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August 2009 • Volume 15 • Number 4



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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 Bryan M. Cavan

A Celebration of Professionalism

In my remarks to the Board of Governors at the Annual Meeting (see page 34), the current economic condition and its

impact not only on the general public, but also on judicial branch funding, the legal profession in general and our State Bar programs for this year, constituted a recurring theme.

I found a quote from a recent *New York Times* article that was and still is especially haunting: "The gentleman's profession of the law is becoming a vestige of the past, removed enough from reality to be remembered, like phone booths or fedoras."

One thing that is most worrisome about the economy and the struggle many lawyers are experiencing is the potential erosion of civility within our profession.

Today, it is more important than ever that we strive to maintain the highest standards of professionalism in our daily conduct with our clients, our fellow lawyers and with the courts.

"Today, it is more important than ever that we strive to maintain the highest standards of professionalism in our daily conduct with our clients, our fellow lawyers and with the courts."

While certainly exacerbated by the mounting financial pressures on lawyers, this is by no means a concern that developed overnight. In his keynote address to a Florida State University College of Law symposium in 1999, then-Yale Law School Dean Anthony T. Kronman concluded, "Our profession is now being remade in the image of the market system, a system that itself needs the integrating professionalism of lawyers. But paradoxically, the more the legal profession is recast in this image, the more it

becomes just a business like any other, the more urgently we appreciate the value of the very qualities this 'paradigm shift' seeks to expunge. Let us resolve to hold on to these qualities as long and as best we can."

As we deal with the challenges of this year, it is most appropriate that we not only celebrate the 20th

anniversary of the establishment of the Chief Justice's Commission on Professionalism (the Commission) by the Supreme Court of Georgia to address similar concerns that existed in 1989, but that we reflect on the need for each of us to recommit ourselves to the principles espoused by the Commission. The primary charge the Commission received from the Court was to ensure that the practice of law in this state remains a "high calling," not "just a business like any other," enlisted in the service not only of the client, but of the public good as well.

For two decades now, the Commission has served as the institutional framework for sustaining an environment that fosters professionalism in the legal community. Its membership is composed of Georgia lawyers, judges, law school professors and members of the general public. In 1996, at the behest of then-Chief Justice Robert Benham, the Commission adopted the following mission statement: "The mission of the Chief Justice's Commission on Professionalism is to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system."

Although this is an ongoing mission, for which measures of accomplishment could be taken on an annual or perhaps even daily basis, the Commission's worthwhile pursuit of such accomplishment has resulted in many prominent achievements over the last 20 years. They are listed in full on the State Bar website, but several are particularly noteworthy.

Professionalism Continuing Legal Education

The Commission approves and oversees more than 500 profession-

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alism CLE sessions per year and produces the curricula and materials for those sessions. The Commission expanded its focus to include judicial professionalism by assisting the Institute of Continuing Judicial Education in developing programs on professionalism for Georgia judges.

Law School Programs

In 1993, the Commission joined the State Bar's Professionalism Committee to develop a program of Orientations on Professionalism that now reaches more than 800 first-year students at Georgia's five law schools. Approximately 200 lawyers and judges volunteer as group leaders for the orientations, which have since been expanded to reach second- and third-year law students as well. An annual Law School Symposium on Ethics and Professionalism in the Practice of Law is held at each law school in Georgia on a rotating basis.

Mentoring Programs

The Commission developed a Mentoring Program in which seasoned lawyers volunteer to serve as mentors for Georgia students throughout their law school careers. Students are able to learn from Bar members practical lessons that are not always available to them in the traditional academic setting. The Commission also assists the State Bar's Young Lawyers Division and other groups in implementing lawyer-to-lawyer mentoring programs and oversees our highly successful Transition into Law Practice Program.

Community and Public Service

To encourage more lawyers to participate in positions of community leadership and public service, the Commission created a Community Service Task Force, which in turn established the Justice Robert Benham Annual Awards for Community Service in partnership with the State

Bar. These awards, presented in each of the state's 10 judicial districts, appropriately recognize and enhance public awareness of exemplary contributions by Bar members in the area of community service.

Judicial District Professionalism Program (JDPP)

The JDPP provides a vehicle for promoting the traditions of civility and professionalism at the local level, aimed directly at improving the profession and bolstering public confidence in the legal system. The JDPP is charged with the responsibility of confidentially receiving inquiries and attempting to resolve cases of unprofessional conduct on the part of lawyers and judges.

A Lawyers Creed

"A Lawyer's Creed," developed by the Commission, is well worth repeating on this special anniversary:

To my clients, I offer faithfulness, competence, diligence and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.


To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive

to improve the law and our legal system, to make the law and our legal system available to all and to seek the common good through the representation of my clients.

As we celebrate the Chief Justice's Commission on Professionalism's 20 years of outstanding service, I encourage you to carefully consider what professionalism means to you in your representation of your clients, your relationships with your colleagues, your responsibilities as an officer of the court and your place as a community leader and public servant.

"I have concluded that professionalism, in a legal sense, is to a great extent practicing the golden rule," explains former Chief Justice Norman S. Fletcher, this year's recipient of both the Chief Justice Thomas O. Marshall Professionalism Award and the State Bar's Distinguished Service Award. "It is not 'do my opponent in before my opponent does me in,' but rather, it is 'do unto your fellow attorneys, the judges and society as you would have them do unto you.'"

If we are successful in simply meeting that standard, I am confident the "gentleman's profession of the law" will not only make it through these difficult economic times but also long outlive both the phone booth and the fedora. 

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

For more information on the Chief Justice's Commission on Professionalism, visit www.gabar.org/related_organizations

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by Cliff Brashier

An Inauspicious Start to a Distinguished Career

By any measure, the legal career of Judge Irwin W. Stolz Jr. has been one of accomplishment and distinction, spanning more

than 50 years and including

service as president of the

State Bar of Georgia (1970-

71) and as a member of the

Court of Appeals of

Georgia (1972-77), among

numerous other positions

of leadership and influence.

For Stolz, these achievements followed a historically inauspicious beginning in State Bar leadership when, as a young whippersnapper in the early 1960s, he became the first and only member impeached from his position on the Board of Governors.¹ He recounts that event not as a traumatic spirit-breaker but as a

"memory I cherish, an experience of making lemonade out of lemons."

Early in his career in LaFayette, he attended a meeting of the Lookout Mountain Circuit Bar Association. The discussion turned to the issue of creating a unified state bar, a most unpopular subject in rural Georgia at the time.

"Someone said we ought to have a vote on this," Stolz recalls. "After some very strong appeals against the organized bar, the vote was 24 to 4 against. I was one of the only four who voted for the organized bar."

A year or so later, a Lookout Mountain Circuit seat on the Board of Governors of the Georgia Bar Association became vacant. At a local bar meeting, volunteers were

sought to fill the position.

"No one else raised their hand, so I said I would do it," Stolz remembers. "At one of my first meetings, the Board was considering resolutions regarding the creation of a mandatory state bar. I was always one of

"I credit that impeachment with leading to my election as president of the State Bar and later becoming a member of the Court of Appeals."

the nice young men, sitting in the back of the room. I always raised my hand in support of the organized bar, even though it was unusual for any rural members to be willing to do so."

In 1964, the State Bar of Georgia came into existence as a unified organization, much to the chagrin of a majority of Lookout Mountain Circuit lawyers, who felt their big-city counterparts didn't understand the way things worked out in the country and feared the "bar police" would always be looking over their shoulders. They decided to take out their frustration on their young colleague who supported the move.

"One lawyer said I was voting against the wishes of the circuit and made a motion to remove me as a member of the Board of Governors," Stolz recalls. "Some of the members were obviously embarrassed over this, but it was clear some background work had been done. The first vote was a tie, but they took another vote, and I was impeached.

"Then they had an election to fill the vacancy, and I lost by two votes. I wrote Madrid Williams, who was executive director of the State Bar, and told her I was no longer the Lookout Mountain Circuit's representative on the board. Over the next six months, I started getting a lot of attention because of this development."

Stolz's hiatus from the board turned out to be short-lived. The following year, the state legislature created a second Superior Court judgeship in the Lookout Mountain Circuit, thereby entitling the circuit to another seat on the Board of Governors, to be appointed by President Will Ed Smith of Eastman. The appointment went to Irwin Stolz.

"He told me I had to do my best to hang on to the seat this time," he remembers, "and I agreed that I would."

The notoriety from his previous experience made Stolz something of a martyr in the State Bar hierarchy. He began to pick up plum committee assignments and soon found himself on the leadership fast track.

"I credit that impeachment with leading to my election as president of the State Bar and later becoming a member of the Court of Appeals," he says today. "I got a level of visibility that I would not have had otherwise. A couple of members who had voted against me later told me they were rather sorry they had done what they had done. It was a positive thing for me once anyone found out about it. Who knows the course that life would have taken without that experience?"

Following his service on the court, he went into private practice, with an emphasis in civil litigation, and he served as vice president of the Georgia Trial Lawyers Association in 1988-90. He is now a partner with Lewis, Stolz, Hurt, Frierson & Grayson, LLP, in Athens. He and his wife, Mary Bell, have four children and eight grandchildren. Outside the courtroom, he is at least equally proficient in the swimming pool—holding at one time or another more than 40 Georgia



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Hon. Irwin W. Stoltz Jr., President, State Bar of Georgia 1970-71.

Masters Swimming records and competing at a global level in world championships in Germany, New Zealand and Italy.

In addition to personal vindication from his initial experience on the Board of Governors, Stolz says his vote in favor of a unified State Bar was the right thing to do, and the past 45 years have proven that.

"The organized bar did not turn out to be the ogre that had been represented by its opponents. Their fears were unfounded," Stolz says. "It has been nothing but a good thing for the lawyers of Georgia. Two cornerstones of the Bar are being able to provide the least expensive Continuing Legal Education program in the country and a system of discipline for lawyers who

betray the trust placed in them by the Bar and the public.

"Being president of an organization that consists of all of the lawyers in the state gives you a level of credibility in the business, social and legal communities that is hard to evaluate in a negative way. When the president of the State Bar goes to the Legislature and says 'this is a good bill,' or 'this is a bad bill' or 'this bill needs to be altered,' the Legislature will listen because they know he or she represents all of the lawyers in the state and does not have a particular ax to grind."

Stolz says the Bar's continued support was crucial in the lengthy struggle to create and maintain a statewide, state-financed indigent defense system, a concept he first proposed during his presidency.


"It was not and still is not a popular program, but it is a necessity," he said. "I called for it, and we continued to push for it for six or seven years before we were told we'd better let it cool off for a while, and we did. Only in recent years was it picked up again when there was a realization it was something we had to have."

Indigent defense is like most initiatives of a unified Bar, according to Judge Stolz. They don't come to fruition overnight, and they don't happen without widespread support throughout the membership.

"These things are not done in a year," he said. "They take a succession of presidents with the same goals. After you become aware of a problem and are exposed to the consequences of that problem and have the opportunity to participate in developing and implementing the proposed solutions, it does have an effect of providing continuity in the goals of the Bar.

"It may be an idea that is initially advanced by one president, but if it's going to have any chance of succeeding, it's got to be supported by the Executive Committee and the Board of Governors and the various other steps it has to go through. Ultimately, any far-reaching change has to be approved by the Supreme Court or the Legislature and the governor. So you've got to have a lot of merit behind your proposal."

Judge Irwin Stolz looks back on his vote for a unified State Bar without regret. "If you were to take a vote today on whether the organized bar is serving its purposes, it would be a resoundingly positive outcome," he concluded.

And of the temporary consequences he suffered because of that vote, "I have absolutely no bitterness or animosity. I view it as one of the nicest things that ever happened to me." 

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

Endnote

1. I've known Judge Stolz's wonderful impeachment story for years. Having often repeated it, I discovered that almost no one has heard it. Their usual question upon hearing it is, "Can the circuit really do that?" And my reply is, "I don't know, but they did!" I hope you agree that it is well-worth preserving through this issue of the *Georgia Bar Journal*.



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by Amy V. Howell

Turning Challenges Into Opportunities

Stepping into the role of president of the Young Lawyers Division, I am honored to have the opportunity to lead an organization

whose members give so gener-

ously of their time and talents

for the betterment of the legal

profession and the communi-

ties in which we live and serve.

My own experience, both

before becoming a member of

the bar and after having joined

our honorable profession, has

shown me how supporting those who are entering the

practice of law, as well as those who are affected by law,

has a meaningful impact on all involved.

After completing my undergraduate degree at Connecticut College, I secured my first “real” job—a teaching position in Raleigh, N.C.—out of my good luck and others’ desperation. The opportunity to work

with a combined class of fourth- and fifth-graders, which included both special needs and gifted students, arose when two teachers resigned in the middle of the school year. Undaunted by my lack of official qualifications, and fueled with sheer determination, I applied my English major skills (honed earning the

degree everyone asked what I’d *do* with) and read everything I could learn about primary education. Every day in the classroom presented a new set of surprises, challenges and successes.

Only months into my new career as an educator, I was accepted into law school. The timing was both personally and professionally awkward, as I had only just begun to make positive progress with several of my students, and I didn’t want to be another teacher to abandon the class. After careful

reflection, I chose to defer law school and see my students through to graduation. Although it was a tough decision to make, it ultimately provided the most challenging and rewarding work experience I had yet encountered. On a larger scale, this experience helped me to realize that my students represented the many children throughout the country facing similar challenges. Ultimately, while I relished teaching each individual student, I knew that I wanted to use a legal degree to make a broader impact.

During my second year of law school, I was fortunate to find a public interest summer internship in child advo-

“Now more than ever, new and young lawyers need similar opportunities to start their careers—opportunities to gain valuable skills and to give back to their communities.”

cacy in Cartersville. Although I grew up in New York and, at the time, had absolutely no personal ties to Georgia, I was thrilled to find an excellent learning opportunity that also included a paid stipend. I was placed with Bartow County Juvenile Court Judge Velma Tilley, a judge who has both an intellectual respect and a personal fondness for the law and took the time to cultivate the same in me. That summer, I witnessed the law in action, intimately observing the difficult decisions that juvenile court judges face every day. In the process, I became familiar with Georgia's courts and agencies and forged professional connections with leaders in Georgia's child advocacy community.

I feel fortunate to have had the opportunity to spend that summer in North Georgia. Not only was everyone I encountered helpful and supportive, the assignment provided me a chance to witness first-hand the legal communities of diverse areas of our state. That part of the experience has been invaluable to me in my current position as the deputy commissioner of administration for the Department of Juvenile Justice. I carry a deep admiration for the entire legal community in Bartow County for the time and energy they gave to my development and growth as a lawyer. My experience that summer was more than another learning opportunity, it initiated my legal career in Georgia.

Now more than ever, new and young lawyers need similar opportunities to start their careers—opportunities to gain valuable skills *and* to give back to their communities.


This year, the YLD will initiate the YLD Summer Public Interest Internship Program. Starting in the summer of 2010, this program will support internships with a paid stipend for work in public service areas such as the judiciary, prosecution, defense and not-for-profit organizations. The summer internship is one of several new and ongoing programs that honor the YLD's

mission of serving both the profession and the public. The Summer Public Internship Program exemplifies YLD service throughout our state, and it reflects two of my three goals for the YLD this year: (1) creating innovative programs and projects; (2) promoting the leadership of young lawyers; and (3) supporting children and families.

As many of us know all too well, the current economic climate presents unique challenges within the legal community. We don't need a legal degree to recognize that our country's economic woes have had a significant impact on all Americans, making it even harder to maintain a career and support a family seamlessly. We see individuals and families dealing with the pressures of job loss, pay cuts, bankruptcies and foreclosures, as well as dwindling savings, pensions and retirement plans, all the while seeking to support themselves and their families. In today's challenging times, everyone and everything can seem vulnerable.

Accordingly, this year, in addition to supporting the development of young lawyers, the YLD also will support children and families. I have charged each of our 26 committees to identify meaningful efforts that we can take to support and engage this theme for the year. And, we're already off to a running start. In addition to the Summer Public Interest Internships, we have created a Parents and Caregivers in the Profession Committee to provide networking and CLE opportunities that are family friendly and provide attorneys a forum in which to address their common challenges. In keeping with this initiative, and an effort to ensure statewide service, each of the 43 members of the YLD Executive Council have been charged to develop and implement a service project in their judicial district or local communities supporting our "Children and Families" theme.

In reflecting on how the YLD can help our peers and other Georgia

families during the coming year, I thought about the simple reason that many of us became lawyers in the first place: *to help others*. I am confident that, through hard work and sincere spirit, the YLD can turn these challenges into opportunities and achieve great success. I look forward to working with the YLD and all members of the Bar to achieve these goals. 

Amy V. Howell is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at amyvhowell@gmail.com.

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Caught Between a Rock and a Hard Place:

Invocation of the Privilege Against Self-Incrimination in Civil Cases

by Aaron M. Danzig and Edward A. Marshall

*"[N]or shall [any person] be compelled in any criminal case to be a witness against himself. . . ."*¹

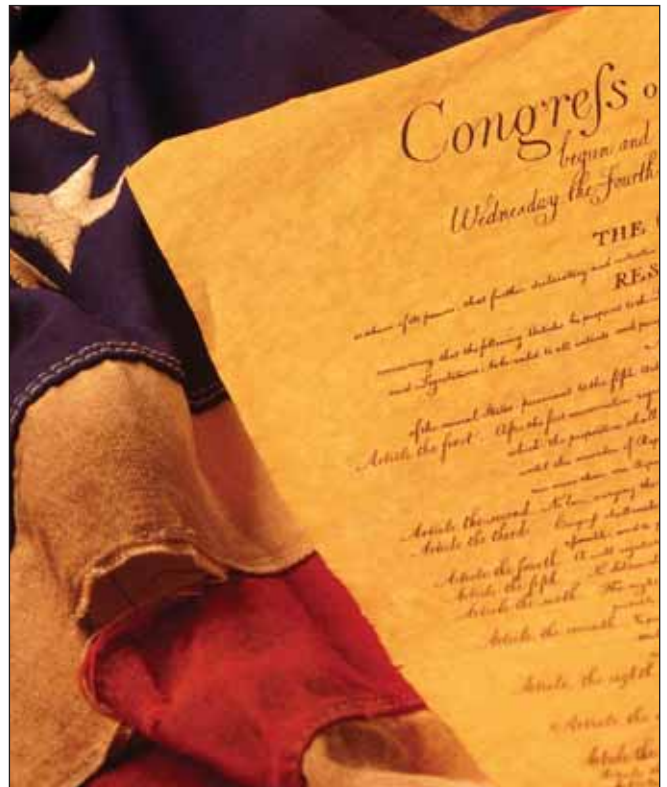
*"No person shall be compelled to give testimony tending in any manner to be self-incriminating."*²

*"No party or witness shall be required to testify as to any matter which may criminate or tend to criminate himself or which shall tend to bring infamy, disgrace, or public contempt upon himself or any member of his family."*³

The Fifth Amendment is one of the bedrock principles of the American criminal justice system. It prevents an accused from being forced to provide evidence against himself in a criminal prosecution and also prevents the prosecution from commenting on the accused's refusal to testify.⁴ The Fifth Amendment's impact on the judicial process, however, extends beyond the purely criminal proceeding.

