoRusso with a plaque "in sincere appreciation for your support and assistance to the charitable programs benefiting the residents of Cobb County, GA." LoRusso was proud to serve as a Cobb County police officer for 12 years before becoming an attorney in 1999.

>  **Karen B. Bragman**, a partner in the litigation group at **Arnall Golden Gregory LLP**, was elected **president** of **Susan G. Komen for the Cure-Greater Atlanta Affiliate**. Komen Atlanta is the local resource for women who need breast cancer screening, treatment, education and support.

Through annual events, including the Race for the Cure and individual contributions, Komen Atlanta raises funds and awards grants that enable women to detect and survive breast cancer. Komen Atlanta has raised more than \$30 million since its inception, 75 percent of which has been utilized in furtherance of its mission in the metropolitan Atlanta area and 25 percent of which is spent on national breast cancer research. In 2010, Komen made \$2.2 million in grants to local breast cancer organizations.

>  **Karen Worthington**, child welfare and juvenile justice consultant, received the **Emory Public Interest Committee Inspiration Award for Unsung Devotion to Those Most in Need**. Worthington is a nationally recognized expert in children's law, the founding director of Emory Law's Barton Child Law and Policy Center, and recipient of the 2009 National Association of Counsel for Children Outstanding Legal Advocacy Award. Worthington was selected for the Inspiration Award because of her many years of work on behalf of abused, neglected and court-involved children. Worthington now resides in Kula, Hawaii, and has a national consulting firm, Karen Worthington Consulting, which helps child advocacy organizations—nonprofit agencies, governments and foundations—implement research-based approaches to accomplish their missions effectively and efficiently.

On the Move

In Atlanta




Freeman Mathis & Gary, LLP, announced that **Coleen D. Hosack** joined the firm as an **associate** in the government law practice group. Hosack's practice focuses on local government liability, land use and zoning. **C. Leanne Prybylski** joined as an **associate** in the construction law practice group. Prybylski's practice focuses on construction and employment law. **Sean Kane** joined the firm as an **associate** in the business liability and insurance law practice group. **Marc H. Bardack** joined the firm as **of counsel** in the business liability and insurance law practice group. The firm is located at 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339; 770-818-0000; Fax 770-937-9960; www.fmglaw.com.

> **Hall Booth Smith & Slover, P.C.**, announced the addition of **Elizabeth Wharton** to the **government affairs group** in the firm's Atlanta office. Wharton was legislative counsel for the Senate Judiciary Committee with the Georgia General Assembly during the 2010 legislative session. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; www.hbss.net.


>   **Troutman Sanders LLP** announced that **Paul Davis Fancher** and **Heather Shirley Smith** were elected **partners**. Fancher is a member of the firm's securities & corporate governance and mergers, acquisitions & business ventures practice groups. He also is a member of the firm's greater China practice team. Smith is a member of the firm's energy practice group. The firm is located at 600 Peachtree St. NE, Suite 5200, Atlanta, GA 30308; 404-885-3000; Fax 404-885-3900; www.troutman-sanders.com.





 **Nelson Mullins Riley & Scarborough LLP** announced that **Michael E. Hollingsworth II**, a well-known corporate attorney with strong ties in the Atlanta business community, was named **managing partner** of the firm's Atlanta office. As co-chair of the mergers & acquisitions group, Hollingsworth has been responsible for significant growth in the firm's corporate department. His practice focuses on middle-market corporate transactions, including mergers, acquisitions, divestitures and joint ventures.


Jeff Mapen was elected to **partnership**. Mapen practices in the areas of business litigation, consumer financial services litigation, product liability litigation and toxic torts defense. **Philip A. Cooper** joined the firm as a partner. Cooper is a member of the firm's corporate and securities group. Former associates **Ross Burris** and **Jonathan Kendall** were promoted to **of counsel**. Burris practices in the areas of health care and life sciences law and litigation. Kendall practices in the areas of health care and life sciences and real estate law. The firm

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

- >  **Duane Morris LLP** announced that **Antony L. Sanacory** was named to **partnership**. Sanacory is a litigator whose practice includes resolution of construction disputes, patent infringement and technology licensing disputes as well as other commercial litigation matters. The firm is located at 1180 W. Peachtree St. NW, Suite 700, Atlanta, GA 30309; 404-253-6900; 404-253-6901; www.duanemorris.com.

- >  **Weissman, Nowack, Curry & Wilco, P.C.**, announced that **Angele Rishi** was named **partner**. Rishi represents clients throughout Georgia in litigation, arbitration and negotiation of real estate disputes, including those arising out of real estate development, title and contracts. The firm is located at 3500 Lenox Road, 4th Floor, Atlanta, GA 30326; 404-926-4530; Fax 404-926-4730; www.wncwlaw.com.

- >  Former Georgia Attorney General **Thurbert E. Baker** joined **McKenna Long & Aldridge LLP** as a **partner** in the firm's Atlanta office. Baker's practice is focused on compliance and investigation litigation, public sector procurements and multi-state public policy litigation and regulatory matters. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.mckennalong.com.

- >  **Burr & Forman LLP** announced that **Kathryn Y. Bouchillon** was promoted to **partner**. Bouchillon is a member of the transactional group, focusing on general corporate work, taxation, economic development and estate and tax planning. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

- > **Lewis Brisbois Bisgaard & Smith LLP** announced that **Bradley Rowlen** was promoted to **partner**. Rowlen's practice areas include product liability, health care, professional liability, transportation and commercial litigation. The firm is located at 1180 Peachtree St. NE, Suite 2900 Atlanta, GA 30309; 404-348-8585; Fax 404-467-8845; www.lbbslaw.com.

- > **Johnson & Freedman, LLC**, announced that **January N. Taylor** was promoted to **partner**. Taylor manages the foreclosure processes for Alabama, Georgia, North Carolina, South Carolina, Tennessee, Mississippi and Virginia. In addition, she manages the firm's title department, which supports foreclosure, bankruptcy, REO and litigation in reviewing and clearing any title issues. The firm is located at 1587 N.E. Expressway, Atlanta, GA 30329; 770-234-9181; Fax 770-234-9192; www.jflegal.com.



Hart

Korn

Paine


Kilpatrick Townsend & Stockton LLP announced that **Cate Hart**, **Russ Korn** and **Jim Paine** were elected to **partnership** in Atlanta. Hart and Korn are members of the patent litigation team. Paine is a member of the commercial transactions team. The firm is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.

- > **Constangy, Brooks & Smith, LLP**, announced the promotion of **Carla J. Gunnin** to **equity partner** and **Leigh E. Tyson** to **partner**. Gunnin focuses her practice on labor relations

Gunnin

Tyson

law, occupational safety and health and mine safety and health administration matters. Tyson practices in all areas of labor and employment law with an emphasis on National Labor Relations Board issues. The firm is located at 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; www.constangy.com.

- >  **Smith Moore Leatherwood** announced that **Steven Henry** was elected a **partner** in the firm. Henry's practice focuses on business, product liability and catastrophic injury, health care provider defense, employment and real estate litigation. 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.

- > **The Hilbert Law Firm, LLC**, announced that **Cammi R. Jones** joined the firm's litigation department as **of counsel**. Jones' primary areas of practice include

business/corporate disputes, real estate disputes and transactional matters. The firm is located at 400 Perimeter Center Terrace NE, Suite 900, Atlanta, GA 30346; 770-551-9310; Fax 770-551-9311; www.hilbertlaw.com.

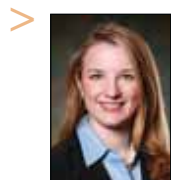


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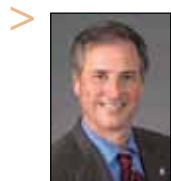
Atlanta trial attorneys **Andrew M. Beal** and **James D. Blitch IV** announced the formation of **Beal & Blitch LLP**. The firm represents a broad range of businesses and individuals in litigation

in federal and state courts, as well as other alternative dispute resolution matters. The firm is located at 1100 Peachtree St., Suite 640, Atlanta, GA 30309; 404-688-2700; Fax 404-688-2988; www.bbllp.com.



Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced that **Jodi D. Taylor** joined the firm as an **associate** in the Atlanta office. Taylor practices general business litigation, with a focus on construction and insurance litigation. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

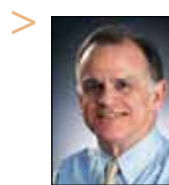
> **Conaway & Strickler, P.C.**, a firm specializing in criminal defense, announced the relocation of their Atlanta office. The firm is now located at 75 14th St., Suite 3000, Atlanta, GA 30309; 404-816-5000; Fax 404-816-5004; www.cs-lawyers.com.



> **Kenneth B. Hodges III** joined **Ashe, Rafuse & Hill, LLP**, as a **partner** in the litigation division. Hodges' practice focuses on commercial litigation, civil rights, government investigations and RICO matters. The firm is located at 1355 Peachtree St. NE, Suite 500, Atlanta, GA 30309; 404-253-6000; Fax 404-253-6060; www.asherafuse.com.



> **Krevolin & Horst** announced that **Zahra S. Karinshak** became a **member** of the firm. Karinshak focuses her practice on white collar criminal matters, corporate internal investigations and complex civil litigation. For the past eight years, Zahra served as an assistant U.S. attorney for the Northern District of Georgia. The firm is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 3250, Atlanta, GA 30309; 404-888-9700; Fax 404-888-9577; www.khlawfirm.com.



> **James Bates Pope & Spivey LLP** announced that **Phil Tribble** joined the firm as **of counsel**. Tribble's practice areas include mergers and acquisitions, general corporate and business law, taxation, agreements and resolution of owner disputes. The firm is located at 3399 Peachtree Road NE, Suite 810, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; jbpslaw.com.

> **Annette Kerlin McBrayer** joined **Coleman Talley LLP** as **of counsel**. McBrayer was previously senior counsel with Epstein Becker & Green where she practiced in the area of real estate litigation. She continues to have a practice that emphasizes title insurance and claims as well as all facets of real estate-related litigation. The firm is located at 7000 Central Parkway NE, Suite 1150, Atlanta, GA; 770-698-9556; Fax 770-698-9729; www.colemantalley.com.

In Alpharetta



> **Weissman, Nowack, Curry & Wilco, P.C.**, announced that **Tammy Skinner** was named **partner**. Skinner manages the firm's North Fulton residential closing office. With substantial experience closing residential real estate transactions, she has counseled clients on many types of complex transactions, including new or existing home purchases and sales, refinances and tax free real estate exchanges. Prior to joining the firm, Skinner was a litigator for 11 years. The firm is located at 555 N. Point Center E, Suite 175, Alpharetta, GA 30022; 404-279-4040; Fax 404-279-4140; www.wncwlaw.com.

In Columbus

> **Hatcher, Stubbs, Land, Hollis & Rothschild, LLP**, announced that **Sarah Hart Sillitto** became a **partner** of the firm. She practices with the firm's litigation group combining general litigation with a focus on representation of educational entities. The firm is located at 233 12th St., Suite 500, Columbus, GA 31901; 706-324-0201; Fax 706-322-7747; www.hatcherstubbs.com.

> **Edward P. Hudson, W. Perrin Nicolson** and **Steven W. Ray** announced the formation of **Hudson, Nicolson & Ray, LLC**. **D. Nicholas (Nick) Stutzman** and **Robert P. (Peyton) Turner** are **associates** with the firm. The firm practices primarily in the areas of real estate, wills and probates. The firm is located at 1921 Whittlesey Road, Suite 110, Columbus, GA 31904; 706-317-3440; Fax 706-317-3441; www.hnandr.com.