In a civil suit, a witness or party may refuse to answer questions posed at trial or in discovery by invoking the Fifth Amendment right against self-incrimination.⁵ The Fifth Amendment

not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any



other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.⁶

Invocation of the Fifth Amendment in civil proceedings, however, is not without its adverse consequences. Indeed, there are very real ramifications for a civil litigant who elects to exercise that right.⁷

Civil litigators should be familiar with the application of the Fifth Amendment and its Georgia counterparts to civil cases in order to counsel their clients effectively on the risks and benefits of testifying or invoking the privilege. Likewise, opposing counsel must be aware of avenues to attack a witness's invocation of the Fifth Amendment or its Georgia analogues, including attempting to overcome the invocation, moving to strike the witness's testimony and seeking an adverse inference against the invoking party.

Toward these ends, this article explores federal and Georgia case law on the following topics:

1. When the Fifth Amendment and its Georgia analogues apply;
2. Asserting the privilege;
3. Opposing assertion of the privilege;
4. Seeking a stay of proceedings;
5. Seeking the adverse inference; and
6. The application of the adverse inference in the corporate context.

Does the Privilege Apply?

The threshold question that an attorney must be prepared to answer in evaluating the invocation of the self-incrimination privilege is whether the privilege applies to the relevant questioning, be it in trial, deposition or other civil discovery.

The Fifth Amendment

In both federal and state proceedings, the Fifth Amendment creates a privilege to decline to respond to certain inquiries where the response would provide a *link* in the chain of evidence needed to prosecute an individual for a crime.⁸ It is not required that the witness's response would itself necessarily sustain a criminal conviction. That is, the "privilege against self-incrimination extends not only to those answers that would in themselves support a conviction, but also to answers creating a 'real and appreciable' danger of establishing a link in the chain of evidence needed to prosecute."⁹ Having said that, "[t]he privilege applies only in 'instances where the witness has *reasonable* cause to apprehend danger' of criminal liability."¹⁰ An unrealistic fear of criminal prosecution, for example, in circumstances in which the statute of limitations would necessarily bar prosecution, will not sustain the invocation of the privilege.

It is important to note that the Fifth Amendment privilege is a personal one; there is no Fifth Amendment privilege for corporations.¹¹ Thus, "[a] corporate officer may not withhold testimony or documents on the ground that *the corporation* would be incriminated. Nor may the custodian of corporate books or records withhold them on the ground that he personally might be incriminated by their production."¹² The custodian of records, however, may be entitled to "act of production" immunity such that, if there were a later prosecution of the custodian, the fact that the custodian of records for the corporation was the individual who produced the records could not be disclosed to the jury.¹³

The Georgia Analogues to the Fifth Amendment

The Georgia Constitution, loosely parroting the Fifth Amendment, provides that "[n]o person shall be compelled to give testimony tend-

ing in any manner to be self-incriminating."¹⁴ A review of case law shows the federal and state constitutional privileges to be largely, if not entirely, coterminous.

The Georgia Code, however, provides a more expansive catalogue of grounds upon which a civil litigant may refrain from providing testimony. In particular, O.C.G.A. § 24-9-27(a) provides that "[n]o party or witness shall be required to testify as to any matter which may criminate or tend to criminate himself or *which shall tend to bring infamy, disgrace or public contempt upon himself or any member of his family*."¹⁵ Subsection (b) of the statute also provides that, outside the realm of post-judgment discovery, "no party or witness shall be required to testify as to any matter which shall tend to work a forfeiture of his estate."¹⁶

These code sections have enjoyed limited development by the Georgia courts, but the authority that exists cuts significant inroads into the statute's ostensibly expansive scope.

The courts have construed the privileges narrowly. Despite statutory language that would seem to suggest to the contrary, the privilege protecting a witness from disclosing disgraceful facts applies only if "[t]he facts . . . directly involve disgrace and [do] not . . . merely tend[] to disgrace indirectly."¹⁷ In addition, the privilege against disgrace can only be invoked when the testimony sought by the questioner is not material to the action, but instead operates to affect the witness's credibility. Stated differently, "it is only where the proposed answer has no effect on the case except to impair the witness' credibility that the witness may fall back on the privilege."¹⁸ Additionally, only the witness herself may invoke the privilege; an objection by a family member that testimony would bring disgrace upon him is necessarily ineffectual.¹⁹

The threshold for invoking the privilege against testimony that

would lead to the forfeiture of an estate is likewise quite high. It is not, for example, impermissible to compel a witness to testify even if the testimony elicited would cause him to lose his job or result in the inability of the witness to earn a living in a particular profession.²⁰

Invocation of these statutory privileges is not without disadvantageous consequences. As in the context of the Fifth Amendment, an adverse inference may be drawn against a civil litigant invoking the privileges provided by O.C.G.A. § 24-9-27.²¹

Asserting the Privilege

To borrow from recent political parlance, the Fifth Amendment operates as a scalpel, not a hatchet. "There is no blanket Fifth Amendment right to refuse to answer questions in civil proceedings."²² Instead, "the privilege must be specifically claimed on a particular question."²³ "The federal courts have held that where a party invokes the privilege against self-incrimination in discovery matters, he may not make a blanket refusal to answer all questions, but must specifically respond to every question, raising the privilege in each instance he determines necessary."²⁴ Georgia law holds likewise.²⁵ Accordingly, a witness or party seeking to invoke his self-incrimination privilege in a deposition or other proceeding must do so on a question-by-question basis.

The individual claiming the privilege has the burden "to state the general reason for his refusal to answer and to specifically establish that 'a real danger of incrimination exist[s] with respect to each question.'"²⁶

Invocation of the privilege must be timely. That is, it must be made at the time that the party refuses to answer pertinent questions. A later assertion of the privilege against self-incrimination may be insufficient to shield the incriminating statements from discovery.²⁷ Likewise, an objection to responding to certain inquiries on grounds

other than self-incrimination may preclude the later invocation of the privilege if the initial objection is overruled by the trial court.²⁸

Opposing Assertion of the Privilege

The witness is not the final arbiter of the propriety of the invocation of the Fifth Amendment. Rather, the court determines whether the privilege applies.²⁹ "The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified."³⁰

Georgia law is similar.³¹ The applicable standard is set forth in the oft-cited case of *Mallin v. Mallin*,³² in which the Supreme Court of Georgia held that, if the questioning of a witness does not tend to incriminate as a matter of law, then the court must then determine whether the witness's answers could incriminate the witness. If so, the decision on whether the answer might incriminate must be left to the witness. If the witness then says under oath that his answer would incriminate him, "the court can demand no other testimony of the fact."³³

Although the court remains the ultimate arbiter of the propriety of the privilege's invocation, it would be wrong to assume that the witness's invocation of the privilege is easily overcome. As the U.S. Supreme Court has stated, it must be "*perfectly clear*, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer[s] *cannot possibly* have such tendency to incriminate."³⁴ That is,

[t]o sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of

why it cannot be answered might be dangerous because injurious disclosure could result. The trial judge in appraising the claim "must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence."³⁵

Due to this difficulty in overcoming a witness's invocation of the privilege, opposing counsel should diligently inquire into the precise areas in which the privilege is being claimed by the adverse witness or litigant. Such questioning is essential to lay the groundwork for a motion to compel if there is no legitimate basis for asserting the privilege—that is, if no "real and appreciable" risk of incrimination exists.

With the appropriate record, the Georgia courts have exhibited a willingness to reject a witness's attempted invocation of the privilege against self-incrimination.³⁶ In *Petty v. Chrysler Credit Corp.*,³⁷ for example, the Court of Appeals of Georgia affirmed a state court order directing a defendant to answer post-judgment interrogatories, holding that the defendant could not shield himself from answering by claiming that all such questions may tend to incriminate him. The Court in *Petty* stated:

This court has held that neither the discretion of the trial court nor the defendant is absolute in determining whether answering such interrogatories would work the harm claimed by the defendant, but "[w]hat is impermissible is that the defendant merely slide out of his obligations by a brash assertion that any and all questions directed to him would tend to incriminate him, regardless of the likelihood of such result."³⁸

In *Begner v. State Ethics Commission*,³⁹ the Court of Appeals of Georgia vacated a trial

court's decision to hold a witness (an attorney) in contempt for refusing to disclose the identity of a client who had made an anonymous campaign contribution, ruling that the trial court must undertake a preliminary inquiry to determine whether the proposed questions posed to the witness could be incriminating.⁴⁰

Opposing counsel is not limited to challenging the witness's contention that the activities into which counsel is inquiring may implicate substantive criminal law. There are other avenues to oppose a witness's invocation of his Fifth Amendment privilege in response to a deposition question or other discovery. For example, if the witness previously received a grant of immunity from the government related to the possible criminal conduct, he would not have a "real and appreciable danger" of incrimination. (Of course, prosecutions can be brought in multiple jurisdictions, so a grant of immunity from one jurisdiction may not be sufficient to

remove the risk of incrimination.) Also, if the statute of limitations has run for the possible criminal offense, the witness could testify about that subject matter without fear of incrimination. Thus, counsel should carefully consider all such avenues of attack before accepting a witness's attempted invocation of the privilege.

Seeking a Stay of Civil Proceedings

Rather than assert a Fifth Amendment privilege in response to discovery requests or deposition questioning, a party may seek a stay of civil proceedings pending resolution of a criminal investigation. Granting a stay is in the court's discretion,⁴¹ and a court must balance the interests of the party requesting a stay with prejudice to the interests of the other side. Courts should review a motion to stay civil proceedings pending the completion of a parallel criminal proceeding "in light of

the particular circumstances and competing interests involved in the case."⁴²

When considering whether to grant a stay of civil litigation in the face of current or imminent criminal prosecution, courts consider the following factors:

1. The extent to which the issues in the criminal case overlap with those in the civil case;
2. The status of the criminal case;
3. The private interests of the plaintiffs in proceeding expeditiously with civil litigation weighed against the prejudice to the plaintiffs if civil litigation is delayed;
4. The private interests of and burden on the defendants;
5. The interests of the courts; and
6. The public interest.⁴³

These factors must be balanced on a case-by-case basis.⁴⁴

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Granting a stay of discovery where a party is required to defend a civil suit involving the same matter as a criminal investigation or indictment may be appropriate in light of the risk of impairing the party's Fifth Amendment rights.⁴⁵ A pending indictment, however, is not a necessary predicate for a stay. Indeed, several courts have deemed a stay appropriate in the face of an active criminal investigation, even in the absence of an indictment.⁴⁶ As explained recently by one federal court, "[t]he exercise of the Defendant's Fifth Amendment Rights should not be made unnecessarily costly."⁴⁷

That being said, the Constitution does not demand that a litigant be freed from difficult choices. It is not unconstitutional for a civil defendant to be forced to elect between the negative inferences drawn from his silence and his Fifth Amendment privilege, and stays are not always granted.⁴⁸

A litigant faced with the potential of inquiry into incriminating circumstances should also consider other procedural mechanisms, short of a stay, before invoking the privilege in civil proceedings. For example, a party may seek a protective order to prevent the opposing party from seeking discovery on certain issues that may implicate the party's Fifth Amendment rights, even in circumstances in which an outright stay would have been impossible to achieve.⁴⁹

Seeking the Adverse Inference

Asserting the Fifth Amendment privilege in a civil proceeding may come with a hefty price. Unlike in a criminal case, the opposing party in a civil case may seek an inference that, had the party answered the question, the answer would have been adverse to that party's interests in the civil proceeding.⁵⁰

In *Simpson v. Simpson*,⁵¹ the Supreme Court of Georgia stated:

We think it is clear that no inference of guilt can be drawn from a privileged refusal to testify in a criminal case nor can the exercise of the privilege in a civil case be used in a subsequent criminal case against the party. However, these cited Georgia cases do not hold that it is impermissible to draw an unfavorable inference in a civil case from the privileged refusal to testify in that case. There is considerable authority that such an inference can be drawn in civil cases. . . .

. . .

We think the correct view . . . [is] that[,] although a person does have a right to invoke the privilege in a civil case in order to protect himself, when he does so, an inference against his interest may be drawn by the factfinder. "Since the inference is irresistible and logical in such circumstances, the court may as a matter of law draw the inference. Such an inference is based upon an implied admission that a truthful answer would tend to prove that the witness had committed the . . . act The administration of justice and the search for truth demands that an inference may be drawn that witness' testimony would be unfavorable to him in a civil action in which the privilege is invoked to protect himself" ⁵²

Additional options are available if a non-party witness invokes the privilege. In that circumstance, in addition to moving for an adverse inference, the opposing party may move to strike the witness's testimony on the grounds that the opposing party would be prejudiced by being unable to cross-examine the witness effectively.⁵³

Critically, having the adverse inference applied against a party, although potentially devastating,

does not *necessarily* mean that party will suffer defeat. If no other evidence is put forth to support the facts at issue, then the adverse inference alone is insufficient to sustain summary judgment. In *LaSalle Bank Lake View v. Seguban*,⁵⁴ for example, the U.S. Court of Appeals for the 7th Circuit reversed a ruling of summary judgment in favor of plaintiff bank in a civil RICO action where the trial court had found that no genuine issue of material fact existed *solely* on the adverse inferences that it drew from defendants' invocation of their Fifth Amendment rights.⁵⁵

Finally, a defendant who invokes his privilege against self-incrimination in response to discovery requests should not then be allowed to testify at trial on matters pertaining to those discovery requests.⁵⁶ Likewise, the federal courts have held that invocation of the privilege may preclude a party from pursuing certain counterclaims and affirmative defenses.⁵⁷ If, however, a party or witness asserts the privilege and later the threat of criminal prosecution is lifted, then that party may seek to re-open discovery and testify.

The Adverse Inference in the Corporate Context

As explained previously, corporations enjoy no privilege against self-incrimination. Nevertheless, when a party-corporation's employee or former employee invokes a personal Fifth Amendment privilege on matters within the scope of his employment, the question arises: What inference, if any, should be drawn against the corporation as a consequence of that invocation?

There is currently no uniform rule either mandating or disallowing the application of an adverse inference against a company where a corporation's employees or former employees elect to invoke the right against self-incrimination. Although the weight of case law seems to lean in favor of authorizing the jury to draw such an inference,⁵⁸ there are cases holding otherwise.⁵⁹

The prevailing trend among the federal courts is to “eschew[] a mechanical approach to determining whether the jury may hold the employee’s silence against the employer.”⁶⁰ Instead, the courts have taken a case-by-case approach, analyzing the circumstances present in a particular case to determine whether the witness’s relationship *vis-à-vis* the corporation may permit the jury to draw an adverse inference. One approach gaining prominence in the federal courts is that articulated by the U.S. Court of Appeals for the 2nd Circuit in *LiButti v. United States*,⁶¹ wherein the court reasoned:

Although the issue of the admissibility of a non-party’s invocation of the Fifth Amendment privilege against self-incrimination in the course of civil litigation and the concomitant drawing of adverse inferences appropriately center on the circumstances of the case, the evolving case law and its underlying rationale accordingly suggest a number of non-exclusive factors which should guide the trial court in making these determinations:

1. *The Nature of the Relevant Relationships*: Although no particular relationship governs, the nature of the relationship will invariably be the most significant circumstance. It should be examined, however, from the perspective of a non-party witness’s loyalty to the plaintiff or defendant, as the case may be. The closer the bond, whether by reason of blood, friendship or business, the less likely the non-party witness would be to render testimony in order to damage the relationship.

2. *The Degree of Control of the Party Over the Non-Party Witness*: The degree of control which the party has vested in the non-party witness in regard to the key facts and

general subject matter of the litigation will likely inform the trial court whether the assertion of the privilege should be viewed as akin to testimony approaching admissibility under Fed. R. Evid. 801(d)(2), and may accordingly be viewed . . . as a vicarious admission.

3. *The Compatibility of the Interests of the Party and Non-Party Witness in the Outcome of the Litigation*: The trial court should evaluate whether the non-party witness is pragmatically a noncaptioned party in interest and whether the assertion of the privilege advances the interests of both the non-party witness and the affected party in the outcome of the litigation.

4. *The Role of the Non-Party Witness in the Litigation*: Whether the non-party witness was a key figure in the litigation and played a controlling role in respect to any of its underlying aspects also logically merits consideration by the trial court.⁶²

In *Libutti*, the 2nd Circuit concluded, “[w]hether these or other circumstances unique to a particular case are considered by the trial court, the overarching concern is fundamentally whether the adverse inference is trustworthy under all of the circumstances and will advance the search for the truth.”⁶³


Conclusion

The Fifth Amendment to the U.S. Constitution and its Georgia analogue, along with a Georgia statute, protect individuals from forced self-incrimination not only in criminal proceedings but also in civil matters and regulatory hearings. Invocation of the privilege must be asserted on a question-by-question basis, as opposed to a blanket refusal to answer, and extends beyond questions directly addressing potential criminal lia-

bility to any questions for which the answer may create a real and appreciable danger of establishing a link in the chain of evidence needed to prosecute.

Invocation of the privilege against self-incrimination in civil proceedings is not absolute, however, and not without serious consequences. Civil litigants or witnesses may be caught between the proverbial rock and a hard place, as they are faced with the difficult decision of whether to invoke their right against self-incrimination and suffer an adverse inference against them in the civil matter or choose to testify and risk potential criminal exposure. In such instances, parties may seek a stay of the civil proceedings, which is in the discretion of the court, or possibly a protective order preventing discovery on certain issues. If these avenues are foreclosed, the adverse inference may be severely damaging to the civil litigant, although, by itself, it will not necessarily ensure the success of the adverse party.

Finally, in some instances, an individual’s invocation of the right against self-incrimination may result in an adverse inference against that person’s employer.

Civil litigators should be versed in these important intricacies of the application of the right against self-incrimination under both federal and Georgia law. They can arise in myriad situations, sometimes without warning, and affect a party’s litigation strategy. 



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Endnotes

1. U.S. CONST. amend. V.
2. GA. CONST. art. I, § I, ¶ XVI.
3. O.C.G.A. § 24-9-27(a) (1995).
4. See Griffin v. California, 380 U.S. 609, 615 (1965); Hoffman v. United States, 341 U.S. 479, 486-87 (1951).
5. See, e.g., Lefkowitz v. Turley, 414 U.S. 70, 77 (1973); Kastigar v. United States, 406 U.S. 441, 444 (1972) (Fifth Amendment "can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory."); Page v. Page, 235 Ga. 131, 132, 218 S.E.2d 859, 861 (1975).
6. Lefkowitz, 414 U.S. at 77.
7. See, e.g., Baxter v. Palmigiano, 425 U.S. 308, 318 (1976) ("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.").
8. See Malloy v. Hogan, 378 U.S. 1, 11-12 (1964) (citing *Hoffman*, 341 U.S. at 486-87).
9. Dempsey v. Kaminski Jewelry, Inc., 278 Ga. App. 814, 815, 630 S.E.2d 77, 80 (2006) (citing *Axson v. Nat'l Sur. Corp.*, 254 Ga. 248, 250, 327 S.E.2d 732, 734 (1985), and *Begner v. State Ethics Comm'n*, 250 Ga. App. 327, 330, 552 S.E.2d 431, 433 (2001)); accord *Simpson v. Simpson*, 233 Ga. 17, 19, 209 S.E.2d 611, 614 (1974).
10. United States v. Argomaniz, 925 F.2d 1349, 1353 (11th Cir. 1991) (citing *Hoffman*, 341 U.S. at 486) (emphasis added); accord *United States v. Gecas*, 120 F.3d 1419, 1424 (11th Cir. 1997).
11. *Braswell v. United States*, 487 U.S. 99, 104-05 (1988); *Dreier v. United States*, 221 U.S. 394, 399-400 (1911); *United States v. Medlin*, 986 F.2d 463, 467-68 (11th Cir. 1993); *SEC v. First Jersey Sec., Inc.*, 843 F.2d 74, 76 (2d Cir. 1988); *Classic Art Corp. v. State*, 245 Ga. 448, 449, 265 S.E.2d 577, 579 (1980) ("Under the 5th Amendment, a corporation cannot avail itself of the privilege against self-incrimination.").
12. *Jacobs v. State*, 157 Ga. App. 466, 468, 278 S.E.2d 21, 23 (1981) (emphasis added; citation omitted).
13. *Braswell*, 487 U.S. at 118.
14. GA. CONST. art. I, § I, ¶ XVI.
15. O.C.G.A. § 24-9-27(a) (1995) (emphasis added).
16. *Id.* § 24-9-27(b).
17. *Wynne v. State*, 139 Ga. App. 355, 357, 228 S.E.2d 378, 381 (1976); accord *Brooks v. State*, 233 Ga. 524, 526, 212 S.E.2d 355, 357 (1975).
18. *Brown v. State*, 242 Ga. 536, 538, 250 S.E.2d 438, 440 (1978).
19. *Thomas v. State*, 245 Ga. 688, 691, 266 S.E.2d 499, 502, vacated, 449 U.S. 988 (1980); see also *Wynne*, 139 Ga. App. at 358, 228 S.E.2d at 381 ("The defendant has no standing to raise a question as to the violation of the witnesses' rights under the Georgia law, as the privilege is that of the person under examination as a witness.").
20. *In re Manheim*, 259 Ga. 791, 793, 387 S.E.2d 330, 331 (1990); *Plunkett v. Hamilton*, 136 Ga. 72, 82-83, 70 S.E. 781, 785-86 (1911).
21. *Simpson v. Simpson*, 233 Ga. 17, 21, 209 S.E.2d 611, 614-15 (1974). For further discussion of the adverse inference, see *infra* text accompanying notes 50-57.
22. *Dempsey v. Kaminsky Jewelry, Inc.*, 278 Ga. App. 814, 815, 630 S.E.2d 77, 80 (2006); accord *United States v. Roundtree*, 420 F.2d 845, 852 (5th Cir. 1969).
23. *Tennesco, Inc. v. Berger*, 144 Ga. App. 45, 48, 240 S.E.2d 586, 588 (1977) (quoting *Capital Prods. Corp. v. Hernon*, 457 F.2d 541, 542 (8th Cir. 1972)); accord *Page v. Page*, 235 Ga. 131, 132-33, 218 S.E.2d 859, 861 (1975).
24. *Axson v. Nat'l Sur. Corp.*, 254 Ga. 248, 249, 327 S.E.2d 732, 734 (1985).
25. *Id.* at 249, 327 S.E.2d at 734; accord *Jett v. State*, 230 Ga. App. 655, 656, 498 S.E.2d 274, 276 (1998) (citing *Tennesco*, 144 Ga. App. at 48, 240 S.E.2d at 588).
26. *Petty v. Chrysler Credit Corp.*, 169 Ga. App. 418, 418, 312 S.E.2d 874, 875 (1984); accord *Chambers v. McDonald*, 161 Ga. App. 380, 380-81, 288 S.E.2d 641, 642 (1982) (quoting *Capital Prods. Corp.*, 457 F.2d at 544).
27. *Jardine v. Jardine*, 236 Ga. 323, 323, 223 S.E.2d 668, 669 (1976); *Cohran v. Carlin*, 165 Ga. App. 141, 143, 297 S.E.2d 54, 55 (1982).
28. *Cohran*, 165 Ga. App. at 143, 297 S.E.2d at 55.
29. *United States v. Argomaniz*, 925 F.2d 1349, 1355 (11th Cir. 1991).
30. *Hoffman v. United States*, 341 U.S. 479, 486 (1951); see also *United States v. Sharp*, 920 F.2d 1167, 1170 (4th Cir. 1990) ("Whether there is a sufficient hazard of incrimination is of course a question for the courts asked to enforce the privilege.").
31. See *Axson v. Nat'l Sur. Corp.*, 254 Ga. 248, 250, 327 S.E.2d 732, 734 (1985); *Tennesco, Inc. v. Berger*, 144 Ga. App. 45, 47, 240 S.E.2d 586, 588 (1977).
32. 227 Ga. 833, 183 S.E.2d 377 (1971).
33. *Id.* at 834, 183 S.E.2d at 378 (internal quotation omitted).
34. *Hoffman*, 341 U.S. at 488 (internal quotation omitted).
35. *Page v. Page*, 235 Ga. 131, 133 n.1, 218 S.E.2d 859, 861 n.1 (1975) (quoting *Hoffman*, 341 U.S. at 486).
36. See, e.g., *Jett v. State*, 230 Ga. App. 655, 656, 498 S.E.2d 274, 276 (1998).
37. 169 Ga. App. 418, 312 S.E.2d 874 (1984).
38. *Id.* at 418, 312 S.E.2d at 874-75 (citing *Chambers v. McDonald*, 161 Ga. App. 380, 380-81, 288 S.E.2d 641, 642 (1982)).
39. 250 Ga. App. 327, 552 S.E.2d 431 (2001).
40. *Id.* at 331, 552 S.E.2d at 434.
41. *United States v. Kordel*, 397 U.S. 1, 11-12 (1970).
42. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) (quoting *FSLIC v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989)); accord *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) ("The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation, which includes authority to control the scope and pace of discovery.").
43. *Am. Express Bus. Fin. Corp. v. R.W. Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 264-65 (E.D.N.Y. 2002).
44. *Volmar Distrib., Inc. v. N.Y. Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993);

- Favaloro v. S/S Golden Gate, 687 F. Supp. 475, 482 (N.D. Cal. 1987).
45. See SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1375-76 (D.C. Cir. 1980); *American Express*, 225 F. Supp. 2d at 265 (granting discovery stay); *United States v. Gieger Transfer Serv., Inc.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997).
 46. *Walsh Sec., Inc. v. Cristo Prop. Mgmt., Ltd.*, 7 F. Supp. 2d 523, 527 (D.N.J. 1998) (stay appropriate in absence of indictment where government had executed search warrants, issued subpoenas to several defendants and defendants were informed that they were targets of criminal investigation); see also SEC v. HealthSouth Corp., 261 F. Supp. 2d 1298, 1326-27 (N.D. Ala. 2003) (civil action stayed even though defendant not yet indicted); *Brumfield v. Shelton*, 727 F. Supp. 282, 284 (E.D. La. 1989) (stay granted where party seeking stay was under investigation by federal grand jury).
 47. *HealthSouth*, 261 F. Supp. 2d at 1316 (granting discovery stay; citations omitted).
 48. See *Baxter v. Palmigiano*, 425 U.S. 308, 317-18 (1976); *Mid-Am.'s Process Serv. v. Ellison*, 767 F.2d 684, 686 (10th Cir. 1985) (a civil defendant who asserts the Fifth Amendment privilege "may have to accept certain bad consequences that flow from that action"); *Volmar Distrib.*, 152 F.R.D. at 39 (Constitution does not require staying civil proceedings when there is a criminal indictment); *Axson v. Nat'l Sur. Corp.*, 254 Ga. 248, 249-50, 327 S.E.2d 732, 734 (1985) (stay denied in civil suit where defendant was under indictment for theft by conversion); *Chumley v. State*, 282 Ga. App. 117, 119-20, 637 S.E.2d 828, 831-32 (2006) (stay denied in civil forfeiture case where defendant had been indicted under Georgia RICO law).
 49. *Dresser Indus.*, 628 F.2d at 1375-76 (citing *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970)).
 50. See *Baxter*, 425 U.S. at 318 ("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them."); *Arango v. U.S. Dep't of Treasury*, 115 F.3d 922, 926 (11th Cir. 1997) ("Fifth Amendment does not forbid adverse inferences against civil litigants, including claimants in civil forfeiture proceedings, who assert the privilege against self-incrimination."); *Simpson v. Simpson*, 233 Ga. 17, 20-21, 209 S.E.2d 611, 614 (1974).
 51. 233 Ga. 17, 209 S.E.2d 611 (1974).
 52. *Id.* at 20-21, 209 S.E.2d at 614 (quoting *Molloy v. Molloy*, 176 N.W.2d 292, 296 (Wis. 1970)) (citations omitted); see *Sanders v. State*, 259 Ga. App. 422, 425-26, 577 S.E.2d 94, 97-98 (2003) (citing *Simpson*).
 53. See, e.g., *Brewer v. Brewer*, 249 Ga. 517, 518, 291 S.E.2d 696, 697 (1982).
 54. 54 F.3d 387 (7th Cir. 1995).
 55. *Id.* at 392-93; see also *Harrison v. Wille*, 132 F.3d 679, 682-83 (11th Cir. 1998) (public employee cannot be terminated solely for exercising Fifth Amendment rights, but adverse inference may be drawn from invocation of rights); *Green v. McKesson Corp.*, No. 2002-CV-48407, 2005 WL 5239705 (Super. Ct. Fulton County, Ga., Dec. 5, 2005) (Long, J.) (declining to apply adverse inference in summary judgment context and citing *Parsons & Whittemore Enters. Corp. v. Schwartz*, 387 F. Supp. 2d 368, 372 (S.D.N.Y. 2005)).
 56. See *Kramer v. Levitt*, 558 A.2d 760, 767 (Md. Ct. Spec. App. 1989).
 57. See, e.g., *United States v. 901 N.E. Lakewood Drive*, 780 F. Supp. 715, 722 (D. Or. 1991).
 58. See, e.g., *RAD Servs., Inc. v. Aetna Cas. & Sur. Co.*, 808 F.2d 271, 274-75 (3d Cir. 1986) (authorizing inference where former employee invoked privilege); *Brink's Inc. v. City of New York*, 717 F.2d 700, 710 (2d Cir. 1983) (holding likewise); *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 825 F. Supp. 340, 352-53 (D. Mass. 1993) (same); *Putnam Res. v. Pateman*, 757 F. Supp. 157, 168 (D.R.I. 1991) ("The Court is, therefore, left with the conviction that its instruction to the jury not to draw inferences from the two Sammartino employees' claims of privilege was indeed error.").
 59. See, e.g., *Emerson v. Wembley USA Inc.*, 433 F. Supp. 2d 1200, 1214 (D. Colo. 2006).
 60. *Data Gen. Corp.*, 825 F. Supp. at 352.
 61. 107 F.3d 110 (2d Cir. 1997).
 62. *Id.* at 123-24.
 63. *Id.* at 124.

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Amelia Island Serves as Host to 2009 Annual Meeting

by Jennifer R. Mason

With a location as beautiful as Amelia Island, it's easy to see why people keep coming back. For the second year in a row, Amelia Island Plantation hosted the State Bar's Annual Meeting. Those who attended the 45th gathering were not disappointed as the island, the Inn and the Conference Center lived up to their potential. From delicious meals to a beautiful setting, Amelia Island once again provided Bar members, family and friends with a wonderful experience.

Opening Night

While the potential of bad weather moved the venue indoors, the spirit of the opening night event remained. Adults and children alike were treated to a visit from Tim Williams of Florida's Gatorland® who brought along two live gators. After sharing information about the animals with the crowd, everyone had the opportunity to step up and experience the gators face to face. A line formed as those brave enough took turns holding a gator and recording a special memory. Kids enjoyed their own room complete with video games, a bounce house and giant inflatable slide, a movie and the ever-popular airbrush tattoo booth, which had more than a few adults standing in line debating whether to get a



A view from the Amelia Island Inn showcases Ocean Links and the Atlantic Ocean.

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

four-leaf clover, heart or butterfly. Buffet-style dining made it easy to grab a bite and catch up with friends

while comedian/songwriter Gerry Robinson wound his way through the crowd composing songs on the spot. The air-conditioned building provided a welcome respite from the heat and mosquitoes and enabled people of all ages to fully enjoy the events of the evening.

Weekend Business

Opening night was followed by the business of the weekend. Breakfast and lunch meetings offered members a relaxed atmosphere in which to conduct the business of their section or committee, honor award recipients and catch up on CLE opportunities. The evening receptions provided a social environment where friends and colleagues could spend time together enjoying each other's company before moving on to the various dinner events. And as always, the meeting offered members the opportunity to participate in non-business related events such as the annual YLD/LFG 5K Fun Run and the golf and tennis tournaments.

Board Meeting Highlights

Following the presentation of awards at the June 19 plenary session, the Board received a report by Robert McCormack, on Active Duty Traditional Guardsman or Reservists, at which time the Board approved proposed changes to Bylaw Article 1, Section 8. The board then received a report on Memorials by Jeffrey O. Bramlett. Following this report, President Bramlett presented the Distinguished Service Award to the Hon. Norman S. Fletcher (see page 42). The presentation of the award was followed by reports on the Investigative Panel by Hubert C. Bell Jr., the Review Panel by Anthony B. Askew, the Formal Advisory Opinion Board by Edward B. Krugman, the Supreme Court of Georgia by Presiding Justice Carol Hunstein, the Court of Appeals of Georgia by Chief Judge



The Mertens family gets up close and personal with the albino gator from Gatorland®. (Left to right) Gatorland's® Tim Williams, Madeleine, Margaret, Anton II and Anton F. Mertens.

M. Yvette Miller, the State of the Law by Attorney General Thurbert Baker, the Georgia Senate by Sen. John Wiles (chair of the Senate Special Judiciary Committee), and the Georgia House of Representatives by Rep. Wendell Willard (chair of the House Judiciary Committee) and Rep. Rick Golick (chair of the House Judiciary Non-Civil Committee).

During the plenary session, President Jeffrey O. Bramlett delivered his outgoing remarks as required by the bylaws of the State Bar. A copy of these remarks can be found on page 30 of the *Bar Journal*.

Bryan M. Cavan presided over the 226th Board of Governors meeting on Saturday, June 20.

Highlights of the meeting included:

- Amy V. Howell provided a report on the activities of the YLD and referred Board members to the written report included in the agenda book. She announced that this Bar year will be focused on supporting children and families, and she has charged the YLD committees to figure out new ways in which to engage and support this theme. In that regard, she has appointed a

Parents and Caregivers in the Profession Committee, will offer networking and CLE opportunities that are family friendly, and will present a forum for young lawyers to discuss the challenges of being both professionals and caregivers. Another significant initiative being undertaken this year will be a Public Summer Internship Program in the summer of 2010 that is designed to assist young and newly admitted lawyers in expanding their skill sets through a variety of public interest positions.

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

Investigative Panel

District 1: Christopher L. Ray (2013)
 District 2: Joseph W. Dent (2012)
 District 3: William D. NeSmith (2012)
 District 4: R. Javoyne Hicks White (2012)

Review Panel

Northern District: Anthony B. Askew (2012)
 Middle District: Oliver Wendell Horne (2012)
 Southern District: Thomas

- R. Burnside III (2012)
- As required by Article V, Section 8 of the Bylaws, the Board:
 - Authorized the President to secure blanket fidelity bonds for the Bar's Officers and staff handling State Bar funds.
 - Directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, said depository currently being Merrill Lynch, and that the persons whose titles are listed below are authorized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: treasurer, secretary, president, immediate past president, president-elect, executive director, general counsel and office manager provided either the president, secretary or treasurer shall sign all checks or vouchers, and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so as said banks are concerned until they are notified in writing, acknowledge receipt thereof.
 - Designated the employment of an independent auditing firm to audit the financial records of the State Bar for the fiscal year 2008-09.
 - Following a presentation by Treasurer Ken Shigley, the Board, by unanimous voice vote, approved the 2009-10 budget.
 - Results of the Executive Committee election were as follows: Charles "Buck" L. Ruffin, Robin Frazer Clark, Nancy J. Whaley and David S. Lipscomb.
 - The Board elected Cliff Brashier as executive director for the 2009-10 Bar year.
 - The Board approved the appointment of Dawn Jones to the Chief Justice's Commission of Professionalism for a two-year term.
 - The Board approved the appointments of Damon Elmore, William C. Rumer, Mark F. Dehler, Leigh M. Wilco and Elena Kaplan for two-year terms to the Georgia Legal Services Board of Trustees.
 - Following a report by Paulette A. Bradham and Michael Monnolly, the Board approved the creation of an Employee Benefits Section and the proposed Bylaws.
 - Following a report by Claudine Wilkins, the Board approved the creation of an Animal Law Section and the proposed Bylaws.
 - The Board received a copy of the future meetings schedule.
 - Linda A. Klein provided a report on the activities of the ABA House of Delegates.
 - Following a report by Robert McCormack, the Board approved proposed Standing Board Policy 500.
 - The Board approved the proposed 2009-10 Elections Schedule.
 - Len Horton provided a report of the activities of the Georgia Bar Foundation.
 - Harvey Weitz provided an update on the new Coastal Georgia Office. President Cavan thanked the members of the Savannah Office Committee for undertaking the project and introduced the new Office Manager, Linda Gale Edwards.
 - Rudolph N. Patterson and Lauren Barrett provided a report on the activities of the Lawyers Foundation of Georgia.
 - The Board received a copy of the minutes of the Feb. 19, March 6, April 16 and May 14, 2009, Executive Committee meetings.
 - Robert Kaufman provided a report on the activities of the Cornerstones of Freedom® program and the Communications Committee.
 - Judge Lamar W. Sizemore Jr. provided an update on the activities of the Long-Range Planning and Bar Governance Committees.
 - Tom Stubbs provided a report of the monthly Lunch and Learn programs offered to unemployed Bar members by the Law Practice Management and Lawyer Assistance Programs.
 - Charles "Buck" L. Ruffin provided a report on the activities of the Pro Bono for Military Veterans and Servicemembers Committee.
 - The Board received a written report from the Unauthorized Practice of Law Program, the Lawyer Assistance Program, the Fee Arbitration Program, the Law Practice Management Program and the Consumer Assistance Program.
 - The Board received a written annual report on the State Bar's Legislative Activities for 2008-09.
 - The Board received a written annual report from the Professionalism Committee.
 - The Board received written annual reports from the following sections: Appellate Practice, Business Law, Eminent Domain, Environmental Law, Family Law, Fiduciary Law, General Practice and Trial Law, Government Attorneys, Health Law, Intellectual Property Law, Labor and Employment Law, Real Property Law, School and



Board Members Dennis Sanders and Michael V. Elsberry talk prior to the business portion of the Presidential Gala.