In Gainesville



Collins & Csider, LLC, announced that **Ari Mathé** joined the firm as an **associate**. Mathé practices in the areas of criminal, juvenile and domestic law. She previously spent six years serving the community as an assistant public defender for the Northeastern Circuit. The firm is located at 332 Washington St., Suite 204, Gainesville, GA 30501; 678-989-0555; Fax 678-989-0550; www.collinscsider.com.

In Macon



Sell & Melton, L.L.P., announced that **Hon. Lamar W. Sizemore Jr.** joined the firm as **of counsel**. He practices primarily in the areas of mediation and personal injury. **Susanna Gwen Patterson**, **Michael S. Wilensky** and **Lauren N. Harris** joined the firm as **associates**. Patterson practices primarily in the areas of taxation and estate planning. Wilensky and Harris engage in general civil practices. The firm is located at 577 Mulberry St., Suite 1400, Macon, GA 31201; 478-746-8521; Fax 478-745-6426; www.sell-melton.com.

In Marietta



Andrew W. Jones, P.C., announced that **Matthew Chase Swanson** joined the firm as an **associate**. Swanson represents clients involving personal injury, motor carrier liability and premises liability. The firm is located at 701 Whitlock Ave. SW, Building J, Suite 44, Marietta, GA 30064; 770-427-5498; Fax 678-324-5801; www.awjoneslaw.com.

In Roswell



Krista Koningsor was sworn in as **solicitor** of the city of Roswell. Koningsor was appointed by Mayor Jere Wood with the approval of the City Council. She is the fourth person ever to hold this office. The Solicitor's Office is located at 38 Hill St., Roswell, GA 30075; 770-641-3727; www.roswellgov.com.

In Alexandria, Va.



The American Bankruptcy Institute (ABI) announced that **Amy A. Quackenboss** was appointed as **deputy executive director**. Quackenboss joined ABI from Hunton & Williams, LLP, where she practiced as counsel in the firm's bankruptcy, restructuring and creditors' rights group. The American Bankruptcy Institute is located at 44 Canal Center Plaza, Suite 400, Alexandria, VA 22314; 703-739-0800; Fax 703-739-1060; www.abiworld.org.



(Left to right) Allegra Lawrence-Hardy, Justice Leah Ward Sears, Bryan Cavan, Paula Frederick and Karlise Grier at the ABA's Annual Meeting in February. Sears was the recipient of the ABA's Spirit of Excellence Award, which celebrates the efforts and accomplishments of lawyers who work to promote a more racially and ethnically diverse legal profession.

In Chattanooga, Tenn.



Patrick, Beard, Schulman & Jacoway, P.C. announced that **Michael A. Anderson**, formerly of Maddox & Anderson PLLC, joined the firm as a **shareholder**. The firm is located at 537 Market St., Suite 202, Chattanooga, TN 37402; 423-756-7117; Fax 423-267-5032; www.pbsjlaw.com.

In Columbia, S.C.



Williston Financial Group (WFG) National Title Insurance Company named **Clinton Yarborough** its **agency state manager/counsel** for South Carolina. Yarborough's role is to grow WFG National Title's presence in South Carolina, with an emphasis on recruiting and serving as a resource for agencies there. WFG National Title is located 2711 Middleburg Drive, Suite 206, Columbia, SC 29204; 803-799-4747; Fax 803-779-4443; www.willistonfinancial.com.

In Virginia Beach, Va.



Williams Mullen announced that **Joel R. Nied**, a partner in the firm's corporate section, was named **co-chair** of the firm's long term care industry service group. A significant portion of Nied's corporate practice relating to mergers, acquisitions and debt financings involves the long term care industry. The firm is located at 222 Central Park Ave., Suite 1700, Virginia Beach, VA 23462; 757-499-8800; Fax 757-473-0395; www.williamsmullen.com.

In Taipei, Taiwan



Kilpatrick Townsend announced the opening of its office in Taipei, Taiwan. The office is located at 129-131 Min Sheng East Road, Sec. 3, Suite 702, Taipei 10596; +886 2 8175 6601; Fax +886 2 6602 1422; www.kilpatricktownsend.com.

The Case of the Disappearing Client

by Paula Frederick

Bad news, boss," your investigator announces as she enters the office. "Our client has disappeared. His condo is empty and there's a 'For Sale' sign out front. The mailbox is stuffed with unclaimed mail—including all our letters! No wonder we haven't gotten any response!"

"He must have moved. What else have you tried?" you ask.

"Everything," your investigator says, consulting her notebook. "We already confirmed he lost his job a couple of months ago. The condo is in foreclosure and will be sold next month. We get a bounce-back message on his e-mail address. I've called his home and cell numbers, and they are both disconnected. The 411 service doesn't have a new listing in his name. I ran him through the Accurint® database, tried that new WhereIsHe? site and Googled him without success. I've even tried 'friending' all the Rusty Jeffersons on Facebook. No luck."

"Well he can't say we didn't try to track him down," you say in amazement. "It's a shame, though. The insurance company finally made an offer in his case, and I can't find him to tell him about it."

"Can't we just accept the settlement?" your investigator asks. "He'll probably be grateful!"

"Well," you say doubtfully, "maybe I can stall them for a while. He might turn back up."

What do you do when a client goes missing?


First, you try to find him. Bar Rules don't require a personal visit to the home of a missing client, but we do expect that a lawyer will make a reasonable effort to locate the client. If snail mail, e-mail and telephone calls do not work, you may be able to find the client using free or for-pay Internet resources.

It may also be "reasonable" to ask friends, family members, neighbors or employers to get a message to



a missing client, when doing so doesn't violate the client's right to confidentiality. Hiring an investigator to search for the client is above and beyond the requirements of the Rules, but could be worth it if the matter is sufficiently weighty.

And no—you can't just settle the case and hope the client turns up. Rule 1.2(a) requires that a lawyer obtain authority from the client *before* settling a case. Unless the client has previously indicated that this particular settlement amount would be acceptable and given you authority to accept it, you may not do so in the client's absence. Of course, when you obtain advance settlement authority, it would be best to put it in writing.

You can't have a client-lawyer relationship without communication. Although it hurts to leave a good offer on the table, ultimately you may have to withdraw from representation if you cannot find the client. 



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

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*New York Law Journal and Legal Intelligencer Polls, 2010; Harvey Research Study, 2010

Discipline Summaries

Dec. 9, 2010 through Feb. 15, 2011

by Connie P. Henry

Voluntary Surrender/Disbarments

Pat Eugene Belcher II

Marietta, Ga.

Admitted to Bar in 1985

On Jan. 10, 2011, the Supreme Court of Georgia disbarred attorney Pat Eugene Belcher II (State Bar No. 047230). The following facts are admitted by default: Belcher was retained by a client on a contingency fee basis to represent her in an automobile accident case. On Jan. 27, 2007, Allstate Insurance Company settled the case on behalf of its insured by sending a settlement check in the amount of \$12,500 to Belcher, payable jointly to Belcher and his client. Belcher did not tell his client about the settlement check, but negotiated the check and kept it for his own personal use. Belcher later admitted to his client that he had kept the money. After the client filed a grievance and Belcher did not file a response to a subsequent Notice of Investigation, Belcher was interim suspended on Aug. 6, 2009. He also received letters of formal admonition in 2005 and 2006.

Sandra M. Fuller

Atlanta, Ga.

Admitted to Bar in 2002

On Jan. 10, 2011, the Supreme Court of Georgia accepted the Voluntary Surrender of License of attorney Sandra M. Fuller (State Bar No. 128758). Fuller was convicted in the Superior Court of Gwinnett County of 10 counts of theft by taking and was sentenced to five years on probation.

Nina A. Lambert Roberts

Atlanta, Ga.

Admitted to Bar in 1994

On Jan. 24, 2011, the Supreme Court of Georgia disbarred attorney Nina Lambert Roberts (State Bar No. 608815). Roberts, who was on interim suspension since Sept. 4, 2008, acknowledged service of four formal complaints in March 2010, but she failed to file an answer to any of them so the Court granted a default judgment.

All four cases involve Roberts accepting monetary payments from clients in immigration-related cases; agreeing to perform certain work on behalf of those clients; failing or refusing to perform that work; failing to advise the clients of the status of their cases; failing to respond to the clients' efforts to contact her; failing to refund unearned fee; failing to provide complete files to the clients and/or return their original documents (including, in one matter, the client's original passport); and failing to respond to the State Bar's Notices of Investigation. In aggravation of discipline the Court noted that Roberts received Investigative Panel reprimands in 1998 and 2004; that she abandoned each of those cases causing serious or potentially serious injury to her clients; that there were multiple offenses; and that those cases showed a pattern of neglect.

Samuel Warren Cruse

Augusta, Ga.

Admitted to Bar in 1988

On Feb. 7, 2011, the Supreme Court of Georgia disbarred attorney Samuel Warren Cruse (State Bar No. 000960). Cruse submitted a petition for voluntary discipline concerning two unrelated disciplinary matters. In the petition, Cruse made unconditional admissions of fact and conduct and requested a suspension of six months to one year. Cruse did not make the \$4,000 refund to the client in one of the cases as he pledged to do in the petition. The Supreme Court noted that Cruse, despite his unconditional admissions, argued to the Court that for the most part he was not at fault in his handling of either client matter. Justices Benham and Melton dissented.

Suspensions

Arthur F. Millard

Doraville, Ga.

Admitted to Bar in 1986

On Jan. 10, 2011, the Supreme Court of Georgia ordered that attorney Arthur F. Millard (State Bar No. 505990) be suspended for a period of three years with conditions

for reinstatement. Millard represented a client concerning the client's conviction in municipal court for a city building permit violation. The client was fined \$400. Millard challenged the conviction in superior court. The superior court found Millard's pleadings to be frivolous and imposed monetary sanctions against Millard and the client, jointly and severally. Millard did not advise the client to seek other counsel or advice in light of the sanctions order. Millard sought review in the Court of Appeals and the Supreme Court, seeking relief for himself and the client concerning the sanctions, as well as the client's conviction. The appellate courts denied review. The client then discharged Millard and told him to take no further action on her behalf. The sanctions issued were ultimately settled and, under the terms of a consent order, the lawyer and the client agreed to pay the city what by then totaled \$26,000 in sanctions and not to seek any further relief regarding either the sanctions or the client's conviction. Nevertheless, in defiance of the client's instructions and the terms of the consent order, Millard sought review of the consent order in the Supreme Court, which again denied review.

Douglas Liddell Kirkland

Ocala, Fla.

Admitted to Bar in 1993

On Jan. 24, 2011, the Supreme Court of Georgia suspended attorney Douglas Liddell Kirkland (State Bar No. 423655) until he can demonstrate that he has been reinstated to the practice of law in Florida. The Florida Supreme Court imposed an emergency suspension based on evidence that Kirkland was misappropriating assets from his attorney trust account.

Lynn McNeese Swank

Stockbridge, Ga.

Admitted to Bar in 1975

On Jan. 24, 2011, the Supreme Court of Georgia suspended attorney Lynn McNeese Swank (State Bar No. 498450) from the practice of

law in Georgia pending the outcome of felony criminal charges in the Superior Court of Fulton County.

Tony Eugene Mathis

Stone Mountain, Ga.

Admitted to Bar in 1997

On Feb. 7, 2011, the Supreme Court of Georgia suspended attorney Tony Eugene Mathis (State Bar No. 477066) from the practice of law in Georgia for 12 months *nunc pro tunc* to March 12, 2010, with conditions for reinstatement. A client hired Mathis in July 2008 with regard to an action for modification of child custody and support. The client paid him \$2,000 for the representation. Mathis did not file an action for modification on the client's behalf until February 2009, and he failed to communicate with the client regarding the action, despite the client's attempts to contact him. He abandoned the action without just cause and caused the client to suffer worry and concern regarding the status of his case. After the client discharged him, he failed to return his client's files and unearned fees, although the client requested that he do so. Mathis also failed to respond to the Notice of Investigation and has been suspended as a result of that failure since March 12, 2010. Mathis submitted that his misbehavior stemmed from depression. The Court found in mitigation that Mathis had not previously been suspended; that he was coopera-

tive in the disciplinary proceedings; that his misconduct was in part the result of mental or emotional difficulties; that he took responsibility for his actions, sought help for his condition; and that he is remorseful for his conduct. Prior to reinstatement Mathis must prove to the State Bar that he has repaid his client \$2,000 and that he has obtained certification from the Lawyer Assistance Program that he is fit to return to the practice of law. Justices Thompson and Nahmias dissented.

Review Panel Reprimands

Eric Shapiro

Atlanta, Ga.

Admitted to Bar in 2000

On Jan. 10, 2011, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of attorney Eric Shapiro (State Bar No. 637795) and ordered that he be administered a Review Panel reprimand in regards to two disciplinary matters.

Shapiro was retained to represent a client in connection with a dispute between the client and various contractors over renovation work done at the client's house. Shapiro filed suit and a mediated settlement was reached in April 2007 that required the client to pay the bills of the two subcontractors and take other actions within 45 days. Judgment was entered

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

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An Attorney's Attorney

against Shapiro's client after the contractor filed suit to enforce the settlement when the subcontractors were not paid. In August 2007 Shapiro contacted the subcontractors' counsel to ascertain the amounts owed the subcontractors.

With respect to the second matter, Shapiro was retained by a client to resolve a real property dispute between the client and the client's brother. The client wanted to resolve the dispute by having his brother transfer certain property to him and told Shapiro that three prior lawyers had been unsuccessful in achieving a resolution. Shapiro and the client had a difference of opinion as to what strategy to use, with Shapiro disagreeing with the client's desire to file a Quiet Title action. Shapiro ultimately withdrew. After the client filed his grievance, Shapiro sent him a full refund and the client asked that his grievance be withdrawn.

In mitigation, Shapiro stated that he lacked a dishonest or selfish motive; with respect to the second matter, he made a timely good faith effort to rectify the consequences of his misconduct and make the client whole; he made full and free disclosures; and he displayed a cooperative attitude toward the disciplinary proceedings. He stated that he received an Investigative Panel reprimand in 2008 and letters of admonition in 2002 and 2006.

The State Bar stated that its investigation showed that Shapiro was not as attentive to detail as he should have been. It also stated that Shapiro has attended a session

of ethics school and that he has hired staff to assist in managing his practice.

Karen Suzanne Wilkes

Rome, Ga.

Admitted to Bar in 1990

On Jan. 10, 2011, the Supreme Court of Georgia ordered that attorney Karen Suzanne Wilkes (State Bar No. 759437) be administered a Review Panel reprimand. The following facts are admitted by default: The Georgia Public Defenders Standards Council (GPDSC) appointed Wilkes in October 2005 to represent a client regarding his Motion for New Trial following his criminal conviction. Although Wilkes investigated and prepared for the matter and moved for a continuance of the hearing on the motion, she returned the file to the GPDSC in March 2006 and never informed the Court or the client that she no longer represented him. In August 2006, the Court denied the client's Motion for New Trial and mailed a copy of the order to Wilkes, but Wilkes never informed the client about the order. The Court found in aggravation of discipline that Wilkes received an Investigative Panel reprimand in 2006.

Reinstatement Denied

Joyce Marie Griggs


Savannah, Ga.

Admitted to Bar in 1992

On Jan. 18, 2011, the Supreme Court of Georgia denied reinstatement of attorney Joyce Marie Griggs (State Bar No. 312109). Griggs was disbarred in 2004

after she was barred from practicing in the U.S. District Court for the Southern District of Georgia. Griggs contended that because the Supreme Court of Georgia subsequently determined that Rule 9.4 was inapplicable to action taken by a federal district, she was entitled to automatic reinstatement. The Court concluded that reinstatement was not warranted because Rule 9.4 was not the sole basis for her disbarment. More than five years have passed since the disbarment and therefore Griggs is eligible to seek reinstatement under the Court's Rules Governing Admission to the Practice of Law. If Griggs seeks reinstatement under these Rules, her application will be considered in conjunction with a disciplinary proceeding that was pending against her at the time of her disbarment and was moved to inactive status.

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 Dec. 8, 2010, four lawyers have been suspended for violating this Rule and two 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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Personal Productivity Tips to Keep on Track

by Natalie R. Kelly

On a daily basis, lawyers around the state contact the Law Practice Management Program for advice on how to best run their practices and become more efficient. Sometimes the advice is directed toward inefficiencies inherent in the personal work styles and habits of individual lawyers. To assist with getting more work done and working smarter rather than harder, below is a list of some personal productivity tips that can help a busy lawyer get through a busy day.

Manage Incoming Communication and Information

Make sure you have made a decision and set a policy for dealing with voicemail messages, office visitors, in-person meetings, office e-mail and other interactions with clients and related parties where information is gathered. Getting a handle on the information that you receive on a daily basis can go a long way toward making the most of your day. Even if you think you have a good system for dealing with incoming communica-

tion and information, stop and truly examine whether or not the systems work well when bombarded with various interruptions. Adjust your systems accordingly so that you can stay on track no matter how busy you become.

Advanced Calendaring

Using a practice management software system or general calendaring program will help you stay on top of appointments and deadlines. Take advantage of advanced scheduling techniques in practice managers by setting up templates for the creation of items that occur repeatedly in the same types of cases. Once the templates have been set up, you won't have to take the time to manually write down each task or appointment with every new or changing case.

Get Organized at Your Workspace

If you are unable to see the top of your desk or are having trouble finding a file, it may be time for you to stop and organize your work space. By moving files to a centralized storage area (not your office floor or car's backseat), you should be able to make some general storage space for the remaining administrative items and personal belongings in your space. Only bring a file that you are working on to your office if you are actually working on material in the physical file, and promptly re-file the matter once you're done with it. Remember, an automated practice management software system can help ease the need for having physical files in your office at all.


Know Your Daily Worth

Don't fall into the trap of not tracking your time in detail as you work on client matters. Understanding the value of your day can help you better gauge not only your potential profitability, but also shape how you should manage your time during the workday. Again, automated software systems are available to assist lawyers with making this sometimes onerous task more tolerable. Plus, the act of writing out or dictating your time can keep you freshly abreast of the activity in the matters on which you work.

Set Up Remote Access

Working from the office is a reality for a very busy lawyer. So maximizing the way you access your office systems remotely can make a difference in how much time you're spending working or actually trying to connect. Monitor your systems on a regular basis

and change to faster connections, where possible. There are differences with how data is accessed over the Internet and how information is processed and displayed across the various remote access programs.

These tips are a just a preview of some of the advice that will be given as a part of this year's annual Law Practice Management CLE program, "Who Knew?" Tips and Advice for Building a Better Practice." The program will be held on April 29 and an agenda and registration information is available at www.iclega.org or on the Law Practice Management page of the State Bar's website at www.gabar.org. 



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

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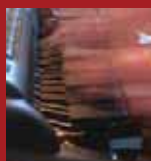
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More Than Your CLE Destination

by Kindall McLendon

Whether you are coming to the State Bar's Coastal Georgia Office for a CLE, deposition or section meeting, while you are already spending time in the city, why not explore? Here in Savannah, dramatic architecture from centuries ago mingles with trendy downtown boutiques. You can get lost in numerous art galleries, scared silly on a ghost tour or find yourself transported back in time during a historical tour. Whether you're looking for a laid-back weekend or seeing and doing as much as possible, Savannah is just the right speed for singles, couples and families.

When in Savannah, indulge in authentic, world-famous Southern fare. One of our most famous restaurants is The Lady & Sons in the historic district; you will have an experience you will never forget. Enjoy home cooking, Southern hospitality and a good time. The Pirates' House is another of Savannah's amazing restaurants. The tunnel beneath the building that leads to the river is actually believed to be haunted by the pirates that used to shanghai unwary men who had just stopped in for a drink. Captain Flint is also believed to haunt the Pirate House, as he is said to have died in an upstairs room. The Pirate House is now known for



more than pirate hauntings—they serve delicious food in 15 unique dining rooms. If you are looking for fine dining, Elizabeth's on 37th is the place for you. The restaurant was opened in 1981, by Chef Elizabeth Terry and husband Michael, in an elegant 1900s southern mansion. Kelly Yambor, the executive chef, makes full use of fresh coastal seafood, local produce and the restaurant's own house-grown herbs and edible flowers. If you go on one of the Foodie tours of Savannah, you are likely to see one or all of these amazing restaurants.

If you are pressed for time or just want a small taste of Savannah's history, one of the many tours is the way to go. They can accommodate you with historical horse drawn carriage tours or you can join one of the larger trolley tours. You can travel back in time, or through the sites of various movie scenes, such as "Forest Gump." The most exciting though is climbing into a hearse right at dusk for the ghost tour! In 2003, Savannah was named America's most haunted

city by the American Institute of Paranormal Psychology.

If historical tours are not your thing then maybe you would like a few of the more cultural activities. Savannah is the home of the Telfair Museums, which include the museums' three locations—two National Historic Landmarks, the Telfair Academy and Owens-Thomas House, and a contemporary building, the Jepson Center—all located within easy walking distance of one another in Savannah's historic district. A single admission fee allows you to access all three, which you can visit at your leisure, over a weeklong period.

Savannah is also home to Juliet Gordon Low's birthplace. As the founder of the Girl Scouts of America, her home has been transformed into a museum. Discover how she founded the Girl Scouts in 1912 and became one of the most significant American women of her time.

If you are a mariner, you will be interested in the Ships of the Sea Maritime Museum. Founded in 1966, its exhibits include ship models, paintings and maritime antiques. It is housed in the Scarbrough House, built for William Scarbrough. Scarbrough was a shipping merchant, born in North Carolina and educated at the University of Edinburgh, who came to Savannah in 1802, at the age of 26. In 1818, at the zenith of his wealth and importance, he became a principal investor and president of the Savannah Steamship Company. In November 1820, 44-year-old William Scarbrough, in the midst of an emotional and physical collapse, was declared an insolvent debtor by the court and his house and furnishings were sold. In 1995, after a period of vacancy, the building was acquired by Ships of the Sea Maritime Museum and restoration began.

If you are interested in performing arts, Savannah is also home to many local theaters such as the Lucas, Trustees and Historic




Savannah Theater. The Lucas Theatre for the Arts has wonderful productions, both by local companies and companies that travel from around the world. Broadway in Savannah is currently being hosted at the Savannah Civic Center and includes shows such as "Mamma Mia!" and "Grease" this April.