Carole Cox, outgoing president of the Gwinnett County Bar Association, accepts the President's Cup from President Bramlett during the Plenary Session.

College Law, Taxation Law, Technology Law and Tort and Insurance Practice.

Annual Awards

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

Chief Justice Thomas O. Marshall Professionalism Award

The 8th Annual Chief Justice Thomas O. Marshall Professionalism Awards, sponsored by the Bench and Bar Committee of the State Bar of Georgia and selected by all living past Bar presidents, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the **Hon. Norman S. Fletcher**, Brinson, Askew, Berry, Siegler, Richardson & Davis, LLP, Rome; and **Steven Gottlieb**, Atlanta Legal Aid Society, Atlanta.

President Jeffrey O. Bramlett presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of

Georgia, to **Hon. Norman S. Fletcher** (see page 42) during the plenary session because he was unable to attend the Presidential Gala Saturday evening where the award is usually presented. Fletcher was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

Georgia Association of Criminal Defense Lawyers Awards

The Georgia Association of Criminal Defense Lawyers announced that the 2008 GACDL Indigent Defense Award went to **Stephen B. Bright** and **E. Wycliffe Orr Sr.**

The GACDL's Rees Smith Lifetime Achievement Award went to **John R. "Jack" Martin**.

The 2008 COTY Award was presented by the GACDL to **Brenda J. Bernstein**, **Rodney Zell** and **Franklin J. Hogue**.

Local and Voluntary Bar Activities Awards

The **Thomas R. Burnside Jr. Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profession

and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This award was deservedly renamed last year in honor of Tommy Burnside Jr., for his lifetime of contributions to the legal profession. This year's recipient was **Hon. Warren P. Davis**, Gwinnett County Bar Association, nominated by the Gwinnett County Bar Association.

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

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

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

The **Best Newsletter Award** is presented to voluntary bars that



2008-09 President Jeffrey O. Bramlett relaxes with his family at the Opening Night Festival. (Left to right) Robert, Nancy, Susanna and Jeff.



Justice Robert Benham and wife Nell during the Presidential Gala Saturday evening.



Mark and Sally Panfel enjoy the atmosphere during the Presidential Gala.



Jonathan Kester and JaDawnya Butler appear ready for the events during the Presidential Gala.



(Left to right) Sally and Ken Shigley, treasurer, spend time with Bob Kaufman, Communications Committee/Cornerstones of Freedom® chair and wife Sue during the Supreme Court Reception.



Participants in the 2009 annual tennis tournament. (Back row, left to right) Nick Martin, Peter Muller, John Corish, Hon. R. Rucker Smith, Jason Alloy and Michael Shryock. (Front row, left to right) Margaret Mertens, DeeDee Worley, Lisa Muller, Frances Kuo, Margaret Washburn, Tamera Woodard, Nicole Hahl, Hugh Kemp and Tim Jefferson.



2009-10 President Bryan M. Cavan pictured with his family. (Left to right) Barry and Joan Cavan, Bryan and Cheryl Cavan, Kathy and Bruce Cavan.



2009-10 YLD President Amy V. Howell and her family enjoy the Opening Night festivities. (Left to right) William, Brian, Lauren and Amy.



2008-09 President Jeffrey O. Bramlett presents the Employee of the Year Award to Pauline Childress, administrative assistant to the chief operating officer.

provide the best informational source to their membership, according to their size:

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

In 1961, Congress declared May 1 as Law Day USA. It is a special time for Americans to celebrate their liberties and rededicate themselves to the ideals of equality and justice under the law. Every year, voluntary bar associations plan Law Day activities in their respective communities to commemorate this occasion. The **Law Day Awards of Achievement** are also judged in size categories:

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

A new category was added to the Local and Voluntary Bar Activity Awards this year. The **Best New Website Award** is given to bar associations with websites that exemplify excellence in usefulness, ease of use, content and design in meeting the needs of the website's targeted audience. The bar associations

are judged in size categories:

- 251 to 500 members: **DeKalb Bar Association**
- 501 members or more: **Cobb County Bar Association, Inc.**

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

Pro Bono Awards

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

The H. Sol Clark Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project in 2009 to **Albert M. Pearson III** for his professionalism and commitment to the provision of legal services to the poor, for his support of access to the courts by marginalized populations and for his extensive pro bono legal services to the migrant farm worker community in Georgia.

The **William B. Spann Jr. Award** is given each year either to a local bar association, law firm project or a community organization in Georgia

that has developed a pro bono program that has satisfied previously unmet needs or extended services to underserved segments of the population. The award is named for a former president of the American Bar Association and former executive director of the State Bar of Georgia.

The 2009 William B. Spann Jr. Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to the law firm of **Clark & Washington, PC**, for its partnership in the provision of pro bono bankruptcy legal services for low-income Georgians, commitment to providing high quality legal services for the poor and stellar support of pro bono publico.

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

The 2009 Dan Bradley Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to **Nancy Lindbloom** of the Georgia Legal Services Program for outstanding commitment to the delivery of legal services to the poor, exemplary professionalism and service as mentor and leader within the public interest community in Georgia.

The **Georgia A Business Commitment Pro Bono Business Law Award** salutes a full-time attorney admitted to practice in Georgia or a law firm or corporate legal department in Georgia for outstanding delivery of legal services to the poor. The ABC Pro Bono Business Law Award was presented by the Access to Justice Committee of the State Bar of Georgia to the **Coca-Cola Company Legal Department** for demonstrating commitment to the delivery of pro bono business law services to the underserved segments of the non-profit community and for serving as

an outstanding service model for the corporate counsel community in Georgia and nationally.

Section Awards

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

- **Section of the Year**
Family Law Section, Edward Coleman III, chair
- **Award of Achievement**
Real Property Law Section, Susan Elliott, chair

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members in recognition for their commitment of service to the public, to Bar activities and to civic organizations. Recipients must be at least 50 years old. The 2009 recipients were: **William Q. Bird** (plaintiff), **Hon. G. Alan Blackburn** (judicial), **Robert E. Hicks** (general practice) and **Jonathan C. Peters** (defense).

Young Lawyers Division Awards

Award of Achievement for Outstanding Service to the Profession: **Christine Barker**, **Judge Michael Barker**, **Peggy Caldwell**, **Justice George Carley**, **Stacey G. Evans**, **Elizabeth Hodges**, **Jennifer Mann**, **Roy Manoll**, **Aimee Maxwell**, **William Noland** and **Stacy Rieke**.

Award of Achievement for Outstanding Service to the Bar: **Sharri Edenfield**, **John Jackson**, **Schreeder Wheeler & Flint, LLP**, and **Carl Varnedoe**.

Award of Outstanding Service to the Public: **Jennifer Blackburn**, **Kelly Campanella**, **Shiriki Cavitt**, **Elizabeth Fite**, **LeRoya Jennings**, **Colin Kelly**, **Stephanie Kirijan**, **Whitney Mauk**, **Janet Scott**, **Amy Stone**, **Texas Young Lawyers Association** and **Meredith Wilson**.



Chief Justice Leah Ward Sears administers the oath of office to Bryan M. Cavan as wife Cheryl holds the Bible.

Award of Outstanding Service to the YLD: **Douglas Ashworth**, **Shiriki Cavitt**, **Thomas Duck**, **Stephanie Kirijan**, **Whitney Mauk**, **Shane Mayes** and **Edward McAfee**.

Dedication to the YLD Award: **Sarah Coole**, **Jennifer Mason**, **Derrick Stanley** and **Stephanie Wilson**.

The Distinguished Judicial Service Award was presented to the **Hon. John F. Salter**.

The Ross Adams Award was presented to **Damon Elmore**.


The recipient of the YLD Ethics and Professionalism Award was **Paul D. Fancher**.

Passing of the Gavel

Prior to the swearing-in ceremony, 2008-09 President Jeffrey O. Bramlett presented the Employee of the Year Award to **Pauline Childress** for her dedication and exemplary work since being employed at the Bar in 1994. Childress serves as the administrative assistant to the chief operating officer.

Following the award presentation, Chief Justice Leah Ward Sears swore in Bryan M. Cavan as the 47th president of the State Bar of Georgia. Cavan placed his left hand on the Bible and repeated the following:

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

At the conclusion of the business portion of the evening, the celebration of another wonderful meeting began as attendees feasted on a variety of menu options, preparing themselves for a night of fun and entertainment. Songwriter Gerry Robinson was back to take special requests and record songs for individuals. The scotch and cigar bar called out to those who didn't mind the heat and the martini bar featured the State Bar's own Doug Ashworth on the piano. And once again the dance club was the place to be as the band Platinum cranked out dance hits on into the night. 



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End of the Year Report

by Jeffrey O. Bramlett

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from 2008-09 President Jeffrey O. Bramlett on his year, delivered June 19 at the State Bar’s Annual Meeting.

Let me start by saying I am grateful to each one of you for the opportunity I have had this past year. It has certainly been the highlight of my working life. I am grateful to all the lawyers around the state who have extended to me encouragement and hospitality, who have counseled me when I was heading down the wrong path. It has been an extraordinary learning experience for me.

I have learned a great deal about the state of Georgia. As my friend and predecessor, Gerald Edenfield, pointed out to me, “Jeff, you know Georgia is a really big state.” Sometimes those of us in metropolitan Atlanta lose sight of that fact. It has been a

great reality check this past year to have traveled all over the state and really appreciate what a wonderful place this is. The experience has taught me much about the great lawyers, the good people, the fascinating communities and the natural beauty of this great state. I shall never take any of them for granted again.

I’m also grateful for the opportunity to have worked with what I believe to be, based on my interactions with my colleagues in other states around the country, the very best Bar staff on the planet. When we succeed, it is almost always because they have thoughtfully prepared your officers and your Board. When we make mistakes, it’s because we have not listened closely enough to them.

I also want to point to the one essential ingredient that—year in and year out—sustains the strength and success of our Bar. It’s not the president, it’s not the Bar leadership, and it’s probably not even the Board of Governors. It is all those lawyers who devote all that volunteer effort across the state in local bars, Bar committees and Bar sections. When you take a 20,000-foot view of it and you think about what lawyers do every day for the bar in their communities to keep the rule of law in place and strong, in the face of all the challenges that our legislators, judicial officers and Attorney General Baker have talked about this morning, it is an incredible resource to our society. I’m very proud to have stood in the midst of our profession’s ongoing magnificent contribution to the well-being of Georgia.



2008-09 Bar President Jeffrey O. Bramlett speaks to Board of Governors members during the 2009 Annual Meeting.

I'd also like to express gratitude to Nancy and our family for putting up with my enduring and persistent absenteeism over the past year. Because when I came into office last year, one of my law partners coined the phrase "the soon to be scandal-tainted Bramlett administration" I want to defuse some rumors about our recent family vacation. It is true that I was out of the country for about three weeks. It is also true that I was traveling with my family in Italy, Greece and Turkey. It's not true this was on the Bar's tab. But as I reflect on the State Bar's aggressive geographical outreach to lawyers around the state—we've opened an office in Tifton, and now the Coastal office in Savannah is open—it occurred to me on this recreational trip that it may be time to expand our horizons. Where shall we site the next State Bar outreach office? Shall we go boldly international? I come back to report to you that I think either Mykonos or Santorini in the Greek islands would be a place where Georgia lawyers would enjoy congregating. If you'd like for me pursue that, I know that my family would be

glad to join me in an effort to identify suitable office space on one of those lovely islands!

When I came into office last year, I told you that my chief concern was maintaining the unity of our Bar. Unity among 40,000 diverse lawyers inclined to form strong opinions is a persistent challenge that faces us. I certainly didn't solve it this past year, but standing on the shoulders of giants like Gerald Edenfield and Jay Cook and Robert Ingram and Rob Reinhardt, I have strived to bring all lawyers together and focus on the core professional values that we all agree on: the rule of law, the preservation of fair and impartial courts and a commitment on behalf of the entire legal profession to accessible justice and to fair play.

We remain focused on our shared values. These are not debatable propositions within the legal profession. We will always argue about the details on the margins, but those fundamental concerns drive us as a Bar and drive us as a profession and I think the state of the Bar is good in that regard.

This year, we have faced economic adversity that has affected the lives of our lawyers, our fellow

Georgians, people across our country and people around the world. No one predicted the sweep, the scope and the intensity of this economic meltdown. I am grateful for the fact that during this meeting, many of you have come up to me and none of you have actually blamed me for the economic catastrophe of the last year. I think that was an appropriate non-assignment of blame. But it has presented our profession with some real challenges.

The estimate is that we have about 900 to 1,100 new lawyers joining our Bar this year. Many of our newest colleagues are having a very difficult time finding suitable employment in our profession. Many of them are taking the entrepreneurial route that many of us took. But it's a very adverse economic situation for them. These young lawyers ask very rational questions like, "How exactly do you build a law practice and obtain clients if you have no experience and no capital and no support to start?"

Your Bar has been proactively looking at how we can help our new young people entering our profession. I want to thank and recognize Tom Stubbs for the Lunch and Learn program he has initiated. I'm sorry Tom is going to be leaving the Executive Committee. He has given us great leadership this past year. When you see him, please thank him for his efforts in that regard. I also want to acknowledge the Transition into Law Practice Program, whose groundwork was laid 10 years ago, and the excellent work of its director, Doug Ashworth. The salience of that program has never been clearer than in these economic times. It has been a great tool and a source of encouragement for the new generation of Georgia lawyers who are struggling with those hard questions in hard times.

Our Lawyer Assistance Program is seeing an uptick in demand for services. Our Law Practice

The experience has taught me much about the great lawyers, the good people, the fascinating communities and the natural beauty of this great state. I shall never take any of them for granted again.

Management Program, a splendid idea when it was launched 15 years ago, is daily proving itself an invaluable resource for our private sector lawyers struggling to adjust in an unforgiving economy.

The special reports this morning highlighted what's going on in the public sector, and I think Justice Hunstein's point is very clear. Yes, the state is facing a very tough budget situation and no area of the public sector is immune from the responsibility to work cooperatively through this reality. But when the funding for the judicial branch drops from 0.9 percent to 0.79 percent, it's careening in the wrong direction. We've worked hard this past budget cycle to urge the legislative and executive branches of government to moderate the meat ax and fulfill the constitutional requirement of an adequately-funded judicial branch of government. Adequacy is like beauty, I suppose, in the eye of the beholder, but it is critical for our profession to advocate for that strong and independent judiciary that we all know is the root of the rule of law.

We have had a strong legislative presence this year. I want to thank Patti Gorham, chair of the ACL, and Dwight Davis, who will be chairing next year. I want to thank Capitol Partners—Tom Boller, Rusty Sewell, Mark Middleton, Hunter Towns—and Charlie Tanksley who have continued to provide us with excellent advice and strong advocacy as we negotiate the reefs and shoals of the General Assembly. I do genuinely thank Chairman Willard and Chairman Golick and the other members of the Legislature, espe-

cially the lawyer-legislators, who have performed their public service with an appreciation for the work of the judicial branch. Sometimes we disagree on the specifics of particular issues, but they have conducted their legislative branch responsibilities with respect for the fact that the judicial branch is a co-equal partner in state government.

Lawyers have consistently told us that they appreciate the State Bar's broadcast outreach to the people of Georgia and, this year, we have continued that effort. Three different public service announcements have been created and broadcast. We have continued to build a relationship both with the leaders and members of our Legislature and the general public about the importance of blind justice and the words of our current PSA, quoting from Abraham Lincoln about government of the people, by the people, for the people never perishing from this earth.

As the members of the Cornerstones of Freedom® and Communications Committee, under the leadership of Chairman Bob Kaufman, have worked energetically to master the details of creating 30-second spots and getting "bang for the buck" in broadcasting them on radio and television, our Bar has built a more decentralized expertise in what it takes to continue this communications activity with increasingly greater skill and knowledge. This group has done a superb job of husbanding our resources carefully. As the diffusion of knowledge about these subjects spreads among the members of this committee to the larger Bar,

we are equipping our institution to get better and better at this communications function.

The major funding source for this communications activity is the Legislative and Public Education Fund. Even in these hard times, the lawyers of Georgia have been generous in their support of this fund because they understand how important it is to provide "air support" for our legislative advocacy "ground game." It is still too early to know how the fund will fare in this hard economy, but I am confident the lawyers of Georgia will provide the necessary resources to get the job done.

As we've broadcast PSAs statewide, we've also maintained a local focus. We've published more than 110 articles in local papers all around the state acknowledging the accomplishments of lawyers and judges in their local communities. The total circulation of those papers exceeds 2.2 million readers. I don't know exactly how many people read these things, but I can tell you I have gotten many very favorable responses from lawyers, judges, their families and members of their communities who have said it is really very appropriate that the Bar is acknowledging these lawyers who are doing good work.

We have continued our Law-Related Education efforts. Ninety-eight schools have toured the Bar Center. More than 4,300 students from 19 counties have done the drill. We've had two teacher workshops, and 50 educators from the DeKalb County schools have come and gone through the program.

We also hosted the National High School Mock Trial Competition. I want to say to all of you who offered me advice during that rather difficult two or three weeks, thank you for your advice. And for those who gave me encouragement, I thank you for that as well. It was an interesting few weeks. I do want to point out that it was a very successful event. All competitors who wished to compete competed. The quality of the advocacy was out-

standing. The YLD devoted countless hours of volunteer effort to ensure that the competition was an experience the participants will never forget. It was a great training experience and learning experience for all concerned. We can be proud of what we did.


In these cynical times, if a public referendum were held on the question, "Should the regulation of the legal profession be entrusted to lawyers?" we'd probably end up under the jurisdiction of the Agriculture Commissioner and his regulations about foxes and hen-houses. But the wisdom of all three branches of government gives us this privilege and opportunity of self-regulation under the watchful eye of the Supreme Court. As you heard here today from Chairman Bell of the Investigative Panel, Chairman Askew of the Review Panel and Chairman Edward Krugman of the Formal Advisory Opinion Board, our discipline system continues to function effectively with the overriding objective of protecting the public. That is something that elevates the Bar beyond the status of a trade association. We rise to the level of a true professional organization when we meet the test of protecting the public. We can all be proud of that performance.

A year ago, I came to you with a proposal to create the State Bar's Military/Veterans Pro Bono initiative. Last year, I ran into some budgetary headwinds. But I am pleased to report that a committee of volunteers, under the leadership of Buck Ruffin and with the tireless support of the Pro Bono Project's Mike Monahan, has worked long and hard to assess the unmet legal needs, to build the relationships with the military installations in the state of Georgia and the JAG offices at these facilities and to recruit more than 650 members of the State Bar who have volunteered to perform legal services under the auspices of this new program. Tomorrow, you will vote on a budget that includes funding to provide staffing on a pilot-proj-

ect basis for the referral network these volunteers have put in place. This committee of volunteer lawyers has given the time and effort and resources to bring this idea off the ground. As we continue over the coming year to work on the continuing legal education component and train up this initial volunteer cadre of 650 and hopefully attract more volunteer Georgia lawyers to this opportunity for service, I believe our Bar is on the verge of creating a resource of support for servicemembers, veterans and their families that will make us all proud.

Last year, Judge Lamar Sizemore received the Distinguished Service Award, our Bar's highest honor. Shortly thereafter, I called him up and said "OK, Lamar, the penalty for good work is more work." I asked him to chair the Long-Range Planning and Bar Governance Initiative. He has done that this past year with the impeccable leadership we have come to expect from him. He and his excellent committee have worked with energy and vision to address the governance questions I've asked them to address. The leaders of the related organizations—the Georgia Bar Foundation, Georgia Legal Services Program, Institute of Continuing Legal Education and Lawyers Foundation of Georgia—have participated enthusiastically and I think we are all excited about the potential of this effort. We are analyzing how we can better bring information to our membership and the Board of Governors about the overall operation of these entities, which are separately governed for various good reasons but are also intimately linked in that we share common objectives.

In this most recent Board of Governors election cycle, we had 18 contested races and 45 people running. It's painful for candidates who have to run in contested races, but it's healthy for our Bar when lawyers are willing to endure the rigors of competition for the opportunity to serve our profession. I

congratulate all candidates for running fair and positive races. I commend the YLD Leadership Academy for stimulating participation. I thank the incumbent Board members for their service. I welcome the new Board members. In the years to come, I hope each of you will seriously consider seeking the experience Georgia's lawyers have permitted me to enjoy over the past year. I am living proof that the job qualifications do not extend much beyond a love of the legal profession, a curiosity about our state and a willingness to work to make it better, and the tenacity to drive long stretches of Georgia highway between stops for barbecue and the warm hospitality of Georgia lawyers. 



Jeffrey O. Bramlett is the immediate past president of the State Bar of Georgia and can be reached at bramlett@bmelaw.com.

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Cavan's Program for the 2009-10 Bar Year

by Bryan M. Cavan

The following is excerpted from Bryan M. Cavan's presidential speech at the 2009 Annual Meeting in Amelia Island.

Good morning. I come before you today full of appreciation and excitement over the opportunity to serve as president of the State Bar of Georgia. I am also humbled by the awesome responsibility and unique challenges that face our organization and our profession today.

The well-documented changes this economy have brought on the nation's law firms—large, medium and small—led a *New York Times* writer to surmise, only a couple of weeks ago, the following: "The gentleman's profession of the law is becoming a vestige of the past, removed enough from reality to be remembered, like phone booths or fedoras."

I certainly hope that is an overstatement, but there is no question we are in some uncharted waters with regard to the current economic situation and how it is affecting not only our clients but our fellow lawyers. This is something that we must cope with and work with in a number of different forms.

In this economy, it is imperative that we take an inward look at our organization. Thanks to some decisions we made several years ago with regard to reserves and indexing, at the present time your State



Photo by Sarah I. Coole

2009-10 Bar President Bryan M. Cavan addresses Bar members, family, friends and guests during the business portion of the Presidential Gala Saturday evening.

Bar is financially healthy, and it will be a top priority for 2009-10 to ensure that those who follow me as president have a healthy Bar to work with as well.

The effects of the economy present a number of challenges to the State Bar to pursue its mission to serve the public, the judicial system and our members.

I believe we have a great untapped resource in our past State Bar presidents. Their interest in the success of this organization did not end when they left office, nor did their love of this profession, their commitment to public service or their dedication to the cause of justice. I intend to utilize their collective talent and individual insight to a great extent toward meeting the challenges of the coming year.

Judge Irwin Stolz, our president from 1970-71, recently and correctly pointed out that the great initiatives of the State Bar rarely come to fruition overnight and never without the widespread support of the Bar's membership.

Ongoing Bar Programs for the Public

Thanks to the vision of my predecessors and a tremendous amount of work by the Executive Committee, Board of Governors and various committees and sections in recent years, the State Bar has made significant strides in a number of areas, and I look forward to continuing this progress this year.

We have raised public awareness of the importance of a strong, fair, impartial *and well-funded* court system through our Cornerstones of Freedom® public information initiative. This program is going to continue. The extent to which it continues is dependent to a great deal on the voluntary contributions of lawyers to the Legislative and Public Education Fund. I ask each of you to support these efforts by including your contribution with the payment of your dues

Today, I want you to know I am committed to strengthening and enhancing each of the State Bar's programs over the course of my term in office.

and to encourage your constituents to do the same. Hopefully we will be able to continue airing TV and radio public service announcements on matters of importance to the judicial system.

We also plan to continue and hopefully enhance our Law-Related Education and Journey Through Justice programs, which are designed to inform Georgia's young people about our court system and legal profession. More than 4,000 Georgia students have participated in these programs during the past year.

There are many ways in which we, as lawyers, have an opportunity to use our individual skills and talents for the public good. The number of our citizens who cannot afford to retain an attorney to assist them in their legal needs is skyrocketing today and overwhelming the organizations and attorneys dedicated to serve this growing segment of our society. We can help by taking pro bono cases, or serving in legal clinics. We also can serve by contributing to the organizations that serve the needs of these people.

2010 Legislative Agenda

This economy is certainly going to continue to impact the revenue situation at the state Capitol. Unless things turn around quickly and dramatically, we are going to have to work even harder to face the budgetary crunches with our courts you have all read and heard about in recent weeks and months. We cannot and will not abandon the effort to obtain a pay increase for our judges. Further, we will be

ready to assist our prosecutors as well. It is doubtful that the economic conditions or the political environment will improve to the extent that we can pursue a pay raise for our judges, but we must keep the dialogue alive with our legislators.

Also on our agenda, legislation that would conform the Georgia Rules of Evidence to federal rules was approved by the House Judiciary Committee and will receive further consideration during the 2010 session. A proposal to substantially revise the Trust Code passed the Senate and will be pending before the House Judiciary Committee going into next year's session.

A bill opposed by the State Bar, which would effectively strip the Public Defender Standards Council of its authority and place the indigent defense system under the executive branch, narrowly passed the Senate. An amended version cleared the House Judiciary Non-Civil Committee but did not reach the House floor for a vote before adjournment.

Our Members

While taking stock in what the economy is doing, we also need to take stock in what we are doing for our membership. For many lawyers, the Bar serves no purpose other than as a repository for their annual dues money so they can practice law in the state of Georgia.

We need to remember the State Bar is for *all* Georgia lawyers. Slowly but surely, we are trying to reach out to all groups everywhere in our state and make sure the Bar becomes relevant to them.

Our efforts with regard to judicial pay raises, indigent defense and the impact on access to justice in the tort reform legislation, have to some degree left questions among our prosecutors and government attorneys as to their relevance in our initiatives. Sole practitioners and small firms have seen their practices decline and ask what does the State Bar of Georgia offer me? The State Bar must be relevant to all of its members, whether we are prosecutors or defense attorneys, in-house attorneys, family law attorneys, corporate and transactional attorneys or tax lawyers, whether our practice is primarily in the federal courts or is in the state courts or is not court related at all. We must continue to reach out to all of our members and listen.

I am committed to strengthening the interaction with our own members across the state. During the upcoming year, we will continue taking our Executive Committee meetings to locations around the state. These sessions have been extremely successful in connecting Bar leaders with fellow lawyers and judges, local bar associations and state legislators throughout the state.

This past year, Jeff Bramlett took this concept a step further by hosting Bar leadership conferences in Tifton and in Savannah. Local bar presidents had the opportunity to share ideas to help the State Bar do a better job of serving the public and our members. I also intend to continue and increase the number of these sessions.

You are already well aware that the State Bar provides the least expensive Continuing Legal Education program in the nation and maintains an exemplary attorney discipline system, promoting public confidence in the legal profession.

Since last October, more than 300 lawyers have made initial claims for unemployment benefits with the Georgia Department of Labor. The Bar responded by

launching a series of monthly Lunch and Learn programs for attorneys who are out of work. The first two sessions in April and May each drew a full house.

There is a wealth of resources available to Bar members who are suffering in this economy through the Law Practice Management and the Lawyers Assistance programs, either online or through direct consultation. If you know a colleague who needs help right now, I hope you will refer him or her to the State Bar website so that we can lend a hand.

In terms of member benefits, we will continue to strengthen and enhance a number of benefits and services including:

- Promotion of professionalism through the Transition into Law Practice Program;
- Outreach to our newest members in the profession;
- Promoting diversity in the profession;
- Support for our sections, committees and voluntary bars;
- Casemaker services; and
- Two new committees, one addressing our Aging Lawyers needs and concerns, and our Military/Pro Bono effort to match Georgia lawyers up with servicemembers who have unmet legal needs, either on a fee or pro bono basis.

We are also very excited about the opening earlier this month of the State Bar's Coastal Georgia Office in Savannah. This beautiful facility on the city's historic riverfront will provide a closer meeting place for an area sweeping from Augusta to Brunswick, as well as a home away from home for those of us who enjoy traveling to Savannah as often as possible.

Along with our headquarters in Atlanta and the South Georgia Office in Tifton, every lawyer in Georgia is now within a two-hour drive of a State Bar office, with the vast majority much closer than that. This will go a long way

toward increasing the relevancy of the State Bar in the lives and practices of all of our members, and I intend to better utilize this advantage over the next 12 months.

These are just a few of the ways the State Bar is trying to fulfill our mission of serving the public and our judicial system and assisting you, our lawyers and judges who are on the front lines every day.

Financial Challenges

Today, I want you to know I am committed to strengthening and enhancing each of the State Bar's programs over the course of my term in office. But I am equally committed to meeting our fiduciary responsibility and keeping the Bar on a strong financial footing during this extraordinarily challenging period. To do so, we need to closely examine our budget line-by-line and make sure that each program is fulfilling the mission for which it was designed.

If you are wondering when I am going to announce the "Bryan Cavan Signature Program" for this year, let me put your mind at ease. There will be no Bryan Cavan Signature Program. This is not the year to be doing something like that. The funding simply is not there for new programs.

While the financial health of the State Bar itself remains strong, we help support a number of vital programs that depend on funding from other sources. For example, IOLTA funds are a major source of support for the Georgia Legal Services Program, the Georgia Appellate Practice and Educational Resource Center, Inc., the BASICS Program and many other deserving programs. Last year, the Georgia Bar Foundation had approximately \$9 million in IOLTA funds to award grants to these programs and others across the state. This year, the IOLTA funds available for grants have dropped to about \$3 million.

We will ask you to approve a budget that will include the


expenditure of a portion of the State Bar's surplus money on some programs whose grant funding will be reduced or unfunded this year because their sources of revenue simply don't have the money.

I am confident we can meet these challenges because of what I see when I look around this room:

- The experience and wisdom of our past presidents and Board members who have been around for many years;
- The "new blood" and fresh perspectives of those of you who were recently elected to serve; and
- The institutional knowledge and incredible talents of Cliff Brashier and the Bar staff.

I am confident about meeting our challenges this year because I know we're all in this together. If I haven't told you already, let me take this opportunity to thank you for your willingness to serve as a leader of the State Bar of Georgia. The time and expense this service costs you alone demonstrates your commitment to the legal profession and our responsibility to serve the public and the justice system.

And once again, thank you for the confidence you have shown in electing me as your president. It is a tremendous honor, and I promise you I will work as hard as I can throughout this year to uphold your trust.

Working together, we will not only survive this difficult economic climate but thrive in our efforts to make the State Bar relevant and helpful to all Georgia lawyers and keep this great organization financially healthy now and in the years to come. 



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

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New President Ready to Listen

by Linton Johnson

After more than 40 successful years in the profession, one might never guess the practice of law was not among the first two career choices of Bryan M. Cavan. The new president of the State Bar of Georgia first saw himself as a clergyman, and then considered the field of diplomacy before settling on the law as his life's work.

Cavan was born in St. Petersburg, Fla. His parents, both from Massachusetts, "went to Florida for their honeymoon and never went home," he says. Actually, his father had a job waiting for him in St. Petersburg. His dad returned there after Army service in the Battle of the Bulge during World War II. A few years later, when Bryan was 12, the family moved to Jacksonville.

Following his graduation from Bishop Kenny High School, Cavan entered the seminary to study for the Catholic priesthood. He attended St. Thomas Seminary in Bloomfield, Conn., for his first two years. After his third year, at St. Mary's Seminary in Baltimore, Md., Cavan left the seminary and entered Belmont Abbey College in Charlotte, N.C., where he finished his degree in philosophy. Knowing that law school was in his future, he minored in English and history.

Then it was on to Emory University School of Law. Cavan arrived in Atlanta with plans to finish law school

and become a foreign diplomat, having known others who had taken a similar path. He had no intention of practicing law until his second year at Emory, when he happened to attend a State Bar of Georgia meeting.

"One of the speakers was a state Supreme Court justice, who talked about the need for good litigators," Cavan recalls. "I sort of got the bug. Local trial lawyers came to Emory to work with us on trial techniques. I truly enjoyed those classes." His proficiency got him on Emory's International Moot Court team, and he argued in the regional competition at Duke University in his third year. For a number of years, Cavan went back to his alma mater and served as an instructor in the Trial Techniques Program.

While in law school, Cavan worked part time for two years as an orderly at Emory University Hospital. The summer before his third year, he got a taste of real-life law practice, working part-time at the Atlanta Law Firm of Arnold & Cate. He was admitted to the Bar in April 1967, during his third year at Emory.

During the spring of 1967, Cavan received a call from a friend who wanted him to meet a classmate of hers at Grady Memorial Nursing School. It was then he met Cheryl Long. Their blind date began a whirlwind courtship, and they were married in November 1967.

Shortly after his graduation from law school, Cavan received his draft notice. He had become acquainted with Atlanta attorney Hugh Howell Jr., "who took me under his wing and became my guardian angel in the military." Cavan joined the Navy and reported to Officer Candidate School in Newport, R.I. He was initially stationed at the Naval



Photo by Sarah I. Coole

2009-10 State Bar President Bryan M. Cavan and family at the Presidential Inaugural Gala. (Left to right) Brent and Ashley Ratliff, Bryan and Cheryl Cavan, Melissa and Mike Cavan, Chris and Sean Cavan.

Air Facility of Andrews Air Force Base in Maryland.

By the summer of 1969, President Richard M. Nixon had already begun reducing American forces in Vietnam. At the urging of Hugh Howell Jr., Cavan earlier had applied for an appointment to the Navy's Judge Advocate General's Corps (then called the Law Specialist Program). Shortly after his promotion to lieutenant junior grade, Cavan received notice of an appointment to the JAG Corps, but within a week came notice of an "early out."

"We were expecting our first child in September," Cavan explains, "so Cheryl and I got out."

The young couple returned to Atlanta with a five-week-old baby, a cocker spaniel and no job. It wasn't long, though, before Cavan started practicing law with Eddie and Reuben Garland. In the summer of 1970, he went to work as an assistant district attorney in DeKalb County under Richard Bell. Two years later, he joined now U.S. District Judge Owen Forrester as a special assistant U.S. attorney at the Office of Drug Abuse Law Enforcement. Cavan spent a year

prosecuting Heroin Task Force cases in the Southeast before returning to private practice.

After a year as an associate with Rich Bass Kidd & Broome in Decatur, Cavan entered into a partnership with Ed Carriere, Wayne Moulton and Mike Maloof—a practice that primarily focused on criminal defense work. Cavan and Maloof left the firm in 1984—"I was getting out of criminal defense practice"—and he entered a new venture with Fielder Martin.

They formed what later became Martin Cavan & Andersen in Buckhead, a construction law boutique that essentially merged with Gambrell & Stolz in 1993. Cavan stayed with the firm until 2001, when he was invited to join Miller & Martin, a 200-lawyer firm with offices in Chattanooga, Nashville and Atlanta, where he remains today. Cavan specializes in construction litigation and arbitration, with most of his work on behalf of general contractors.

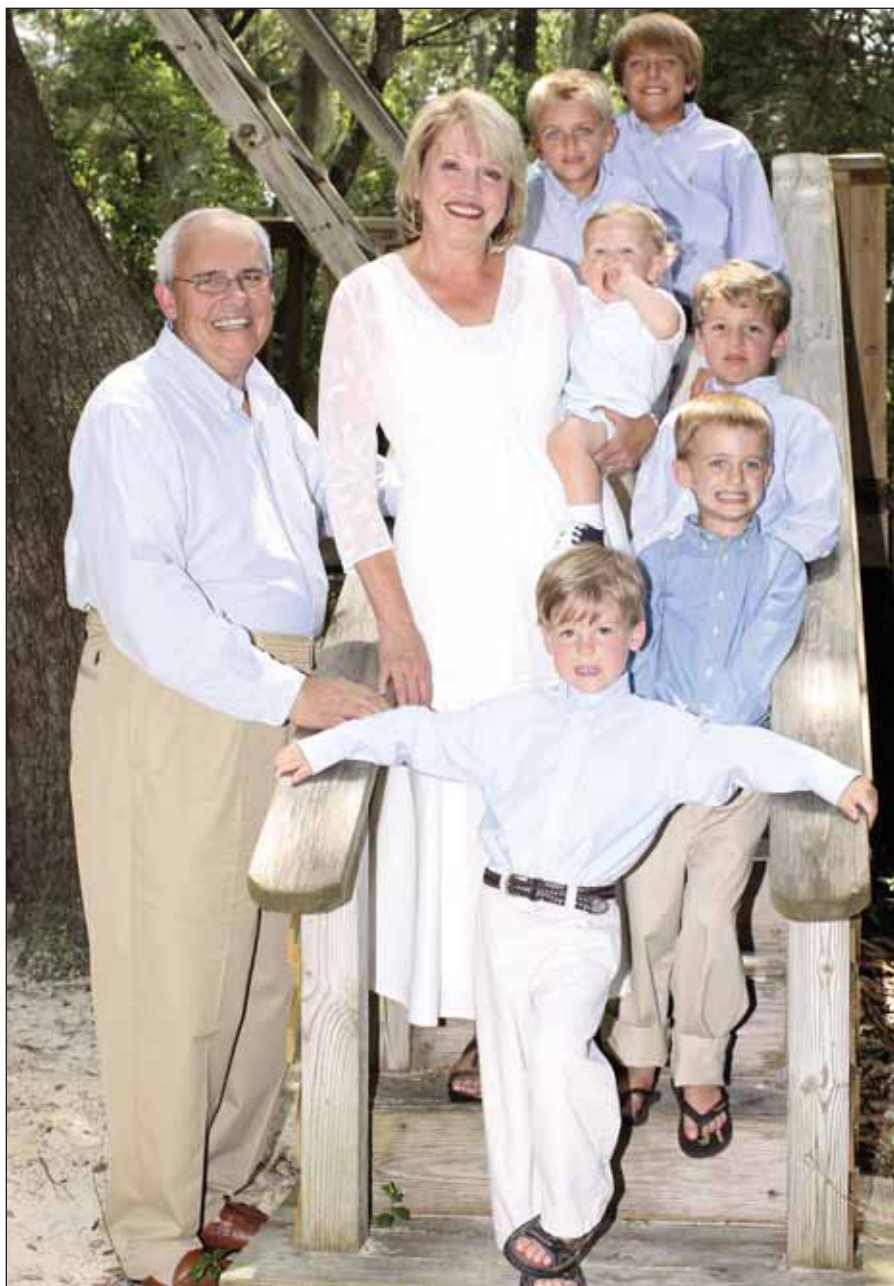
"I consider myself a problem solver," Cavan says, "not just a litigator."