If you are thinking that your cultural side has been satisfied, and you're ready to move on to the nightlife, we have plenty of that too! Savannah has an active nightlife. Hear jazz and blues or bluegrass. Go salsa or swing dancing. Sing along in a piano bar or invite your friends along for a little karaoke. If you are in the mood for a calmer evening, you can sit in City Market and enjoy local musicians. Whatever the mood, Savannah's nightscape can accommodate you.

One attraction that cannot go without mention is Tybee Island and the beach. Located 30 minutes east of Savannah, this small barrier island boasts a wide, 3-mile long beach that's backed by beautiful sand dunes and is perfect for sunbathing, people-watching and frolicking in the waves of the Atlantic Ocean. The island's south-end pier and pavilion is a splendid venue for strolling above the ocean and fishing. Although many people are lured to Tybee mainly because of what it provides in the way of recreation and relaxation, those with a love of history won't be disappoint-

ed. Tybee offers: Fort Screven, The Tybee Island Lighthouse (dated 1773), an intriguing museum, and Fort Pulaski National Monument which is just west of the island on Highway 80.

The State Bar has arrangements with two hotels in downtown Savannah, The Hyatt Regency and The Avia, which opened last year. There are also many bed and breakfasts in the area. Regardless of what you choose, you can rest assured that you will be treated to all the southern hospitality and charm Savannah has to offer.

Since her founding in 1733, Savannah has been one of America's favorite destinations for business and pleasure. Located in the heart of Coastal Georgia's low country, Savannah is a city of rare natural beauty, of azaleas in bloom and lovely oaks draped with Spanish moss. We haven't even begun to scratch the surface of her many attractions and charms in this short article. So when you are discussing the location of your next section meeting, or just want to get away, think of Savannah and your State Bar Coastal Georgia Office. 



Kindall McLendon is the office administrator at the State Bar of Georgia's Coastal Georgia Office in Savannah and can be

reached at kindallm@gabar.org.

Fine Tune Your Practice With Sections

by Derrick W. Stanley

As the number of sections grows, the ability for you to fine tune your practice grows also. As of the Midyear Meeting in January, the State Bar now has 44 sections ranging from Appellate Practice to Taxation Law, Creditors' Rights to Intellectual Property Law and Animal Law to Professional Liability. With this vast array of offerings, Georgia lawyers have the ability to network with colleagues in some very specialized sections.

Many sections offer programming through lunch and learn programs or through a collaboration with the Institute of Continuing Legal Education in Georgia (ICLE). ICLE offers programs at various locations throughout the state and the country. Half and whole day programs can cover topics from "nuts and bolts" to convocations on professionalism. ICLE partners with the sections to ensure the speakers are top rate and the materials are in-depth and complete. Additionally,



ICLE works with sections to produce institutes. The institutes are usually held in a resort environment and allow time for networking, socializing and acquiring a full year of CLE. The Family Law, Real Property Law, Entertainment and Sports Law and General Practice and Trial sections are only a few of the groups that work year round to ensure their institute is a complete success and offers current information that is valid to their specialized practice areas.

State Bar and ABA Government Attorneys Sections Team Up

by Charles "Chuck" Olson

The Government Attorneys Section of the State Bar of Georgia partnered with the Government and Public Sector Lawyers Division of the American Bar Association to present two programs at the ABA Midyear Meeting held in Atlanta, Feb. 11-12. The program was attended by 65 lawyers from Georgia and throughout the United States.


The first session, "Ethical Considerations in Public Sector Law," focused on unique ethical issues confronted by public lawyers using an entertaining, interactive format. Panelists for this session included DeKalb County Attorney Lisa Chang, State Bar of Georgia General Counsel Paula Frederick, U.S. Magistrate Pamela Mathy of the Western District of Texas, General Counsel of the Prosecuting Attorneys Council of Georgia Chuck Olson and American Bar Association Fellow Sharon Pandak of Prince William County, Va. The panelists dramatized short, illustrative hypothetical scenarios including special conflicts of interest for former and current government officers and employees; trial publicity; responsibilities of supervisory lawyers; competence; organization as a client; and responsibilities of subordinate lawyers, with a discussion period following each skit.



Photo by Janet Coulter

E-Discovery, public records and metadata were the subjects of the second program. This session focused on recent cases and ethics opinions concerning the duty to preserve electronically stored information. Serving on the panel were Mark Armitage, deputy director of the Michigan Attorney Discipline Board; David W. Degnan, Koeller Nebeker Carlson & Haluck, LLP, in Phoenix, Ariz.; Judge Herbert B. Dixon Jr., Superior Court of the District of Columbia; and Murray J. Weed, Freeman Mathis and Gary LLP in Atlanta.

A current list of section-sponsored events can be found at www.gabar.org/sections. ICLE posts their events at www.iclega.org and in the *Georgia Bar Journal*. There are several institutes coming up over the next few months and are worth investigating, especially if you would like to grow or expand your practice area.

Section membership provides the most current information and the first chance to register for events and secure lodging, if necessary. Sections offer members the opportunity to have resources available that will help solidify your practice. 



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

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Fastcase Authority Check Report

by Sheila Baldwin

Since the beginning of 2011, all Georgia attorneys have enjoyed free access to Fastcase for their legal research. Many have taken advantage of the live training that has been offered at the three State Bar locations. Upcoming sessions, both live and web based, are posted on the Bar website, www.gabar.org, under “Bar News & Events.”

One of the first things attorneys want to know about Fastcase is “will it shepardize?” Since Frank Shepard invented the legal citator, attorneys have depended on legal research aids, both in print and now online, to compile authoritative cases that have cited their cases, and then to determine if they are good law. The term “shepardize” has become a generic term to describe the process of learning if a case or statute is still good law. It implies that the system one uses to research the law is supported by a sophisticated method of analysis by a large team of attorneys and experts who analyze cases and attach symbols to define the current status of the case or statute. Lexis and West are the two companies who offer “shepherdizing” with in-depth analysis.


Authority Check is the name of Fastcase’s automatic integrated citation analysis tool. It is designed to help users locate and analyze subsequent cases. Fastcase makes it known that this tool is “not a citator; it does not include editorial information telling you whether a case is still good law and it does not check for subsequent cases overruling your case.” For members’ convenience they offer a link to Lexis and West for pay-per-cite options.

What Authority Check does offer is the ability to find seminal cases by sorting search results according to the number of subsequent citations. This tool also generates a list of later citing cases to find related authority on your topic as well as prioritizing your research by identifying the most frequently cited cases on your list of results.

Using search terms, (*security OR pledge*) and *assignment/10 exemption* (see fig. 1), in the Georgia federal and state jurisdictions, 30 cases appear in the results page. On the right side of the screen, the number of times a case is cited is listed under these labels, “these results” and “entire database” (see fig. 2). By clicking on either of these terms, the most frequently cited cases are brought to the top of the screen. *Elzea v. National Bank of Georgia*, 570 F.2d 1248 (C.A.5 (Ga.), 1978) displays showing 10 citing cases using the search terms and 32 cited generally. Open the case by clicking on the title and notice the Authority Check at the top left of the page. Click on the hyperlinked number to generate the Authority Check Report with a list of later citing cases. The report will load in your browser as a new tab or window (see fig. 3).

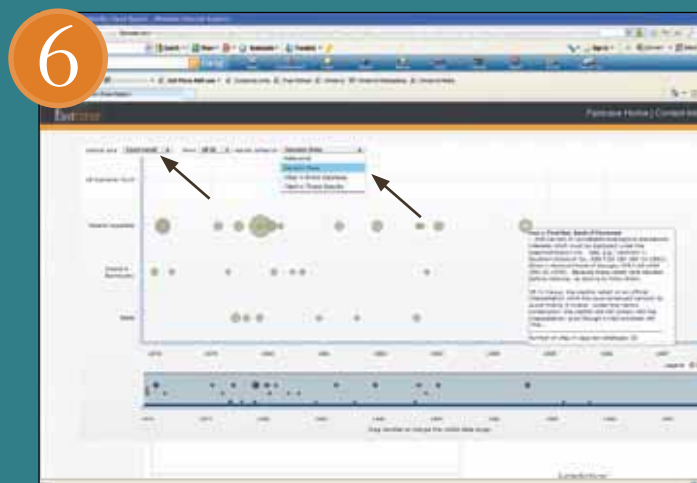
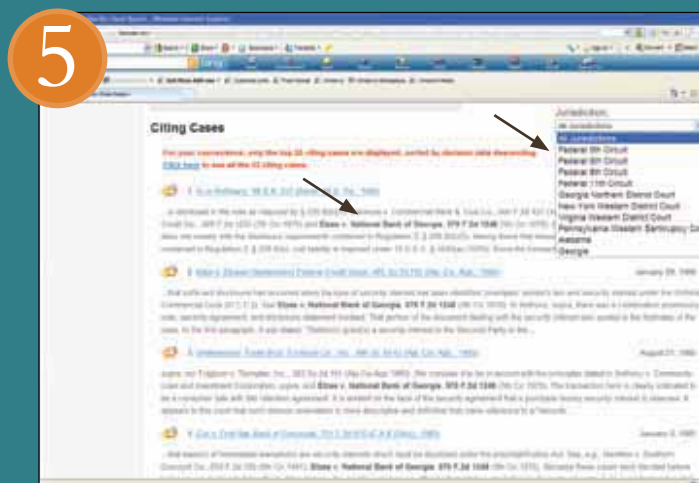
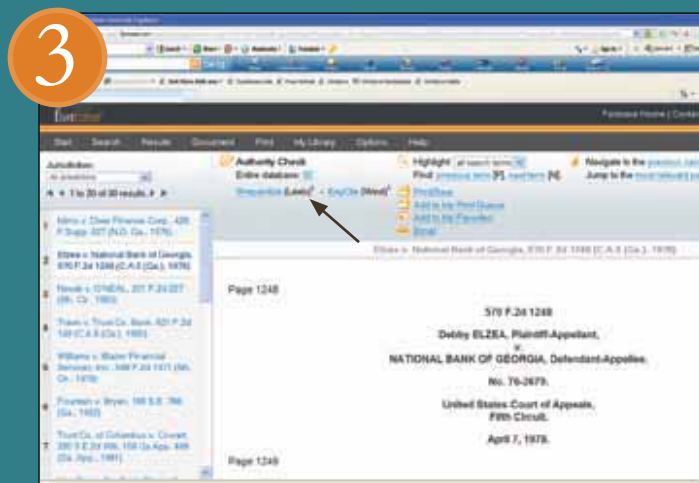
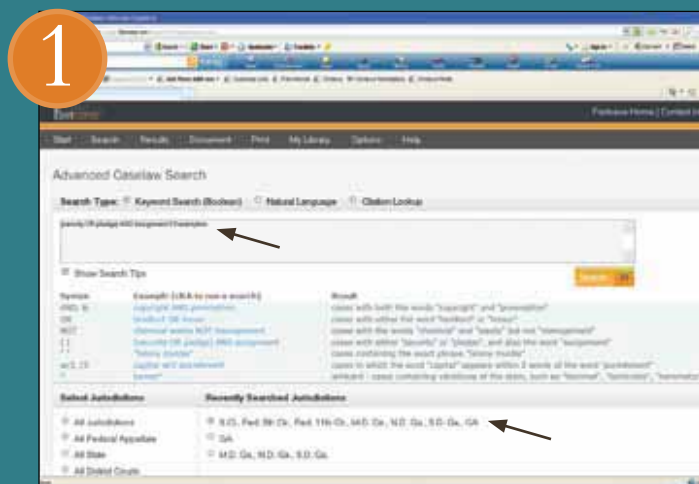
The report pulls together several useful pieces of information in an interactive format. View the full case by clicking on “view document.” The interactive timeline is viewable and expandable from the report by clicking the arrow on the upper right side of the timeline (see fig. 4). Adjacent to the timeline is a summary of how many times the case has been cited as well as how many times it is cited by jurisdiction with the most recent decision date listed. The cases are also presented in a list view showing a relevant paragraph within the case so you can get an idea of how it is using your case as an authority. Select the “Jurisdiction” dropdown on the right side of the list to filter by court (see fig. 5).