Cheryl is a registered nurse who has worked at Grady Memorial,

Northside and St. Joseph's hospitals in Atlanta and later with companies providing home health care. About two years ago, they moved from Atlanta to Newnan. They live next door to their daughter and son-in-law, Ashley and Brent Ratliff, and three of their six grandsons, Zach, Nicholas and Will. The Cavans also have two sons, Mike and Sean. Mike and his wife Melissa have three sons, Jake, Alex and Chandler, and live in Fernandina Beach, Fla., while Sean and his wife Chris recently moved from Crestview, Fla., to Washington, D.C.

In his spare time, Cavan enjoys his grandchildren and planting in the yard. "Cheryl enjoys picking out flowers and shrubs," he says, "and having me plant them. One of these days, I will begin work on my golf game in earnest."

Over the years, Cavan has been active in the community, coaching football and softball in the Murphey-Candler youth program in DeKalb County, and serving as president of the Buckhead Branch of the Atlanta Chamber of Commerce and as a member of the chamber's Forward Atlanta Advisory Council.



Bryan and Cheryl Cavan with their six grandchildren. (Top to bottom) Jake, Alex, Will, Zach, Chandler and Nicholas.

He is also a co-founder of the DeKalb Volunteer Lawyers Foundation and served on its Board of Directors until 2008. He "went through the chairs" of elected office in the DeKalb Bar Association, serving as president in 1982-83, but at the time was not being pulled toward State Bar leadership.

That began to change in 1988, when Cavan was appointed by Gov. Joe Frank Harris to the Governor's Conference on Justice in Georgia, and he co-chaired its Committee on Prison Overcrowding. He later

served on the State Bar's Overview Committee for the General Counsel's Office and the Statewide Judicial Elections Committee.

In 1995, he ran for an open seat on the Bar's Board of Governors and won a three-candidate race. Since that time, Cavan has chaired the Disciplinary Board Investigative Panel, the Law Practice Management Committee and the Uniform Rules of Court Committee and Judicial Procedure and Administration. He was elected to the Executive Committee in 1999.

"After a number of years, I decided I either needed to continue and serve as an officer, or else get out of the way," he said. He was elected and served two years as treasurer and one as secretary prior to his election as president-elect.


Despite a successful career of presenting evidence and arguments, Cavan said he will spend a great deal of his term as Bar president on the other end of the conversation.

"I believe we in leadership need to be listening to our members," he said. "We need to be a State Bar that can be supportive and help them through these lean times—not only those in private practice facing layoffs and unemployment, but also government lawyers and judges who are dealing with severe budget cuts.

"We might not hand out T-shirts that say 'Listening Tour 2009-10,' but I do look forward to going around the state and meeting with our fellow lawyers," he continued.

"I enjoy being with lawyers—all shapes, sizes and different career paths. We all have similar goals: helping each other and helping the justice system."

Embarking on his year of being the "go-to guy" for more than 40,000 Georgia lawyers, Cavan gives credit to those who have helped him along the way.

"I've been associated with some incredible people," he said, singling out onetime law partner and former U.S. Sen. David Gambrell as a special mentor. "And I don't think any of this would be possible without the support of my wife and my law partners. I also attribute an awful lot to my parents and my upbringing, how to treat other people. Family, faith and friends—that's the core of all of us." 



Linton Johnson is a media consultant to the State Bar of Georgia.

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Former Chief Justice Receives State Bar of Georgia Distinguished Service Award

by Derrick W. Stanley

The Distinguished Service Award is the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia. The 2009 recipient, the Hon. Norman S. Fletcher, was honored with this most prestigious award during the Bar's Annual Meeting June 19 at Amelia Island, Fla.

The award was presented at the plenary session where the Board of Governors and attendees gave a standing ovation to Fletcher as he was presented his resolution. Due to prior travel arrangements, the award was presented earlier than usual which added to the surprise for Fletcher.

"Among the many accomplishments of this year's honoree, the State Bar of Georgia specifically attributes the establishment and maintenance of an indigent defense system in our state largely to the diligent leadership and ongoing personal involvement of this individual," said Jeffrey O. Bramlett, president of the State Bar, in making the presentation. "His long record of service and the unfailing dedication, spirit and integrity with which he has served since his admission to the Bar in 1958 are a credit to the profession and an inspiration to all Georgia lawyers."

Fletcher is a graduate of University of Georgia School of Law. He began his law practice as an associate in the law firm of Matthews, Maddox, Walton & Smith in Rome, and in 1963 moved to LaFayette to form a partnership with Irwin W. Stolz Jr. and the late George P. Shaw, later establishing the Fletcher & Womack Law Firm in LaFayette and, after retirement from the Supreme Court of Georgia, joining the firm of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP, in Rome.

Fletcher was appointed by Gov. Joe Frank Harris to the Supreme Court of Georgia in 1989, served as presiding justice from 1995 through 2001, was sworn in as chief justice on June 28, 2001, and served on the Board of Directors of the Conference of Chief Justices from 2003-05.

He has also been active in the Bar and has served as co-chair of the State Bar of Georgia Commission on Lawyer Disciplinary Reform in 1989, as a member of the State Disciplinary Board (1984-87), chair of the Investigative Panel (1986-87), chair of the Local Government Section of the State Bar (1977-78), president of the City Attorneys Section of the Georgia Municipal Association (1978-79), board member of the Attorney's Title Guaranty Fund (1971-75) and president of the Lookout Mountain Circuit Bar Association (1973-74).

Fletcher has a long record of community service, including three terms on the Board of the LaFayette Chamber of Commerce, serving as president of the LaFayette Rotary Club, as a ruling elder of Peachtree Presbyterian Church, as an officer in the First Presbyterian Church of Rome, LaFayette Presbyterian Church and Cherokee Presbytery and as a commis-



Photo by Sarah I. Coole

2008-09 President Jeffrey O. Bramlett presents Hon. Norman S. Fletcher with the 2009 Distinguished Service Award for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

sioner to the Presbyterian Church USA General Assembly in 1984 and 1985.


In 1999 he was presented the Harold G. Clarke Award by the Georgia Indigent Defense Council "in recognition of his long-term commitment and dedication to the cause of ensuring equal justice for all of Georgia's citizens" and he received the Atlanta Bar Association's Leadership Award in 2002 "for inspiring by his example, challenging by his deeds, reminding us all of our debt to our profession and our community."

In addition to being honored this year with the Distinguished Service Award, Fletcher was also the recipient of the eighth annual Chief Justice Thomas O. Marshall Professionalism Award, presented by the State Bar of Georgia.

The legal community and the citizens of Georgia owe a debt of thanks to Fletcher for his tireless and selfless service to the profession, the jus-

tice system and the State Bar of Georgia for more than 50 years.

The State Bar of Georgia expresses its gratitude and appreciation to Honorable Norman S. Fletcher for his many years of devotion to the legal profession, the justice system and the people of Georgia by presenting him with the Distinguished Service Award.

Fletcher's contributions to the bench and bar throughout his career exceeded the qualifications for this award; moreover, it was his diligent dedication and unrelenting dedication that earned him the declaration. Congratulations to Justice Fletcher on embodying the spirit of the Distinguished Service Award. 



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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Lawyers Foundation of Georgia Returns to Amelia Island

by Lauren Larmer Barrett

Amelia Island Plantation once again provided a beautiful backdrop where the fellows of the Lawyers Foundation gathered to conduct their business. The Foundation's events, held during the Annual Meeting of the State Bar, included a silent auction and fellows meeting, as well as a joint dinner with the Chief Justice's Commission on Professionalism and the annual Fun Run.

While the annual silent auction was not quite as successful initially as in previous years, grossing \$10,000 onsite, the opportunity to participate in the Second Chance Auction is still going on, so it is possible that the final number will increase! With the adverse economic conditions that have fallen upon us, we are grateful for everyone's contributions. Thank you to all who worked so hard finding items for us—we couldn't do it without you. And of course, thanks to everyone who placed bids. We appreciate your support.

The annual Fun Run, co-sponsored with the YLD and Capitol Partners, was held on the beach in front




Photo by Mary McAfee

Race participants enjoy beautiful views as they make their way toward the finish line during the annual Fun Run.

of the resort. In spite of the intense heat, all of the participants completed the race. The excitement of receiving the T-shirt at the finish was eclipsed by that for the welcome bottle of water. Race participants were certainly thankful that the event began a bit earlier than in the past.

The fellows meeting was held on Thursday afternoon, competing with the beach, the pool and the golf course. In spite of the many distractions, the meeting drew a good crowd, and those present received an update on the Foundation and elected officers and trustees for the upcoming year.

The Fellows Dinner was a joint effort with the Chief Justice's Commission on Professionalism to celebrate the 20th anniversary of the Commission. (See page 76 for all the details.)

To all those who support the Lawyers Foundation of Georgia, thank you! The continued growth of the Foundation is due to your participation and contributions. If you have any questions about the mission, programs or events of the Foundation, please contact Lauren Larmer Barrett, 104 Marietta St. NW, Suite 630, Atlanta, GA 30303; lfg_lauren@bellsouth.net; 404-659-6867. 



Lauren Larmer Barrett is the executive director of the Lawyers Foundation of Georgia and can be reached at lfg_lauren@bellsouth.net.

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Past Presidents Jimmy Franklin (2001-02) and Gerald M. Edenfield (2007-08) enjoy the LFG/CJCP Dinner.



Justice Carol W. Hunstein and Cathy Fitch, director of Career Development at Stetson University College of Law at the 20th Anniversary Celebration.



(Left to right) Lauren Larmer Barrett, executive director, Lawyers Foundation of Georgia, Professor A. James Elliott, Associate Dean, Emory Law School and Avarita L. Hanson, executive director, Chief Justice's Commission on Professionalism at the CJCP's 20th Anniversary Celebration.

2009 Pipeline Features Mentoring Sessions by State Bar Diversity Sponsors

by Marian Cover Dockery

Sixteen high school students participating in the 2009 Pipeline Program along with Emory University School of Law volunteer Laura Lewis and Princeton University senior and volunteer Noel Vinson entered the offices of Alston & Bird LLP for one of their daily law firm visits. Here the students participated in one-on-one mentoring sessions organized by partner Angela Payne James, chair of the firm's Atlanta Diversity Committee, and Rosalie Chamberlain, diversity manager, where 15 firm and summer associates gave valuable advice about pursuing legal careers. The group then visited Alston's courtroom where IP partner Frank Smith was preparing for an upcoming trial and explained his craft.

Earlier that week, the students visited Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Equifax



Photos by Roger Washington, Sutherland

Winners of the written and oral competition pose with Judge Kimberly Esmond Adams. (Left to right) Chelseay Parks, Tyler Mason, Judge Adams, Danielle Hayes and Kourtney Outlaw.

and Adorno & Yoss where they heard presentations on various topics. Baker's Charles Huddleston, a partner and chair of the Georgia Diversity Program Steering Committee, instructed the students to be "loud and proud" when introducing themselves. Four of Baker's attorneys then shared their diverse backgrounds: partner Mark Carlson, a Dartmouth and Harvard Law graduate, relayed his humble beginnings as a product of a



2009 Pipeline students at the oral and written competition hosted by Sutherland. (Back row, left to right) Marian Dockery (director of Diversity Program), Tyler Mason, Ryan Vinson, Danielle Hayes, Imari Blackwell, Jameek Barnes, Udy Obot, Terence McKenzie and Keelah Jackson (Pipeline teacher). (Front row, left to right) Lanerica Rogers, Jasmine Reid, Noel Vinson (Pipeline volunteer), Chelsea Parks, Kourtney Outlaw and Brianna Bogan.

single parent household; associate Megan Ouzts, a former college soccer player who graduated first in her class; associate Damany Ransom, a Morehouse and University of Michigan Law school graduate, was branded by his colleagues as an exceptionally good writer; and associate Erica Mason, former manager in the entertainment industry, explained why she decided not to practice entertainment law after law school.

Darren Moore, senior director and corporate counsel at Equifax, taught the students a remedial course in handling credit. A panel discussion with Equifax's in-house counsel coordinated by attorneys Richard Goerss and Jennifer Burns followed, and featured Kristin Brooks, Tamisa Greening and Robin Shetler. Paralegal Shannon Strachan moderated the discussion.

At Adorno & Yoss, partners Kenneth Southall, Auma Reggy, Cecilly Clark, Matt Williams and Romy Kapoor and associates Aja Diamond, Shawn Johnson, Kurt Schaettinger, Roxann Smithers and Vickie Carlton-Sadler guided the attendees on resume writing techniques, effectively preparing for interviews and the appropriate use of e-mail and Facebook pages. Monica Jones, diversity manager,

planned the movie ice-breaker that opened the session prior to the luncheon and mentoring sessions.

The Pipeline Program, launched in 2008, teaches high school students critical skills—specifically grammar, writing and speech—needed to successfully excel in college and law school. The 2009 program began on May 26 and concluded on June 5. State Bar Diversity Program Director Marian Cover Dockery developed the speech curriculum for the program while Hapeville Middle School teacher Keelah Jackson developed the grammar and writing curriculum. Jackson, along with Chas Hamilton Jr., member of Teach for America Corps, taught grammar and writing each morning to the 16 students. The law firm of Parker Hudson Ranier & Dobbs LLP provided a light breakfast each morning before classes began. DLA Piper and AT&T also furnished supplies for the program.

Attorneys with previous careers as English teachers: Mary Bulls, National Labor Relations Board; Chandra Davis, McGuireWoods LLP; Trish Treadwell, Parker, Hudson, Rainer & Dobbs LLP; Angela Rumson, attorney; and Genny Zhu, Owen Gleaton Egan

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Jones & Sweeney LLP, assisted in teaching grammar and writing during the second week. Local attorney volunteers, Lovita Tandy, King & Spalding LLP; John Tyler, AT&T; Darius Patillo, DeKalb County District Attorney's office; Kwende Jones, Burr & Forman LLP; Kevin Wilson, clerk, Supreme Court of Georgia; Tomesha Faxio, attorney; Fred Dawkins, Freeman Mathis & Gary, LLP; Gerry Wells, DLA Piper US LLP; Femi Obadina, Rogers Law Offices; James Valbrun, Wotorson Thompson & Valbrun, P.A.; and Marian Dockery, Burwell Dearing Dockery, LLP, taught the daily speech classes. The teachers evaluated and rated the students' presentations on various topics including the crisis in Korea, the new Supreme Court nominee, the NBA finals and the pros and cons of monitoring the content of Facebook.

During week two, the students visited Cox Communications where Marcus Delgado, chief IP counsel, and Randy Cadenhead led a presentation on inter-generational communications. At

Troutman Sanders, associate Tashwanda Pinchback greeted the students and shared her words of wisdom with the students regarding college, law school and future careers. Pinchback was followed by Melba Hill, who taught an etiquette class during lunch with partners Mark Newman, Rebecca Shanlever and Diane Lidz and associates Shakara Barnes and Pinchback. The next day, Louise Sams, executive vice-president and general counsel of Turner Broadcasting System (TBS), welcomed the students before they enjoyed pizza and a "speed mentoring" session with TBS attorneys Patty Butler, Keith Henderson, Phillip Walden, Nick Corsello, Rachel Ruskin, Rich Taylor, Mira Koplovsky, Tina Shah, Regine Zuber, Segeda Ranjeet, Michelle Hylton, Ray Whitty, David Vigilante and Noni Ellison-Southall. CNN paralegals and personnel also participated in the mentoring event. A tour of CNN capped the students' visit.

Afternoon sessions included a presentation by Dr. Barbara Williams Emerson, daughter of

former Atlanta mayor Hosea Williams, regarding her experiences as a teenager during the events in Selma, Ala., and other cities in the South. During a tour of the Shepherd Center, outreach coordinator Pete Collman introduced students to paralyzed patients in wheelchairs, many close to their own ages. It was a wake-up call for the students who learned firsthand of the dangers of speeding, driving without seatbelts or while talking or texting on their phones and playing contact sports without helmets. A brief review of the disability laws preceded the tour.

At Swift Currie LLP, the students were entertained with a skit written by associate Ernessa Brawley where two interviewees' e-mail addresses and Facebook pages were scrutinized. A PowerPoint flashed the contents of each Facebook page on the screen. The first candidate, portrayed by associate Xavier Balderas, was very impressive in his interview. But an unprofessional e-mail address coupled with the content on his Facebook



2009 Pipeline students and volunteers take a break during a session at Alston & Bird LLP.

Photo by Monica Skidmore, Alston & Bird

page, including pictures of the candidate in a food fight and lying on the sidewalk inebriated, countered the excellent interview.

Associate Jennifer Guerra portrayed the role of a more conservative candidate. While she was less impressive than the first candidate in her interview, a search of her Facebook page pictured her posing with her mom at college graduation and then on a trip to Italy with friends, and had a much more professional e-mail address. The question of "Who would you hire?" was then posed to the students before they broke into small groups.

The Pipeline Program concluded with the written and oral competitions, judged by Sutherland attorney Jim Johnson and several Sutherland summer associates, who ranked students' essays and

oral presentations on the 1964 Civil Rights Act. The winners of the 2009 competition were:

- Best Overall Essay and Speech—Danielle Hayes, junior, Greater Atlanta Adventist Academy
- Best Essay—Chelsey Parks, senior, South Cobb Magnet School
- Best Speech—Kourtney Outlaw, junior, Grady High School
- Honorable Mention, Speech—Tyler Mason, sophomore, Druid Hills High School

The Hon. Kimberly Esmond Adams, Fulton County Superior Court, presented a certificate of completion to each student. Following her presentation, "Top 10 Points for Success in

Life," Adams presented monetary awards to the winners. Danielle Hayes received \$200, Chelsey Parks and Kourtney Outlaw each received \$100 and Tyler Mason received \$75 for their outstanding presentations.

For more information about the Pipeline Program and how your firm or company can help, contact Marian Cover Dockery at mariand@gabar.org. 



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 go to www.gabar.org/programs.

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The State Bar of Georgia Diversity Program presents the 17th Annual CLE and Luncheon, Sept. 30, 2009, at the Bar Conference Center from 8 a.m. - 2 p.m.

Please join us for "A Conversation with Chief Justice Carol Huntstein."


For registration and other information visit www.gabar.org.


Kudos

> **Lewis Brisbois Bisgaard & Smith LLP** was ranked **No. 1** in *MultiCultural Law Magazine's* 2009 "**Top 100 Law Firms for Diversity**." The firm ranked No. 5 in the magazine's "Top 100 Law Firms for Women," No. 7 in the "Top 50 Law Firms for Partners" and No. 5 in the "Top 25 Law Firms for Hispanics" listings. The "Top 100 Law Firms for Diversity" listing ranks the nation's top firms for excellence in ensuring diversity and inclusion in the legal profession.