Once a case is identified as useful to your case, you may continue to explore it using these same steps so that you can decide if it’s still good law and on point to your argument. Don’t forget, the interactive timeline is helpful to find relevancy, jurisdiction, highly cited cases and the latest case all within an easy to filter screen (see fig. 6).

As always, feel free to contact me at sheilab@gabar.org or 404-526-8618 or you may contact the Fastcase team directly at service@fastcase.com or 866-773-2782 if you are having any difficulty. 



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



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

FWIW: Why Writing Well Matters, Even in E-mail

by Karen J. Sneddon and David Hricik

Although communicating by e-mail is not new, the expanding use of digital devices, such as iPhones, iPads, Google Androids and BlackBerries, has continued to increase the speed and volume of electronic communications. With increased speed and volume comes the risk of error and misapprehension. This installment of “Writing Matters” provides some tips on how to communicate professionally on the information superhighway, even at today’s breakneck speeds.

To Hyphenate or not to Hyphenate?

There are many still-accepted ways to spell e-mail. Email, E-mail, email and e-mail are all possible options. Plausible justifications can be asserted for each one. The most commonly used are email and e-mail. We use the word “e-mail.”* The important point, though, is consistency: using some or all of the variants in the same email can be distracting. (See!)



Mind Your Manners

Whatever it says about social graces, lawyers today often check e-mail while meeting with other people. Doing so, however, leads to the risk of poorly worded, informal and incomplete replies. This immediacy can encourage vague messages that create confusion or which may unintentionally offend the recipient.

Worse, e-mail can become evidence, and when it does the poor choice of words or sloppy presentation can come back to haunt an attorney. E-mails are unintentionally (or intentionally) forwarded. Care should be taken not to include any informal or casual language that could later prove embarrassing.

To help avoid these problems, you should try to maintain a greater level of formality in e-mail than the average teen does in texting. One way to do this is to continue to use conventions of correspondence, such as a salutation and a closing. While the salutation may be informal, such as "good morning" or "hello," including a salutation may help you to instill a formal tone to the substance of the e-mail. Likewise, a closing before your signature block maintains the professional, formal tone of the communication.

Another point to remember is to use "please" and "thank you." In the rush, everyday manners sometimes disappear. Which would you rather your client remember your e-mails for: their kindly tone, or their informal, off-the-cuff nature?

Finally, the abbreviations common to text messaging or e-mail among friends should not be used in professional e-mail, even if those abbreviations would make the recipient LOL. Likewise, absent clear reason to do so, avoid using humor and sarcasm, because sometimes the recipient may not perceive the tone because of the written form of communication. Even emoticons can fail to convey a playful tone to a busy reader. ;-) AND DON'T WRITE IN ALL CAPS!!! It's difficult to read and is considered to be the electronic equivalent of shouting by many e-mail recipients.

Looks Matter

Consider the visual appearance of your e-mail. Though common now, reading information from a screen can still be more difficult than from a piece of paper, particularly to those of us in the older generations. Moreover, e-mail is read on various screen sizes, so consider how to structure and format the text to increase readability of the message. Headings and enumeration of points can help provide a visual structure. Also, text should be concise so that the reader need not scroll through a maze of dense text. Paragraphs should be short and to the point.

Proofread

Electronic gadgets positively encourage typos and other errors. From the small screen to the overly quick fingers (or thumbs), typos are a characteristic of e-mail exchanges. Reduce typos by proofreading



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The American Bar Association Members' Authority Trust Collective Trust (the "Collective Trust") has filed a registration statement including the prospectus for the "Prospectus" with the Securities and Exchange Commission for the offering of Units representing pro rata beneficial interests in the trust. The Collective Trust is established under the Uniform Trust Code. The Collective Trust is a retirement investment program sponsored by the ABA Retirement Funds in which lawyers and law firms who are members or associates of the American Bar Association, must state and limit law associations, and their employees that employees of certain organizations related to the practice of law are eligible to participate. Copies of the Prospectus may be obtained by calling (877) 947-2272, by visiting the Web site at the ABA Retirement Funds Website at www.abaretirement.com or by writing to ABA Retirement Funds, P.O. Box 1422, Boston, MA 02204-0422. This advertisement shall not constitute an offer to sell or the solicitation of an offer to buy, or a request of the recipient to submit an indication of interest in the Collective Trust, and it is not a recommendation with respect to any of the collective investment funds established under the Collective Trust. For each state, the law of the state of the Collective Trust is in effect. No state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction. The Prospectus is available through the State Bar of Georgia as a member benefit. However, this does not constitute an offer to purchase, and it is not a recommendation with respect to any security that is available through the Prospectus.

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carefully. For particularly important e-mails, quell the urge to immediately type and send the e-mail (or, more likely, reply to an e-mail). Instead, after composing the message, do something else for a few minutes. Then proof-read the e-mail once again before sending it. This write-pause-send approach also works to minimize ill-advised, immediate responses and the troublesome and potentially embarrassing use of "reply all" rather than just "reply."

What's it in Regards to?

All legal writing assumes a busy reader. Using a descriptive subject line helps readers immediately recognize the relevance of the e-mail. Don't fall, however, into the trap of including all relevant information in the subject line and leave the body of the e-mail empty.

To Attach or Not to Attach

Think before you attach a file. Big files may be blocked by an e-mail system and result in a delay in the receipt of the message. Moreover, an individual may be checking e-mail on a portable digital device that may be unable to open a readable version of the

attachment. Or, even if the attachment can be opened, the reader may be using a device with a very small screen and be far removed from a printer.

Keep Your Priorities Straight

Don't over use the high-priority option. Overuse of this can cause recipients to give all e-mails from the particular sender low priority—or none at all.

Tag, You're It


E-mail involves a swapping of responses. Because of the nature of e-mail, quick responses are expected. If at all possible, try to respond to e-mails within 24 hours. If you are delayed for more than one day, be sure to clearly reference the preceding e-mail in sufficient detail to prompt the memory of the ongoing discussion if it is not threaded below. This helps place the response in context.

Don't Forget a Useful Signature Block

Including a signature block with alternate means to communicate, including telephone and fax numbers, is helpful for the recipient.

Privacy

The immediacy and availability of e-mail is a powerful benefit. But never forget that e-mails are inadvertently forwarded or printed and left on printer trays. Think twice before including sensitive information in an e-mail, no matter how secure the transmission itself may be.

For more on e-mails, see Janis Fisher Chan, *E-mail: A Write it Well Guide*, and Philip Vassallo, *The Art of Email Writing*. 



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



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

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

**The Associated Press Stylebook recommends use of "e-mail."*

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Justice Robert Benham Community Service Awards

by Avarita L. Hanson

On Feb. 15, nearly 200 family members, friends and colleagues gathered in the auditorium of the State Bar to pay tribute to 10 special members of the profession. Two judges and eight attorneys were honored with the State Bar's top honor for community and public service at the 12th annual Justice Robert Benham Awards for Community Service. They were honored because they have served a variety of organizations and causes outside their judicial duties and professional obligations.

Each honoree was featured in a short video and presented with a specially-designed crystal sculpture award handed out by co-emcees, Patrise Perkins-Hooker, selection committee chair, and Avarita L. Hanson, executive director of the Chief Justice's Commission on Professionalism.

This year's event included unique remarks from the founder of this awards program, Justice Robert Benham, who related his childhood experience of doing the right thing even when the choice to do so was a difficult one. Youths in attendance were seen

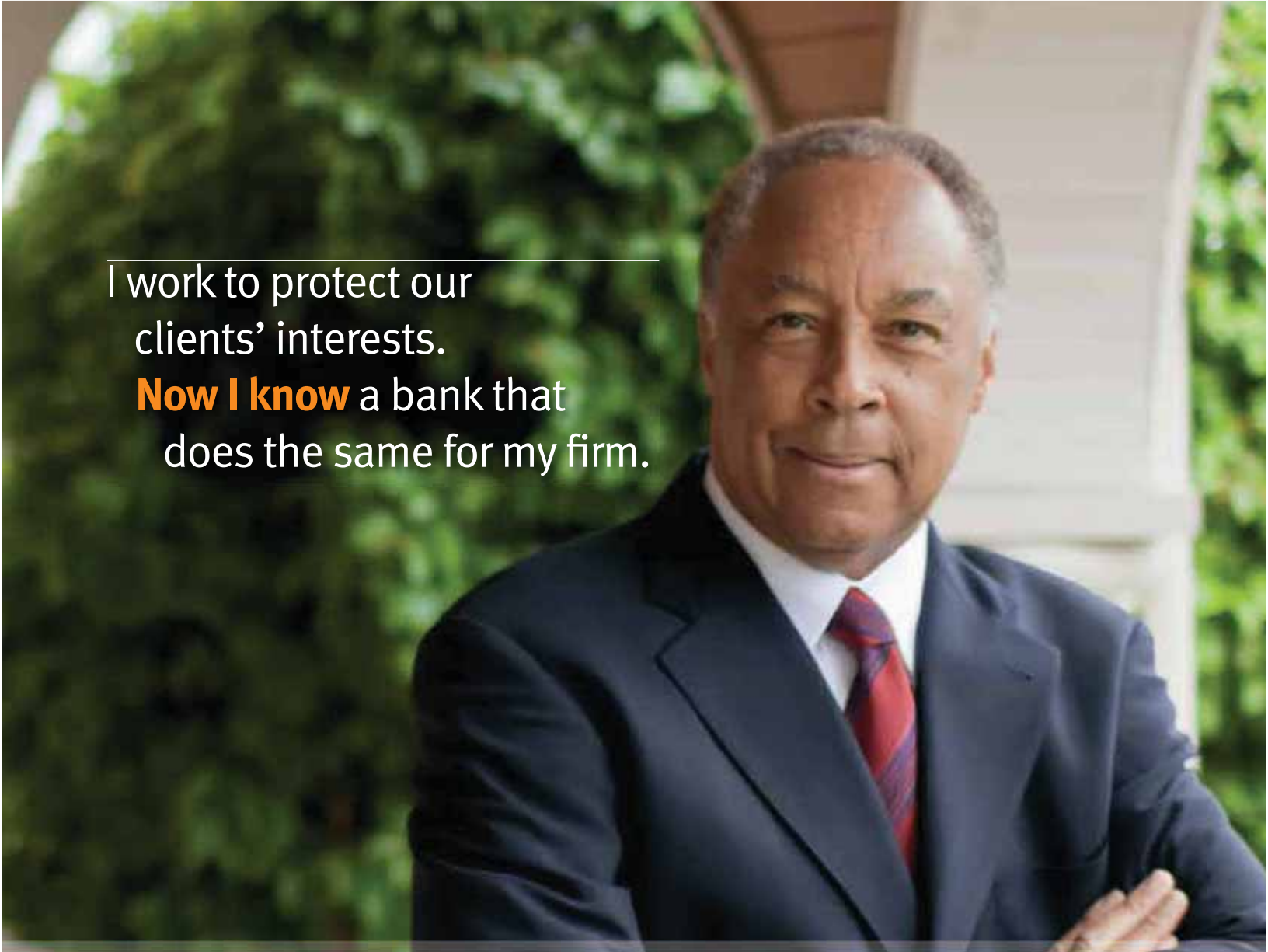


Guest Speaker Supreme Court of Georgia Justice David Nahmias (center) with recipient Eric A. Ballinger (left) and recipient Hon. M. Anthony Baker (right).

Photos by Don Morgan Photography

listening attentively as Benham related his returning a good sum of money he found and thereby learning the importance of doing right even when it might hurt you. Introducing Benham in his own way, WXIA-TV Finance, Consumer and Legal Editor, William "Bill" Liss, shared his insights into the character and life of Benham. Justice David Nahmias followed with words of inspiration and motivation in giving the "charge to serve" to those assembled that evening.

The Lifetime Achievement Award, the highest honor for community service given by the State Bar of



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(Front row, left to right) Honorees, special guests and emcees: D. Bradley Folsom, Judge Samuel D. Ozburn, Prof. Sarah L. Gerwig-Moore, Justice Robert Benham, Anne W. Lewis, Judge M. Anthony Baker and Howard E. Spiva. (Back row, left to right) William J. "Bill" Liss (WXIA-TV), Patrise Perkins-Hooker, Clarence Williams III, Vivica M. Brown, Eric A. Ballinger, Justice David E. Nahmias, George T. Brown Jr. and Avarita L. Hanson.

Georgia, went to **George T. Brown Jr.** of Jonesboro, who has practiced and served in the community for more than 45 years. A legend in the Clayton County legal and greater community, Brown helped launch the Clayton County Mock Trial Competition in 1984 at Jonesboro High School and served as its attorney-coach until 1993. This competition became the model for the state of Georgia, spawning other high school mock trial competitions. He has been a leader in his church, Jonesboro First United Methodist Church, for 45 years and has served in leadership positions with the Arts Clayton Board of Directors, YMCA Board, Civitan Club and Jodeco Homeowners Association. A past president of the Clayton County Bar Association, he served on the committee that oversaw the county's Indigent Defense Program.

The other nine honorees are highlighted below.

Hon. M. Anthony Baker, Juvenile Court Judge of Cherokee County, exemplifies the servant-judge in his native North Georgia Canton community. Baker serves as

assistant scoutmaster for Boy Scout Troop 124 in Holly Springs, as a judge of Cherokee County's Avery Elementary Fifth Grade Class Mock Trial Program and with the Towne Lake Optimist Club's annual Youth Oratorical Contest. He is an active member of the New Covenant Bible Church and serves on the board of the Cherokee County Sports Hall of Fame.

Eric A. Ballinger, principal with Ballinger & Associates in Canton, has demonstrated commitment to service in his community since starting to practice law. Attorney and church leader, Ballinger has been a dedicated member of the Cherokee County Historical Society, Cherokee County DUI Court and Canton Optimist Club. An Episcopal Priest, he has served in various capacities at the Good Shepherd Church, St. John's Anglican Church and St. Luke's Episcopal Church.

Vivica M. Brown, a Stone Mountain resident and now interim Atlanta deputy city attorney, has given superb service to a variety of organizations that give a unique voice to special needs children and

their families. A self-described "parent partner," and engaged in education advocacy, she serves the DeKalb Chapter of the National Alliance on Mental Illness, Dream Maker's Youth Foundation, Access and Resource Center of DeKalb County, Parent Leadership Institute of the National Association for the Education of African American Youth with Learning Disabilities and as a guardian ad litem with the Truancy Intervention Project.

D. Bradley Folsom, now practicing in Valdosta, has provided exemplary service in two South Georgia communities, first in Albany, then in Valdosta. Described as a "doer," in Albany, he was involved with the Easter Seals of Southern Georgia, Sertoma Club, Board of Ethics for the City of Albany and Leadership Albany Class of 2006. In Valdosta, Folsom has been engaged in and held leadership positions with the Greater Valdosta United Way, Azalea City Kiwanis Club, Stone Creek Property Owners Association, Park Avenue United Methodist Church, State YMCA of Georgia, Leadership Lowndes and Artesian City Sertoma Club.

Prof. Sarah L. Gerwig-Moore, is an assistant professor at Mercer University's Walter F. George School of Law. She is engaged in numerous civic activities to benefit the people of Macon and countless others. She serves as a member of the Macon-Bibb County Planning and Zoning Commission, College Hill Corridor Commission and is grants chair and a board member of the Central Georgia Affiliate of the Susan G. Komen for the Cure.

Anne W. Lewis, partner in the Atlanta law firm Strickland Brockington Lewis LLP, is an energetic community leader whose passion is for service that makes a difference and inspires her colleagues. She served as president of the St. Thomas More Catholic School Board of Education and its Parent-Teacher Organization, is a room mother, auction committee chair and concession stand volunteer. She chaired the Supreme Court of Georgia Committee on Civil Justice, and served on the boards of the Georgia Justice Center, Atlanta Lawyers Chapter of the Federalist Society for Law and Public Service, Georgia Association for Women Lawyers and the State Bar's Indigent Defense Committee. She is now general counsel for the Georgia Republican Party and organized Pocketbook Politics.

Hon. Samuel D. Ozburn, who serves on the Superior Court of the Alcovy Judicial District in Covington, admirably gives his time in service to the public and community both on and off the bench. A founding member of the Newton County Chapter of the Salvation Army in which he has been active for 29 years, Ozburn was instrumental in establishing its Covington building. He also helped create the Newton County Mock Trial Program, chairs the Elders of the Eastridge Community Church, has been active with the Kiwanis Club of Covington for more than 30 years and served as president of the Mental Health Association of Newton County and the Alcovy Bar Association.


Howard E. Spiva, Savannah attorney with the Spiva Law Group, has been engaged in numerous activities to protect and uplift the youth in his community. He founded the Justice for Children Foundation to promote community awareness of child safety issues through classes, events and collaborations with entities such as the Savannah Police Department. He also works with the Memorial Hospital Rehab Institute, Lawyers for Public Justice, Habitat for Humanity, Fraternal Order of Police, New Birth Christian Church, Savannah Elks Lodge, Aircraft Pilot Association, Masons Acadia Lodge #452 and Shriners Mobile Unit.

Clarence Williams III, a Warner Robins attorney with the Williams Law Group, has his finger on the pulse of the community and uplifts and motivates many young people. Through his fraternity, Alpha Phi Alpha, he volunteers in a wide range of activities for youths. He is a league coach with the Warner Robins Recreation Department, serves on the board for the Court Appointed Special Advocates of Houston County, volunteers with the READ Foundation and is an active member of the Sacred Heart Catholic Church.

"These individuals and countless other Georgia lawyers who volunteer their time and expertise in their communities bring great honor to our profession," said S. Lester Tate III, president of the State Bar of Georgia. These deserving Bar members have served a wide range of community organizations, government-sponsored activities and humanitarian efforts. Their fields of service include: youth athletics and mentoring programs, literacy programs, social and support services, church and religious activities, politics, promotion and support for legal aid programs, community development, health, education, sports, recreation and the arts. These awards recognize the commitment of Georgia lawyers to volunteerism, encourage

all lawyers to become involved in community service, improve the quality of lawyers' lives through the satisfaction they derive from helping others and raise the public image of lawyers.

The special evening continued with a reception for family and friends and featured jazz musician sounds of Eric Thomas. Guests lingered and networked, while watching replays of the video tributes to the honorees prepared by Vince "The Voice" Bailey of Vince Bailey Productions. Special thanks to the volunteers for the evening: Alexandra M. Cornwell, Angela M. Hinton, Mary K. McAfee, Lindsay T. McClelland, Paula M. Mickens, Aimee L. Pickett, Karen J. Shelley, Meredith L. Wilson and Myia S. Wood. Much gratitude to the staff of the Chief Justice's Commission on Professionalism, Terie Latala and Nneka Harris-Daniel.

The Justice Robert Benham Community Service Awards are co-sponsored by the State Bar of Georgia and the Chief Justice's Commission on Professionalism. Members of the selection committee include: Patrise Perkins-Hooker, chair, Lisa E. Chang, Mawuli M. Malcolm Davis, Elizabeth L. Fite, Laverne Lewis Gaskins, Michael D. Hobbs Jr., W. Seaborn Jones, William J. "Bill" Liss, J. Henry Walker IV, Janet G. Watts and Brenda C. Youmas. Lawyers, organizations and members of the public are invited to submit nominations. Nominations open in the spring of each year. For more information, contact Nneka Harris Daniel, administrative assistant, Chief Justice's Commission on Professionalism at professionalism@cjcpga.org. 



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

In Memoriam

The Lawyers Foundation of Georgia Inc. sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

Kirby G. Bailey
Stockbridge, Ga.
Woodrow Wilson School of Law
(1961)
Admitted 1961
Died July 2010

Walter E. Baker
Hawkinsville, Ga.
Emory University School of Law
(1951)
Admitted 1950
Died January 2011

Marshall H. Barkin
Daytona Beach, Fla.
Emory University School of Law
(1962)
Admitted 1961
Died August 2010

Sam L. Brannen
Statesboro, Ga.
Emory University School of Law
(1965)
Admitted 1965
Died January 2011

James C. Bright
Avondale Estates, Ga.
University of Louisville School of Law
(1949)
Admitted 1963
Died December 2010

James Benjamin Burns
Columbus, Ga.
Atlanta Law School (1977)
Admitted 1979
Died January 2011

Douglas R. Davis
Powder Springs, Ga.
Mercer University School of Law
(1972)
Admitted 1972
Died January 2011

Chester A. Dettlinger
Loganville, Ga.
John Marshall Law School (1992)
Admitted 1992
Died November 2010

Richard F. Dodelin
Columbus, Ga.
Georgia State University College
of Law (1990)
Admitted 1990
Died February 2011

Felix Dowdell
Duluth, Ga.
Woodrow Wilson School of Law
(1979)
Admitted 1979
Died November 2010

Charles J. Driebe
Jonesboro, Ga.
University of Georgia School of Law
(1958)
Admitted 1957
Died March 2011

Alan S. Gaynor
Savannah, Ga.
University of Virginia School of Law
(1952)
Admitted 1951
Died August 2010

Robert H. Green
Milledgeville, Ga.
University of South Carolina
School of Law (1951)
Admitted 1951
Died May 2010

George William Harrell Jr.
Bluffton, S.C.
University of Georgia School of Law
(1954)
Admitted 1954
Died July 2010

Wilfred Jacques Jr.
Waycross, Ga.
University of Georgia School of Law
(1956)
Admitted 1957
Died October 2010

Albert Felton Jenkins Jr.
Madison, Ga.
University of Georgia School of Law
(1965)
Admitted 1964
Died January 2011

Ronald Karwoski
Atlanta, Ga.
University of Georgia School of Law
(1976)
Admitted 1976
Died October 2010