> **W. Andrew Bowen**, of The Middleton Firm in Savannah, was admitted to the **Leadership Academy** of the Tort Trial & Insurance Practice Section (TIPS) of the American Bar Association (ABA). TIPS is one of the ABA's most active sections facing issues confronting the legal profession which impact tort law. Bowen was one of only 21 lawyers nationwide selected into the TIPS Leadership Academy. Bowen will also serve as a vice chair to one of TIPS' general committees.

> **Miller & Martin PLLC** was named a "**Top 100 Law Firm for Diversity**" by *MultiCultural Law Magazine*, which also ranked the firm as **No. 1** in the publication's list of the "Top 25 Law Firms for African Americans."


>  **Brian D. Burgoon** was one of two alumni to receive the **2009 Outstanding Young Alumnus Award** from the University of Florida College of Law in April. The award was established by the university to recognize alumni under 40 who have distinguished themselves in business, community and service. He is a sole practitioner with The Burgoon Law Firm, LLC, in Atlanta, and focuses his practice on commercial litigation, civil litigation and personal injury.


>  **Pamela F. Everett** received the **Radiance Award**, an alumni award from the Georgia State University College of Law's Black Law Students Association. The award is presented to an alumna who uses her expertise to improve humanity. Everett, of counsel with Freeman, Mathis & Gary, LLP, focuses her practice in the area of municipal law, providing day-to-day advice to her clients on employment, zoning, contracts, procurement and general liability matters.

> **Jones Walker** announced that *MultiCultural Law Magazine* named the firm to its annual list of "**Top**

100 Law Firms for Women." *MultiCultural Law's* list of top 100 law firms for women is part of a series of listings related to the top 100 law firms for diversity.

The firm was recently recognized among the nation's top law firms for diversity in the *Minority Law Journal's* **2009 Diversity Scorecard**. This year's rankings have been revised to stress the importance of hiring and promoting minority attorneys to partnership positions. A new diversity score was created by adding the minority percentage of all U.S. attorneys at the firms surveyed to the minority percentage of all U.S. partners at those firms.

>  **Gary W. Farris** was selected by the Atlanta Father's Day Council as one of four recipients of the "**Father of the Year**" award. The Council paid tribute to each of them for their exemplary commitment to their families, community involvement and ability to successfully balance their personal and business lives, while excelling in their chosen careers. Farris, a partner at Burr & Forman LLP, represents a variety of banks and other financial institutions in real estate and commercial financing transactions.

>  **Court of Appeals of Georgia Judge Sara L. Doyle** was initiated as an **honorary member** of the **Fish Chapter of Phi Alpha Delta** law fraternity located at the Walter F. George School of Law at Mercer University in Macon. To qualify for honorary membership one must have attained unusual distinction in the legal profession or in the field of law on at least a statewide basis, and be unanimously approved by the international executive board of Phi Alpha Delta—the foremost legal fraternity for men and women law professionals.


> J.P. Turner, an independent brokerage firm headquartered in Atlanta, announced that **Scott Holcomb**, general counsel for the firm, was selected as a **Manfred Wörner Fellow** for 2009. Holcomb was one of only 15 Americans and 15 Germans selected to attend the Manfred Wörner Seminar held in Germany and Belgium in May. The annual seminar brings together 30 young Americans and Germans to examine German and European security policy and to discuss U.S.-German and U.S.-European security interests. The seminar serves to deepen the understanding between participants from both countries and offers an excellent opportunity to broaden professional networks.

- >  **Amy J. Kolczak**, partner with Owen, Gleaton, Egan, Jones & Sweeney LLP, was honored in May by the National Association of Women Business Owners-Atlanta at the Women Entrepreneur (WE) Awards as the **WE Advocate-Community Professional**. The WE Awards were established to recognize the crucial role women-owned businesses play in the growth of Georgia's economy.

- >  Fisher & Phillips LLP Chairman and Managing Partner **Roger Quillen** was named to "**The Nation's Most Powerful Employment Attorneys—Top 10 for Labor Law.**" *Human Resources Executive* magazine compiled the list of influential employment attorneys on the basis of curriculum-vitae analyses, evaluations by clients and peers and reporting by the staff of Lawdragon, a Los Angeles-based news and networking site for lawyers and clients.

In June, Quillen was also re-elected to the firm's management committee. The three-member committee also re-elected Quillen to serve as the group's chairman and the firm's managing partner.


The Labor Relations Institute (LRI) named Fisher & Phillips LLP partners **Douglas R. Sullenberger** and **James M. Walters** among LRI's annual listing of "**Top 100 Labor Attorneys**" in the United States.

- >  **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Linda A. Klein**, managing shareholder of the firm's Georgia offices and a member of the firm's board of directors, was recently inducted into the **YWCA of Greater Atlanta's 2009 Academy of Women Achievers**. Klein was recognized at a banquet in May for her accomplishments in empowering women and eliminating racism in the Atlanta community.


Klein was also awarded the **Edmund S. Muskie Pro Bono Service Award** by the **American Bar Association Tort Trial & Insurance Practice Section (TIPS)**. The award recognizes TIPS members who exemplify the attributes embodied by the late Sen. Muskie: his dedication to justice for all citizens, his public service and his role as a lawyer and distinguished leader of the section.

- > **Freeman Mathis & Gary, LLP**, was named one of the **Top 25 Small Businesses of the Year** by The Cobb Chamber of Commerce and *The Atlanta Journal-Constitution*. Candidates were evaluated

based on criteria including staying power, growth in number of employees, increase in sales or unit volume, current and past financial standing, innovative products and services, response to adversity, evidence of contributions to aid community projects and overall management philosophy.

- >  Womble Carlyle IP attorney **William M. Ragland Jr.** was named to the first-ever **IAM 250—The World's Leading IP Strategists**. The list was compiled by *Intellectual Asset Management (IAM)* magazine and recognizes the world's 250 top attorneys, consultants and financiers who work with intellectual property owners to increase the value of their IP portfolios. To qualify for listing in the IAM 250, individuals had to be nominated by at least three people who work in organizations unrelated to that particular nominee.

- > **Young, Thagard, Hoffman, Smith & Lawrence, LLP**, was recognized in the May 2009 issue of *Best's Review* as one of only 69 law firms in the United States who have been recommended for at least 75 consecutive years by the insurance companies they have represented. The A.M. Best Company has been publishing its *Directory of Recommended Insurance Attorneys and Adjusters* since 1929.

- >  **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**, announced that **Peter B. Murphy** was appointed **vice chair of the labor and employment law committee** of the American Bar Association's Young Lawyers Division. The committee provides young attorneys with a practice focus or interest in labor and employment law with information and opportunities for professional development and networking.

- > **Arturo Corso**, founding partner of Corso, Kennedy & Campbell, LLP, was named a **2009 Rising Star** by *Georgia Super Lawyers*. Only 2.5 percent of Georgia attorneys are named Rising Stars, and combined, they represent more than 60 practice areas. For inclusion and distinction as a Rising Star, attorneys are selected by the most recent group of Super Lawyers and independent research by *Law & Politics*.


- > **Hitch & Webb, LLC**, announced that founding member **Scott E. Hitch** was named to the **advocacy committee** of the Georgia chapter of the U.S. Green Building Council. Also, Hitch, one of the few Georgia lawyers who also is a LEED Accredited

Professional, was selected as a 2009 Rising Star by *Georgia Super Lawyers*.


The firm also announced that it was named a **platinum partner** of the **Clean Air Campaign** and has joined the Partnership for a Sustainable Georgia, a state-sponsored voluntary environmental leadership initiative.


- > **Legal 500** recommended **McKenna Long & Aldridge LLP** as a “**tier one**” firm for mergers and acquisitions work in the South Atlantic region for the second year in a row. The Real Estate group was also recognized in Georgia for their real estate and construction work. The *Legal 500: U.S.* provides independent, unbiased commentary on the leading law firms in the U.S. legal marketplace in various areas of corporate, intellectual property, litigation, real estate and tax law.


- > **Cantor Colburn LLP** was awarded a multi-million dollar contract with the **National Institutes of Health** to provide patent legal services in the chemical arts. Cantor Colburn is one of only four law firms in the nation selected for this award.

- >  **Ford & Harrison LLP** was named one of the **top immigration practices** in the 2009 edition of *Legal 500: U.S.* In addition to the practice ranking, *Legal 500* also selected **Joycelyn L. Fleming** as one of the top immigration attorneys in the nation based on her immigration expertise. *The Legal 500* is a guide to commercial law firms in the United States and it conducts extensive research on lawyers it considers, including interviewing clients.

Additionally, the firm was named to *The National Law Journal's* inaugural “**Midsized Hot List**.” The list honors 20 law firms that demonstrate exemplary innovation in practice management, fee arrangements, attorney recruitment and retention, and business development, especially in the face of current economic challenges.

- >  **C. Richard Langley**, senior partner with Langley & Lee, LLC, was recently **board certified** by the American Board of Professional Liability Attorneys (ABPLA) in the field of medical professional liability. The ABPLA is accredited by the American Bar Association to certify attorneys in accordance to the highest standards of experience, ethics and education.

- >  **John Yates**, partner, Morris, Manning & Martin, LLP, was chosen to serve on **Duke University's Law School Board of Visitors**. The Board of Visitors advises Dean David F. Levi on all matters concerning the Duke University School of Law. It also serves as a reporting and recommending body to the law school, university administration and Board of Trustees on issues including student development, alumni relations and fundraising, as well as faculty and academic affairs. The Board of Visitors is the most senior of the law school's three boards, which communicate the interests of alumni and friends to the dean and staff, represent the school in the greater community and help build the institution through leadership.

- >  The **Associated General Contractors of America (AGC)** named **Philip E. Beck** of Smith, Currie & Hancock **vice chair** of the **AGC Contract Documents Committee**. Beck, a recognized leader in the construction law and contracts area, previously served on the AGC executive board as the chair of the Service and Supply Council, and has been extremely active in AGC national as well as the Georgia branch chapter.

- > The **Georgia Association of Solicitors-General** announced new leadership for 2009-10. **Brian Fortner**, solicitor-general of Douglas County, will lead the association as **president**. **Robert James**, solicitor-general of DeKalb County will serve as the **president-elect**. **Leslie Abernathy**, solicitor-general of Forsyth County, will serve as **secretary** and **Barry Morgan**, solicitor-general of Cobb County, will be **treasurer**. Officers of the association are elected for a one-year term after being nominated by the executive board and voted on by the membership body at the annual spring meeting of the association.

- >    **Kilpatrick Stockton** announced that partner **Rupert Barkoff** was once again named a **Legal**

Eagle in *Franchise Times'* annual listing of the nation's top franchise attorneys. The recognition appeared in the May 2009 issue of *Franchise Times*.

James Stevens, a partner in the firm's corporate department, was selected to serve as **chairman** of the **Bank Counsel of the Georgia Bankers**

Association. The Georgia Bankers Association is the trade and professional organization representing the interests of banks and thrift institutions in the state of Georgia.

Alicia Grahn Jones, an associate in Kilpatrick Stockton's intellectual property department, was selected to serve as **vice-president of public affairs** on the 2009-10 board of the **Georgia Association for Women Lawyers**.

On the Move

In Atlanta

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Howard Hirsch**, **Michael Rafter** and **Kevin McGill** joined the firm, adding a significant real estate investment trust practice to the office. Hirsch and Rafter joined as shareholders, and McGill as an associate. All three attorneys were previously with Bryan Cave Powell Goldstein LLP in Atlanta.

Scott N. Sherman, previously an associate at Alston & Bird, joined the firm as **of counsel** in the Atlanta office in the firm's business litigation practice. The firm is located at Monarch Plaza, Suite 1600, 3414 Peachtree Road NE, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

- >   **David M. Janet** joined the Atlanta office of **Stites & Harbison** as **counsel**. His practice focuses on licensing and transactional matters in the technology, telecommunications, software, life sciences, financial services and entertainment business sectors.

Dominick M. Moore joined the firm as an **associate**. Moore serves clients in the areas of business law, securities and finance and general corporate law. The office is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

- > **Partners C. Glenn Dunaway** and **Stephen B. Schrock**, of counsel **Chuck Connors**, and associates **Karen Reschly** and **Rebecca Vandiver** have joined **Morris, Manning & Martin, LLP**, from Bryan Cave Powell Goldstein. Together, they compose the new the timberland investments and forest products practice, which consists of an integrated team of experienced lawyers from multiple disciplines, pulling primarily from the corporate and commercial real estate groups. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road


NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

- > **Kilpatrick Stockton** announced that **Gary E. McClanahan** joined the firm's Atlanta office as **counsel**. McClanahan comes to Kilpatrick Stockton from Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, and will be a member of the firm's health & life sciences team in the corporate department. The office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.

- > **McKenna Long & Aldridge LLP** announced that **Shannon C. Baxter** joined the firm as **of counsel** in its Atlanta office. Baxter focuses her practice on the representation of creditors and borrowers in commercial lending transactions. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308, 404-527-4000; Fax 404-527-4198; www.mckennalong.com.

- > **Krieg DeVault LLP** announced that **Randolph R. Smith Jr.** joined the firm's Atlanta office as a **partner**. Smith will concentrate his practice on ESOP transactions, either as trustee counsel or as company counsel, and also in corporate and securities and investment funds. The office is located at One Glenlake Parkway, Suite 700, Atlanta, GA 30328; 317-636-4341; Fax 317-636-1507; www.kriegdevault.com.

- > **Jenifer Niedenthal** joined the Atlanta office of **Womble Carlyle**. Her practice concentrates in the area of business litigation in the state and federal courts and in arbitration forums, including the AAA, NASD and NYSE. The firm is located at 271 17th St. NW, Suite 2400, Atlanta, GA 30363; 404-872-7000; Fax 404-888-7490; www.wcsr.com.


- >  **Littler Mendelson** announced the addition of **L. Traywick Duffie** as its newest **shareholder** to the firm's Atlanta office. Duffie advises and represents corporate clients on a broad range of employment and labor matters including employment litigation, union organizing, wage-hour, unfair competition, workplace safety and ERISA. The office is located at 3344 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-233-0330; Fax 404-233-2361; www.littler.com.

- > **Kaye Woodard Burwell**, **James E. Dearing Jr.** and **Marian Cover Dockery** announced the formation of **Burwell Dearing Dockery, LLP**. The firm pro-


vides legal services in complex litigation, immigration, employment discrimination, labor, real estate, financial services and diversity training. The firm is located at 730 Peachtree St. NW, Suite 560, Atlanta, GA 30308; 404-870-0010; Fax 404-870-0008; www.burwelldearing.com.

- > **Angela B. Hitch, Patrick B. Webb and Scott E. Hitch** announced that they have formed **Hitch & Webb, LLC**. The firm, with offices in Atlanta and Roswell, focuses on business strategy, compliance counseling and resolution of disputes involving environmental, sustainability, renewable energy and green building issues; corporate, technology and commercial real estate matters and transactions; and trusts, estates and probate matters. Its members include one of the only LEED-accredited attorneys practicing in Georgia. The firm's Atlanta office is located at 1375 N. Highland Ave., Atlanta, GA 30306; 404-226-7766. The Roswell office is located at 325 Watercress Drive, Roswell, GA 30076; 404-580-1270; www.hitchwebb.com.

In Marietta

- >  **Steven A. Ellis** announced the opening of **The Ellis Law Firm, LLC**. The firm practices in the areas of estate planning, family law and all civil litigation. The firm is located at 2501 E. Piedmont Road, Suite 105, Marietta, GA 30062; 770-575-5715; www.ellislawonline.com.

In Norcross


- >  **Rubin Lublin, LLC**, announced that **Erica Malcom** joined the firm as an **associate**. Malcom's primary focus is pre-title research and curative procedures for Georgia and Tennessee. The firm is located at 3740 Davinci Court, Suite 100, Norcross, GA 30092; 770-246-3300; www.rubinelublin.com.

In Birmingham, Ala.

- >  **David Bowsher** joined **Adams and Reese, LLP**, as **special counsel** in the firm's Birmingham office. He previously served as acting general counsel of the U.S. Department of Commerce in Washington D.C. Bowsher's legal practice focuses on corporate restructuring, bankruptcy issues and mergers and acquisitions. He will also spend time in the firm's D.C. office on governmental relations matters. The office is located at Concord Center, 2100 Third Ave. N, Suite 1100, Birmingham, AL 35203; 205-250-5000; Fax 205-250-5034; www.adamsandreese.com.

In Washington, D.C.

- > Retired Army **Lt. Col. Margaret C. Johnson** joined the **Department of Defense Office of the General Counsel** as a **habeas project attorney**. Johnson previously served as deputy staff judge advocate of the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) with headquarters in Washington, D.C. and forward operations in Guantanamo Bay, Cuba, where she was awarded the Defense Meritorious Service Medal for Outstanding Service for her service at OARDEC. The Department of Defense Office of the General Counsel is located at 1600 Defense Pentagon, Washington, DC 20301; www.dod.mil/dodgc/.

- >  **R. Jason Fowler** joined **Covington & Burling LLP** as an **associate** in the firm's litigation and intellectual property groups. The firm is located at 1201 Pennsylvania Ave. NW, Washington, DC 20004; 202-662-6000; Fax 202-662-629; www.cov.com.

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

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2009 Chambers USA

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

Update Your Member Information

Keep your information up-to-date with the Bar's membership department. Please check your information using the Bar's Online Membership Directory. Member information can be updated 24 hours a day by visiting www.gabar.org/member_essentials/address_change/.



Keeping Secrets

by Paula J. Frederick

“Hey Judi,” says the voice on the other end of the line. “One of your former clients, a guy named Nick McDowell, hired me this afternoon. He wants me to pick up his PI case. He brought me a copy of the file and I’m sure we can work out your fee on a quantum meruit basis. But tell me—why’d you withdraw? Looks like a pretty clear case of liability.”

Your response is met with stunned silence, then “Whaddya mean, you can’t tell me?” the caller sputters.

“I’m ethically bound to keep Nick’s secrets,” you reply. “Tell you what—have him call to give me permission, and I’m happy to tell you everything I know.”

“But I’m his new lawyer!” the caller cries. “You won’t waive attorney-client privilege by talking to me!”

“It’s not mine to waive,” you remind him. “Besides—I’m not talking about attorney-client privilege; I’m concerned about the ethics rule on confidences and secrets. I’ve got to keep Nick’s confidences—even from you, unless I get an OK from him.”

“Man, you sure are a stickler,” the caller says before agreeing to have Nick call you.


Sighing, you pull out the Georgia Rules of Professional Conduct to be sure you are on firm ground.

Georgia’s Rule 1.6 broadly defines the confidentiality requirement. The Rule requires a lawyer to keep in confidence all information gained in the professional relationship with a client unless the client consents to its release, or unless the information falls within an exception to the Rule. In addition, it allows disclosure of information necessary to carry out the representation, information which is disclosed because the law requires it or information disclosed pursuant to Court order.

The attorney-client privilege is an evidentiary privilege that is much narrower than the confidentiality rule. For example, the confidentiality rule applies to *all* information relating to representation, regardless of its source, and a client does not waive her right to have information kept confidential simply by having third parties present when a disclosure is made.