Ben S. McElmurray Jr.
Augusta, Ga.
University of Georgia School of Law
(1960)
Admitted 1959
Died January 2011

Carl W. McPherson
Bremen, Ga.
Emory University School of Law
(1953)
Admitted 1954
Died December 2010

Michael Neidenbach
Gainesville, Ga.
Tulane University Law School
(1980)
Admitted 1980
Died January 2011

Bob Reinhardt
Tifton, Ga.
University of Georgia School of Law
(1952)
Admitted 1951
Died February 2011

John Robinson IV
Tampa, Fla.
University of Georgia School of Law (1975)
Admitted 1975
Died January 2011

William E. Rountree
Swainsboro, Ga.
University of Georgia School of Law (1947)
Admitted 1947
Died June 2010

Wilmer L. Salter Jr.
Vidalia, Ga.
Woodrow Wilson School of Law (1969)
Admitted 1971
Died December 2010

Philip T. Schley Jr.
Columbus, Ga.
University of Georgia School of Law (1983)
Admitted 1987
Died September 2010

Forrest W. Silvey
Augusta, Ga.
Augusta Law School (1949)
Admitted 1949
Died December 2010

Tom K. Smith
McRae, Ga.
University of Georgia School of Law
Admitted 1967
Died January 2011

M. Harry Steine
Augusta, Ga.
University of Georgia School of Law (1933)
Admitted 1933
Died January 2011

Frank C. Stone Jr.
Anderson, S.C.
Atlanta Law School (1948)
Admitted 1948
Died June 2010

William Tarver
Panama City, Fla.
Cumberland Law School (1973)
Admitted 1974
Died May 2010

Michael Stewart Thwaites
Greenville, S.C.
Duke University School of Law (1980)
Admitted 1981
Died February 2011

Albert L. Watson III
Chattanooga, Tenn.
Tulane University Law School (1972)
Admitted 1985
Died January 2011

H. Glen Willard Jr.
Kiev, Ukraine
University of Tennessee College of Law (1966)
Admitted 1974
Died December 2010

Julian B. Willingham
Augusta, Ga.
University of Georgia School of Law (1948)
Admitted 1947
Died March 2010

Robert Joseph Wright
Watkinsville, Ga.
University of Georgia School of Law (1983)
Admitted 1983
Died November 2010



Sam L. Brannen died in January 2011. He was a native of Bulloch County and a 1959 graduate of Statesboro High School. Brannen graduated from Emory University in 1963 and from the Emory University School of Law in 1966. Afterward, he returned to Statesboro and began practicing law. He served as the city attorney for Statesboro from 1966 until the present day. Early in his career, Brannen was elected as solicitor-general of Bulloch County and served in that capacity for many years. Brannen was the judge of both the Statesboro Municipal Court and the Municipal Court of the Town of Portal from 1984 until 1991. He served as a member of the Board of Governors of the

State Bar of Georgia from 1984 to 2005. Brannen was a past president of the Georgia Municipal Association.

Early in his career, he achieved the rank of captain in the Judge Advocate General Corps of the U.S. Army Reserve. He was a member of the First United Methodist Church, the Rotary Club of Statesboro and was a past president of the Forest Heights Country Club and of the Bulloch County Bar Association. Brannen was a devoted and loving father and an avid outdoorsman.



Charles J. "Chuck" Driebe, a former city of Atlanta Alderman, one of the leaders in the reformation of the State Bar of Georgia and an attorney whose passion was solving problems and working in local, state and national electoral politics, died in March 2011.

Known for his quick wit, sharp legal mind, dry, wise-cracking humor and brilliant analytical skills, he was a lifelong "yellow dog" democrat and an early supporter of a little-known candidate for governor named Jimmy Carter. He attended every Democratic National Convention since the 1968 Chicago Convention during the height of anti-Vietnam War and civil rights period. Born in November 1933 of Lebanese-Catholic descent, Driebe was a native of the Pocono Mountains of Pennsylvania and moved to Georgia while serving in the U.S. Army as an MP at Ft. McPherson. He attended Temple University before enlisting in the Army.

Even though he lacked a college degree, Driebe was accepted into the University of Georgia School of Law and graduated first in his class. He then clerked for the Court of Appeals of Georgia, became the first president of the Younger Lawyers Section of the State Bar of Georgia, and played a key role in establishing the code

of ethics and self-discipline for the State Bar of Georgia. Driebe pursued his dream to “get right into the courtroom and represent people.” He opened his own law practice near the Clayton County Courthouse—then a distant outpost in a much smaller metro Atlanta area. He was appointed to the Board of Aldermen (now City Council) by Atlanta Mayor Sam Massell.

Featured on the cover of the 2007 *American Bar Association Journal*, Driebe also served as the editor-in-chief of *Solo*, the magazine of the General Practice, Solo and Small Firm division of the ABA. He was a member of the Board of Governors of the State Bar of Georgia until the time of his death. In spite of a devastating diagnosis of both cancer and ALS two years ago, he continued to practice law and was in his office solving a client’s problem as recently as the week prior to his death.

A passionate Georgia Bulldogs football fan and a longtime member of the Inquiry Club, Driebe loved playing doubles tennis every Sunday at Bitsy Grant Tennis Center. However, he often said that his greatest joys in life—surpassing football, tennis, law and politics—were his grandchildren.



A. Felton Jenkins Jr., vice chairman of the Board of Regents of the University System of Georgia, died in January 2011 after a short battle with brain cancer. Born in January 1941 in Madison, Ga., Jenkins was a retired senior law partner with King & Spalding. He served as chair of the Georgia Justice Project, president of the Atlanta Chapter of the American Cancer Society and chairman of the Madison-Morgan Cultural Center. Jenkins also served on the Georgia Agricultural Exposition Authority, the Georgia Appellate Judicial Selection Commission, the Georgia Judicial Process

Review Commission and the Georgia Joint Study Commission on Revenue Structure. He was on the Board of Directors of the Georgia Sports Hall of Fame, the Decatur First Bank Group and Dundee Mills, Inc. An excellent writer as well as speaker, he co-authored the important legal book *Georgia Civil Procedure Forms*.

Jenkins earned his undergraduate degree (A.B., 1963) and his law degree (J.D., 1965) from the University of Georgia, where he was elected to Phi Beta Kappa and Omicron Delta Kappa. Throughout his career, he actively supported his university as chair of the School of Law’s Board of Visitors, secretary of the UGA Foundation and member of the UGA Strategic Planning Group.

Admitted to the Bar in 1964, he joined King & Spalding in 1965 and later served as co-chair of the firm’s Litigation Section. As a successful trial lawyer in the state and federal courts, he argued cases in several federal circuit courts of appeals and before the U.S. Supreme Court. He was a life fellow of the American Bar Foundation. He served on the State Bar of Georgia Board of Governors and was president of the Younger Lawyers Section from 1972-73.

He retired in 1992, and in 1997, moved back to his boyhood home in Madison, Ga., where he farmed cattle, trees and pasture land in Morgan County. He taught Sunday school and served as a trustee at Madison First United Methodist Church.

In addition to his several civic and nonprofit board endeavors, he was a golfer, traveler and adventurer. Jenkins climbed Mt. St. Helens, Mt. Hood and Mt. Kilimanjaro, and completed the 33-mile Milford Track in New Zealand. On his most recent international expedition to Nepal in 2009 at age 68, he trekked to the South Base Camp of Mt. Everest at 17,590 feet of elevation. Always an athlete and competi-

tor, he played on three Georgia state champion football teams in the late 1950s for Morgan County High School.



Bob Reinhardt died in February 2011. He was born in Sycamore, Ga., in September 1927 to Robert E. and Maggie Branch Reinhardt.

After attending public schools in Sycamore and service in the U.S. Army Air Corps, Reinhardt attended North Georgia College and the University of Georgia, where he received his law degree in 1952. While at Georgia, he was commander of the Sigma Nu Fraternity, president of the Inter-Fraternity Council and a member of the Sphinx Society.

He founded the law firm now known as Reinhardt, Whitley, Summerlin and Pittman in Tifton in 1952. He practiced as senior partner of that firm for 59 years, during which time he served as president of the State Bar of Georgia and the Tifton Bar Association, and received the first Tradition of Excellence Award conferred by the State Bar of Georgia for General Practice. Reinhardt’s commitment to the practicing Bar included service on the Board of Governors of the State Bar, Georgia Board of Bar Examiners, Georgia Judicial Nominating Commission and the Georgia Judicial Qualifications Commission. He was a member of the American College of Trial Lawyers.

A strong supporter of the University of Georgia, he served as trustee of the UGA Foundation and paid tuition to that institution for three sons for 19 consecutive years. He served as chairman of the Board of Visitors of the University of Georgia School of Law and received its Distinguished Service Award.

He loved and promoted Tifton through years of service on the Tift County Development Authority (charter member), Tift County Hospital Authority, ABAC

Foundation, Tifton-Tift County Chamber of Commerce (president), Forward Tifton, Tifton Rotary Club (president) and other local organizations.

He was an active member of Tifton's First United Methodist Church, having served in many capacities, including chairman of its Administrative Board, member of the Finance Committee, delegate to the South Georgia Conference and as a member of the Board of Trustees of Magnolia Manor.




H. Glen Willard Jr. was born in September 1942 in Vidalia, Ga. He lived in Kiev, Ukraine, for the past 13 years and died there in December 2010 after a two-year struggle with cancer.

Professionally, Willard was an accountant and an attorney. He completed an undergraduate degree from the University

of Mississippi in three years, and obtained his law degree from the University of Tennessee while working full-time teaching accounting classes.

Following graduating from law school, he formed a law practice in Humboldt, Tenn., before joining the Arthur Anderson accounting firm in Atlanta. Later, he practiced corporate and tax law at Willard & Rushing in Atlanta before merging with Neely & Player.

Willard traveled to Ukraine to assist Michael Willard in creating The Willard Group after the business was acquired from Burson-Marsteller and its parent, Young & Rubicam. He was best-known as editor of *The Ukrainian Observer* magazine for much of its seven-year history. He was also an avid supporter of Little League baseball in Ukraine.

Willard was a member of the State Bar of Georgia and the Tennessee Bar Association. 

Local and Voluntary Bar Activities Awards















Deadline: May 6

Attention all Local and Voluntary Bars in Georgia! It's time to submit your entries to be recognized for all your hard work! The awards will be presented at the State Bar's Annual Meeting at Myrtle Beach, S.C., on June 3.

For more information and guidelines, visit **www.gabar.org** or call **404-527-8792**.

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War Like the Thunderbolt: The Battle and Burning of Atlanta

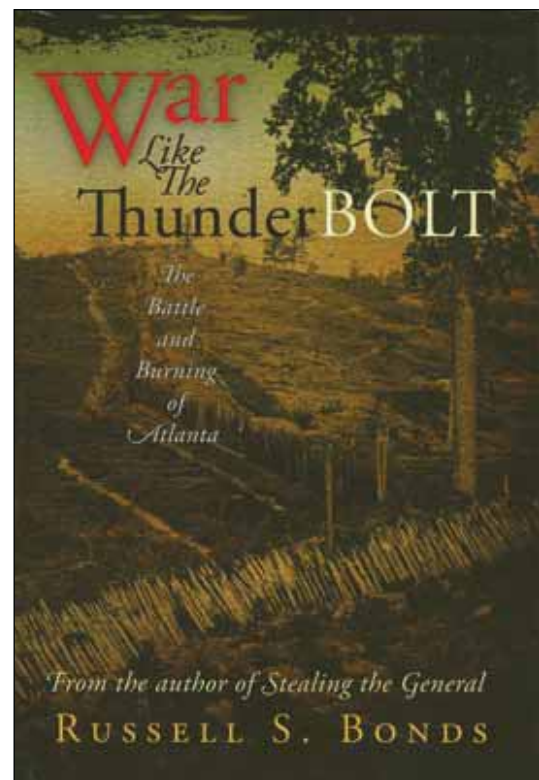
by Russell S. Bonds, Westholme Publishing, 536 pages

reviewed by Robert F. Glass

In *War Like the Thunderbolt: The Battle and Burning of Atlanta*, Russell S. Bonds, an Atlanta lawyer, provides a fascinating and gripping account of one of the decisive battles of the American Civil War. Elegantly written and meticulously researched, *War Like the Thunderbolt* meshes a sharp analysis of military strategy with captivating and empathetic personal stories of the major players in the battle.

The book is further complemented by vivid first-hand accounts of the battle from ordinary citizens and spectators. The effect of this synthesis is a book that should be read by Civil War enthusiasts as well as readers who merely hope to learn more about a very important page in American history.

Atlanta was a different place in 1864. In May 1864, Atlanta's population census totaled 10,000, including slaves, second only in size to Richmond, the capitol of the Confederacy. The city of Atlanta—originally named Terminus, and later, Marthasville—served as a symbol of continued Confederate strength and resis-



tance. Atlanta was a vital supply and rail center to the Confederacy. The four-month Atlanta campaign culminated in the actual Battle of Atlanta, which occurred

in July, but the city itself did not actually fall until September. After 128 days of Georgia heat, 10 major battles and 120 gunshots for every minute of the four-month struggle, the Confederate symbol of resistance finally fell. "Brave men on both sides fought as only Americans can fight," one soldier was heard to have said. Only 50 civilian families remained in the city after the Union victory.


In reading this book, few would know that Bonds' "day job" isn't writing about Civil War history. Bonds traces the developments and play-by-play of the campaign as if trained under the tutelage of the legendary Civil War historian Shelby Foote. And he is not afraid to challenge old assumptions by other historians, Foote included. Bonds challenges Foote's analysis of the objective behind the Atlanta Campaign, arguing that the Union initiative to sack Atlanta was undertaken because of the importance of the supply, medical and rail services to the rest of the Confederacy. Foote, by contrast, did not take into consideration the strategic importance of the city to the Confederate resistance. Bonds also disputes the traditional thinking on General Sherman's psychological instability, arguing that "Crazy Billy" was calloused and cruel even before the loss of his

young son, Willy. Bonds is not afraid to stake his claim in Civil War history. And he shouldn't be.

My favorite aspect of *War Like the Thunderbolt* is the plethora of intriguing stories and interesting tidbits that Bonds intersperses throughout the book. For example, in 1855, the future commander of the Confederate forces in the Battle of Atlanta, John Bell Hood, known by most as "Old Woodenhead," had a passing encounter with a nervous bank manager in San Francisco. The two would meet again. The bank manager was William Tecumseh Sherman. Bonds recounts General Sherman "chest-deep in the Chattahoochee River near Vinings Station." One can only imagine. Ironically, the name "Peachtree" was imperfectly born: an orchard near Peachtree Creek was originally called "Standing Pitch Tree" by an ancient Creek Indian settlement. Settlers corrupted "pitch" to "peach," yet Atlanta now has more than 70 streets and avenues with "Peachtree" in its name.

Bonds also pays special attention to the extensive destruction Atlanta suffered following the Union victory. When asked why Atlanta had been burned so badly by the Union forces, a triumphant Sherman responded, "This city has done and contributed probably more to carry

on and sustain the war than any other, save perhaps Richmond." Sherman was also noted for saying that "vigorous war means universal destruction." His actions spoke as loudly as his words.

Sometimes overlooked in importance to the Union victory, Bonds includes some memorable commentary from the soldiers that fought in the battle on the significance of the Atlanta Campaign. One Confederate soldier from Georgia wrote his mother after the battle and stoically noted the importance of the sacrifice of the battle. "Tread lightly," he wrote, "this is sacred ground, made so by the many gallons of Southern blood it has drunk and the many mangled bodies it contains." More than 11,000 men, Confederates and Federals alike, fell at the Battle of Atlanta. If you are in the city and see a historical marker near Peachtree Creek or elsewhere, take a moment to stop and read it. I guarantee you will if you read this book. 



Robert F. Glass is a personal injury trial lawyer. He is of counsel with Cash Krugler & Fredericks in Atlanta. Glass is a member of the *Georgia Bar Journal* Editorial Board.

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April-June

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APR 12	NBI, Inc. <i>Anatomy and Physiology for Attorneys</i> Atlanta, Ga. 6 CLE	APR 22	ICLE <i>Business Immigration Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
APR 13	Atlanta Bar Association <i>Starting a Small Law Firm Webinar</i> Atlanta, Ga. See www.atlantabar.org 3 CLE including 1 Ethics	APR 26	Atlanta Bar Association <i>Private Placements and Other Financing Alternatives</i> Atlanta, Ga. See www.atlantabar.org 6 CLE
APR 13	ICLE <i>Sports Law</i> Atlanta, Ga. See www.iclega.org for location 3 CLE	APR 28	ICLE <i>Tax Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
APR 13	ICLE <i>Section 1983 Litigation</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	APR 29	ICLE <i>Law Practice Management</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
APR 14	ICLE <i>Women in the Profession</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	APR 29-30	Atlanta Bar Association <i>Intellectual Property SpringPosium</i> Barnsley Gardens, Adairsville, Ga. See www.atlantabar.org 8 CLE including 1 ethics, 2 trial
APR 14	ICLE <i>Child Welfare</i> Atlanta, Ga. See www.iclega.org for location 6 CLE	MAY 5	ICLE <i>Professional Liability</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
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Note: To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893.



MAY 5-7	ICLE <i>Real Property Law Institute</i> Destin, Fla. See www.iclega.org for location 12 CLE	MAY 23	Atlanta Bar Association <i>PLI Groupcast – Pretrial Practice</i> Atlanta, Ga. See www.atlantabar.org 6 CLE
MAY 6	ICLE <i>Dispute Resolution</i> Augusta, Ga. See www.iclega.org for location 6 CLE	MAY 24	NBI, Inc. <i>Medicaid Update 2011</i> Atlanta, Ga. 6 CLE
MAY 9	Atlanta Tax Forum, Inc. <i>Current Events and Issues in Sub C</i> Atlanta, Ga. 1 CLE	MAY 26-28	ICLE <i>Family Law Institute</i> Amelia Island, Fla. See www.iclega.org for location 12 CLE
MAY 10	ICLE <i>Group Mentoring</i> Atlanta, Ga. See www.iclega.org for location 3 CLE	JUN 6	NBI, Inc. <i>Practical Guide to Zoning and Land Use Law</i> Atlanta, Ga. 6 CLE
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MAY 19	Atlanta Bar Association <i>Consumer Bankruptcy – Business Bankruptcy</i> Atlanta, Ga. See www.atlantabar.org 3 CLE	JUN 23	ICLE <i>Selected Video Replays</i> Atlanta, Ga. See www.iclega.org for location 6 CLE
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Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

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

A copy of the proposed amendments may be obtained on and after March 21, 2011, 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, GA 30303; phone 404-335-6100. Comments on the proposed amendments may be submitted in writing to the clerk at the above address by April 22, 2011.

Proposed Amendments to Uniform Superior Court Rules 4, 24 and 25

At its business meeting on Jan. 20, 2011, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 4, 24 and 25. A copy of the proposed amendments may be found at the Council's website at www.cscj.org. Should you have

any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Thursday, June 30, 2011.

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

The 2011 State Champion Team is from Henry W. Grady High School in Atlanta

*The State Champion Team will represent Georgia at the
National High School Mock Trial Championship in Phoenix, Ariz., May 6-7.*

The 2011 Regional Champion & Wildcard Teams are:

Lowndes Co. HS (Region 1 – Albany); **Clarke Central HS** (Region 2 – Athens); **Milton HS** (Region 3 – Atlanta); **Woodland HS** (Region 5 – Cartersville); **Union County HS** (Region 6 – Dalton); **Decatur HS** (Region 7 – Decatur); **Jonesboro HS** (Region 8 – Jonesboro); **Wesleyan School** (Region 9 – Lawrenceville); **Middle Georgia Christian Homeschool Association** (Region 10 – Macon); **Mt. Paran Christian School** (Region 11 – Marietta); **Eagle's Landing HS** (Region 12 – McDonough); **Bremen HS** (Region 13 – Newnan); **Savannah Country Day School** (Region 14 – Savannah); **Sandy Creek HS** (Region 15 – Covington); **Grady HS** (Region 16 – Atlanta); **W. Forsyth HS** (Region 17 – Cumming); **Atlanta International School** (Southern Wildcard Team); **Westminster Christian Academy** (Northern Wildcard Team)

For more information about the program or to make a donation to the state champion team to support their participation at nationals, please contact the mock trial office:
404-527-8779 or toll free 800-334-6865 ext. 779; E-mail: mocktrial@gabar.org





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spacious conference rooms; law library; two private entrances and reception areas; free parking adjacent to building; two file/work rooms; storage room; break room adjacent to kitchen; security system. This brick law building, overlooking a pond, is in a great location directly across the street from the North Springs MARTA Station; easy access to I-285 and GA 400; and close to Perimeter shopping, hotels, restaurants, hospitals, etc. Call 770-396-3200 x24 for more information.

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Local and Voluntary Bar Activities Awards

Deadline: May 6

Attention all Local and Voluntary Bars in Georgia! It's time to submit your entries to be recognized for all your hard work! The awards will be presented at the State Bar's Annual Meeting at Myrtle Beach, S.C., on June 3.

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State Bar of Georgia 2011 ANNUAL MEETING

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

Opening Night

Join us for the State Bar's Opening Night Festival, a relaxing, family-friendly evening with music and margaritas! Expect to hear all of your favorite Jimmy Buffett songs performed by A1A, the official and original Jimmy Buffett tribute band. Your kids will be unable to resist the games and fun planned especially for them. (Food and drinks included.)

CLE, Sections & Alumni Events

Fulfill your CLE requirements or catch up with section members and fellow alumni at breakfasts, lunches and receptions.

Presidential Inaugural Gala

The evening begins with a reception honoring the Supreme Court of Georgia justices, followed by the awards ceremony and inauguration of Kenneth L. Shigley as the 49th State Bar president. After the awards and inauguration, relax and enjoy your evening in one of three themed rooms of dinner, dancing and entertainment.

Social Events

Enjoy the Opening Night Festival, the Supreme Court Reception and Presidential Inaugural Gala, along with the numerous recreational and sporting events that will be available.

Family Activities

Golf, tennis, shopping, swimming, sightseeing and other activities are offered by the resort and are available at your convenience.

Kids' and Teens' Programs

Programs designed specifically to entertain children and teens will be available.

Exhibits

Please don't forget to visit the exhibit booths at the Annual Meeting. Get your exhibitor card stamped and turned in to be entered into a drawing to win a great prize!

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