Exceptions to the Rule allow a lawyer to reveal information to prevent serious bodily injury or death, to avoid or prevent harm or substantial financial loss to another as the result of criminal conduct or to defend against a claim by the client that the lawyer has done something wrong. The exceptions are not mandatory, and a lawyer does not act unethically if she declines to reveal information under any of the situations outlined at Rule 1.6(b).

In short, there is no special exception to the Rule that allows a lawyer to reveal confidential information to successor counsel without the client’s permission. It will be a rare instance where the client does not readily give his permission—usually when he’s got something to hide. In those cases successor counsel will have to reach his own conclusions. 



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



Let CAP Lend a Helping Hand!

What is the Consumer Assistance Program?

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

Does CAP assist attorneys as well as consumers?

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

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

What doesn't CAP do?

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

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

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

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

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

Discipline Summaries

April 11, 2009 – June 14, 2009

by [Connie P. Henry](#)

Disbarments

Paul L. Hanes

Atlanta, Ga.

Admitted to Bar in 1964

On April 28, 2009, the Supreme Court of Georgia disbarred attorney Paul L. Hanes (State Bar No. 323300). This matter was before the Court pursuant to a Notice of Discipline, which Hanes did not properly reject. Hanes became ineligible to practice law on Sept. 1, 2006, due to the non-payment of bar dues and was administratively suspended on Oct. 1, 2007. The Supreme Court suspended Hanes on March 15, 2007, for non-compliance with CLE requirements. Hanes represented a client in a civil litigation matter during which time he became ineligible to practice law, but he did not inform his client, seek to withdraw or protect the client's interests. After Hanes failed to respond to a summary judgment motion, the trial court granted summary judgment against the client. Hanes acknowledged service of the Notice of Investigation, but did not respond.

The Court found in aggravation of discipline that Hanes failed to respond to the Notice of Investigation, and that he received an Investigative Panel Reprimand in 2003.

Daniel Richard Hayes

Peachtree City, Ga.

Admitted to Bar in 1999

On May 18, 2009, the Supreme Court of Georgia disbarred attorney Daniel Richard Hayes (State Bar

No. 339935). The following facts are admitted by default: In 2003 Hayes was retained to represent two people following an automobile accident. He filed suit against the car's owner, the car's driver and the owner's insurance company. The suit was dismissed as to the insurance company as an improper direct action against an insurance company. The suit was dismissed as to the owner and/or driver for untimely service. Hayes never informed his clients that the insurance company had filed a motion for attorney fees and sanctions against them, of any hearing in the case, of the dismissal of any parties or that attorney fees had been assessed against them. The clients learned of the motion for attorney fees when they retrieved their file from the court. Hayes acknowledged service of the Notice of Investigation, but did not submit a sworn response. It is unclear whether the clients were able to appeal or reinstate their suit and it appears that Hayes has abandoned his law practice.

David A. Harris

College Park, Ga.

Admitted to Bar in 1998

On May 18, 2009, the Supreme Court of Georgia disbarred attorney David A. Harris (State Bar No. 329610). The following facts are admitted by default: In July and August 2007 the Office of the General Counsel received written notice that three items totaling \$32,692.64 presented on Harris's attorney trust


account had been returned for insufficient funds. Harris claimed the overdrafts resulted from theft by an employee; however, he failed to provide documentation supporting his claim. On April 16, 2008, Harris accepted service of the Notice of Investigation, but did not respond. The Court had previously suspended Harris from the practice of law on Aug. 7, 2008.

Robert P. Copeland
Marietta, Ga.

Admitted to Bar in 1995

On June 8, 2009, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Robert P. Copeland (State Bar No. 186825). Copeland pled guilty in the U.S. District Court for the Northern District of Georgia to one count of wire fraud.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 11, 2009, six 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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Keys to Building Up Relationships in a Down Economy

by Natalie R. Kelly

The lingering economic downturn has created many opportunities for lawyers to redefine themselves, their practices and their relationships with clients. Personal and law firm marketing have become some of the most important areas of focus for lawyers working through these tough times and more positive times to come. Here is a basic overview of some opportunities which you may decide to take advantage for yourself or your firm.

Classic Marketing Opportunities

Networking

The networking lunch has not met its death. It is very important to reach out to past and current clients and, in cases where you have been introduced, to potential clients. Spend time discussing your brand, how your firm has changed or will change to adjust for the new times to come and about your area of expertise to solidify some of your existing relationships and extend similar courtesies to others.

Client closing letters are great ways of making sure you have educated your clients on your practice and the type of work they can send to you in the future. Do not underestimate the power of a well-worded closing letter to get your brand and new marketing message across to an audience.



Photo by Luca Apolito

Speaking Engagements and Writing

Opportunities to speak and write on topics related to economic shifts, new laws and other issues of the times are more plentiful. By accepting these types of engage-

ments, you are able to work on becoming an expert or specialist in a particular field.

Referral Network

Keep in touch with old contacts and make sure you have a firm to refer business to that you are not able to handle. Reciprocity for paying business is not always immediate when it comes to referrals, but making sure you have the network in place is essential during these times. The number of cases that can come from referrals remains one of the top ways of getting business for lawyers.

Electronic/New Age Opportunities

In-house Technology

Technology has presented a full bevy of solutions for building relationships. While these have been mainly online, you should

check to see if your office technology is meeting the bill when helping keep client relationships in good standing. Does your case management or practice management techniques drive effective communication with your clients? How often are you in touch and are you getting any new business or interest in your firm with this outreach?


Social Networking Sites

Social media marketing has skyrocketed over the past year, and there has been much focus on using Facebook, LinkedIn and more recently Twitter to market law practices. Staying on top of profiles and contacts that are tied to or made from these sites can help foster business. Opportunities abound for finding business from online sources as it becomes more common for consumers to seek legal services by going through online sources.

Legal Marketing Resources


You can find more ways to build vital business relationships from information provided by some of the following resources:

- www.lawpractice.org
- www.lawmarketing.com
- www.internetmarketingattorney.com

Relationships are the cornerstones of effective law office marketing plans. If you need more assistance with developing a plan to foster relationships via the opportunities discussed here, please contact the Law Practice Management Program at 404-526-8772. 



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



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Giving Their All for Kids

by Bonne Cella

"There can be no keener revelation of a society's soul than the way in which it treats its children." Nelson Mandela

Attorneys continually give back to the community. Of all the ways and programs available, few are nobler than assisting as child advocates. There have been three notable individuals in the southern part of the state who deserve recognition. The impact their work has on the lives of our young is far-reaching and immeasurable.

Bob Clyatt, a worker's compensation attorney from Valdosta, witnessed the life-shattering consequences to families of seriously or fatally injured workers on a day-to-day basis. In the wake of this devastation, the dream of providing higher education and a better life for the children of the victims all but vanished. While taking a deposition from an injured worker in Albany in 1987, Clyatt was interrupted by a small girl who ran into the room and hugged her father. He was struck by the thought that this child, through no fault of her own, could be deprived of opportunities that normal children have because of her father's injury. Memories of the little girl kept invading his thoughts. "How could kids like her have a chance? These kids need a chance. Kids' Chance" — the phrase would not leave his mind. In 1988, Clyatt (with the help of the Worker's Compensation Law Section of the State Bar of Georgia)¹ founded Kids' Chance—an organization to raise money to fund scholarships² for the children of



State Court Judge Larry Mims with Summer Stephenson, the county-wide winner of the First Impressions Essay Contest.

injured or deceased workers. Today, his vision is flourishing with 37 states sponsoring Kids' Chance. With over \$5 million raised in Georgia alone and 600 scholarships awarded, Clyatt is understandably enthusiastic about Kids' Chance and readily acknowledges the members of the State Bar and the other agencies that made it happen. His passion for Kids' Chance is contagious and he stands ready to go the distance for its continued success.




Bill Rumer and his children. (Clockwise, left to right) Nick, Bill, Sam, Tasha and Laura.

Columbus attorney Bill Rumer and wife Becky enjoy children and all of the activities that benefit children. With two children of their own, Sam (26) and Laura (23), the couple made a decision in 1985 to become foster parents and have since cared for seven children. The Rumer's took it a step further in 1992 when they adopted son Nick, who is now 19, and in 1999 they adopted Tasha, now 14.

Rumer has served on the Board of Governors for the State Bar since 1993 and has been recognized numerous times by his peers for his pro bono efforts and professionalism in his law practice. Of equal importance to his love of the law is his community service work where he serves on the following boards: Muscogee County Department of Family and Children Services; Friends of Foster Care—provides what the state does not for foster children; Contact Helpline—a mental health resource; The Achievement Academy—provides education for children with learning disabilities; and Habitat for Humanity. Rumer serves his community in many other capacities and thoroughly enjoys being a football official for the Georgia High School Association. He is quick to recognize his wife of 33 years as the one deserving of recognition: "Becky is the one...I can't begin to tell you all she does to help children." U.S. Congressman Lynn Westmoreland selected the Rumer's

as Angels in Adoption—a citation given to those who enrich the lives of foster children and orphans.

State Court Judge Larry Mims is a man on a mission and that mission is all about improving the lives of kids. After graduating from Cornell University and the University of Georgia School of Law, this Tifton native returned to his hometown with wife Joyce. In 1994 they organized Mims Kids. This enrichment program opens the world to at risk kids between the ages of five and 13 through art and travel while improving their self-esteem. They have taken program participants to New York City and Washington D.C. They have also spent time visiting Tuskegee and Montgomery, Ala. They have also been to the Georgia Aquarium in Atlanta and were invited to a performance of Disney on Ice. Programming included teaching the kids to paint in watercolor and make puppets and leather crafts. Currently Mims Kids are learning public speaking skills, polishing their manners and etiquette while discovering the importance of community service. Mims is also working on an initiative that focuses on healthy lifestyle choices to help fight childhood obesity and he has instituted a judicial outreach program called The First Impressions Project designed to acquaint fourth graders in Tift County with the judicial branch of government. The students are asked to write an essay about their experience at the end of the program and the winners from each class are given the opportunity to go to the State Bar in Atlanta and perform in a mock trial. This year the kids will travel in a tour bus rather than a school bus thanks to members of the Tifton Judicial Circuit Bar. Mims has given these students a positive experience with the legal system and impressed upon them the importance of the jury and juror service in our courts. He gives Joyce the credit for the success of Mims Kids and his inspiration for

The First Impressions Project. Mims acknowledges with gratitude all of the volunteer attorneys, court personnel, teachers and others for their support of his efforts for the sake of children. 



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

Endnotes

1. The book *A History of Workers' Compensation in Georgia*, by Jan Pogue and Tom Poland, is available for sale through the Worker's Comp Law Section. All profits from the sale of the book benefit Kids' Chance Inc.
2. Jeffrey Kight an attorney from Douglas, Georgia was a recipient of a Kid's Chance scholarship in 1990 to Mercer University. "At the time; I was clueless as to how I could continue my education... I didn't know what I was going to do to be honest. Attorney Curtis Farrar was familiar with my dad's accident and contacted Bob Clyatt. There is no question as to how much this program helped me... I support it completely and now proudly serve on the board of Kids' Chance."

Congratulations

The Tifton Judicial Circuit Bar recently presented Bonne Cella with its annual Liberty Bell Award.

The award is given to someone who is not an attorney but helps the law profession and court system on a daily basis.

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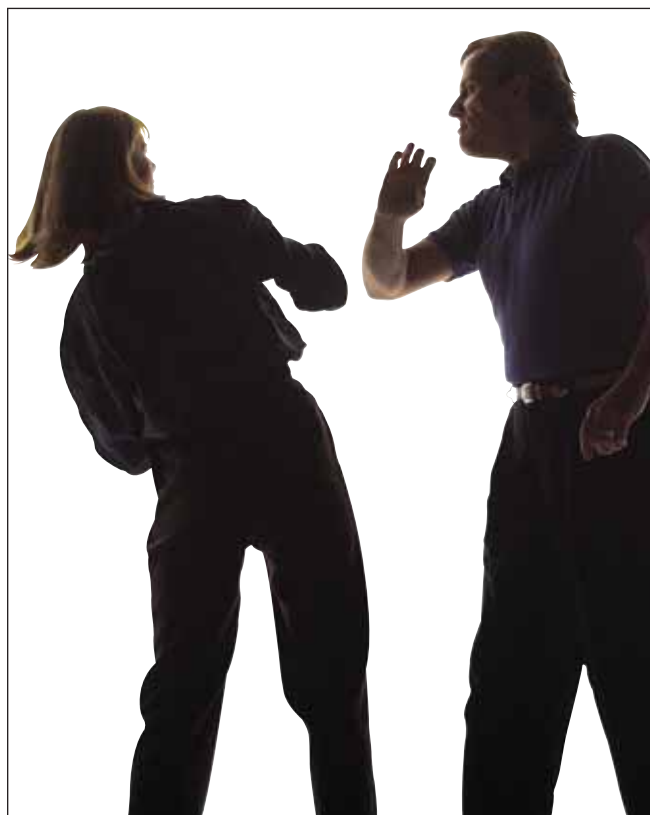
Lawyers Saving Lives and Families in Georgia

by Vicky O. Kimbrell and Susan Wells

In cities and towns across Georgia, private attorneys represent victims of domestic violence through the Georgia Legal Services Pro Bono Project. Other Georgia lawyers donate money to legal services to fund representation for victims. These lawyers embody the best traditions of professionalism and responsibility that the State Bar of Georgia is celebrating in the Cornerstones of Freedom® campaign to educate the public about the important place that lawyers have in our society.

Georgia Legal Services provides access to the courts for women like Andrea Watts of Douglas County who was stabbed 11 times and nearly killed by her abuser. Andrea didn't think of herself as a statistic. She was trying to leave her husband, who had threatened her and been verbally abusive for years. She and her four children moved in with her mother and Watts tried to go on with her life.

Watts didn't know that most severe abuse happens to women who are trying to leave an abusive relationship, especially when they have no legal representation



and no protective order.¹ Studies show that legal representation is one of the most important determinants of whether a victim will survive and make it out of an abusive relationship—or die trying.

Although we know that a protective order or a divorce judgment won't stop a bullet or a determined abuser, it can empower the victim psychologically and provide the economic help needed to support herself and her children away from the abuser.

A study by two economics professors, Amy Farmer of the University of Arkansas and Jill Tiefenthaler of Colgate University, found that the increased availability of legal services to women had a direct positive impact on reducing the numbers of domestic violence incidents in communities across the country. "Because legal services help women with practical matters such as protective orders, custody and child support, they appear to actually present women with real, long-term alternatives to their relationships," their study concluded.² Farmer and Tiefenthaler ranked availability of legal services as highly as increased education and higher income as resources that made it possible for a woman to issue a credible threat to leave the relationship. The study points out that a credible threat to leave is the chief tool a woman can use to prevent violence against herself and her children. If she is dependent on her partner for support, has little education and no access to legal assistance, she has few options but to

stay in the relationship, no matter how violent.

Watts became a domestic violence statistic, but she doesn't want to remain nameless. She wants her story to help others avoid the horror she experienced. In these days, when high profile abuse cases are in the headlines and everyone wonders why the singer went back to the rapper after he'd beaten her, Andrea Watts' case is more typical, more tragic and more instructive about how domestic violence plays out in real families. It is also instructive about what really helps victims in these cases.

Watts didn't know about Georgia Legal Services' lawyers and their domestic violence work in September 2008 when her husband went to her mother's house where she was getting ready to go to work, slashed the tires of her car and then lured her back to their old home with the promise of another car. When she went in, he attacked her. "When I woke up, I realized my throat was slit. He stabbed me 11 times and slit my throat twice. I said, 'Look at me, I'm dying.'" At that point, he called his mother and said, "Come see what I have done," she recalled. Then Watts said, he gently dressed her and held her hand until they heard his mother come in the house and called 9-1-1. "I flat lined twice in the helicopter

on the way to the hospital. They called my mother and said I hadn't made it."

Two days later she awoke in Atlanta Medical Center with a collapsed lung, two deep slashes in her throat, plastic surgery on her face to repair bones and a severed artery and nerve in her right arm that has caused permanent disability. She spent six days in the intensive care unit and 14 days in the hospital, running up \$180,000 in medical bills that are mounting with continuing therapy for her and her children.

Georgia Legal Services Program (GLSP) lawyers try to get involved before abuse occurs. "Andrea had great support from her family and a sympathetic judge," said Antonette Sewell, the GLSP attorney who represented Watts in the family violence temporary protective order action after the attack. "But just having to go in and see him in court. . . Just looking at her you could see the severity of her injuries. . . she was very shaken." Although the abuser was in jail, Watts needed a permanent restraining order against him to keep him from having access to the children or to her, if he was released on bond. Watts would not agree to a restraining order.

The judge in this case granted the permanent order and restricted him from visitation. But that is rare in domestic violence cases.

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In cases where a lawyer can get involved before the abuse is severe, the long-term costs—physical, mental and monetary—are a fraction of what they are in cases like that of Andrea Watts, who is still in physical and psychological therapy, along with her children.

Incredibly, most of the time, the victim, after proving to a court that she was beaten by the abuser, has to pack up the children and send them over to the abuser's house for visitation. "In what Kafkaesque world does it make sense that abusers are proper custodians for children?" asks Sewell, who has a Masters in psychology in addition to her law degree.

Family violence is usually an escalating process that increases in severity. "We try to stop it early before it gets deadly," said Sewell. In cases where a lawyer can get involved before the abuse is severe, the long-term costs—physical, mental and monetary—are a fraction of what they are in cases like that of Andrea Watts, who is still in physical and psychological therapy, along with her children. In her case, she has a good education, a good job, some medical insurance and family support. She still lost her home, all her possessions, her job and the use of one arm, as well as her sense of security and stability, perhaps for the rest of her life. Sewell was also able to help her get over \$20,000 in medical assistance to help pay for medical bills from the Victim Assistance Program³ and other resources to get her back on her feet financially.

The most severe family violence occurs against separated and divorced women whose partners become angry when they feel they've lost control of their victims. That's one reason GLSP lawyers want to get involved in cases before the woman tries to leave.

They can often set up restraining orders and other protective structures to help the woman get away from the violent relationship before it becomes fatal, or nearly so.

GLSP's 58 lawyers in each of their 12 offices across the state handled about 3,400 domestic violence cases last year, up from about 3,200 the year before. GLSP also holds trainings for community partners who serve victims. The most difficult struggle for the program is lack of funding and the resulting lack of resources for so many cases. The number of cases GLSP can handle is tiny compared to the need. GLSP recently lost over \$700,000 in federal funding because of budget cutbacks.

The Georgia Coalition Against Domestic Violence reports that the number of calls to the domestic violence hotline, (800) 33-HAVEN, has gone up from 70,557 in 1993 to over 91,000 in 2008. The 2008 Georgia Fatality Review Report shows that more than 500 victims have been killed in family violence incidents in the past four years.⁴

In many parts of Georgia, however, there is little recognition of family violence as a community problem that should be addressed by making more services available and holding batterers accountable. GLSP attorneys train community partners, including private attorneys, judges, law enforcement officials, guardians ad litem, health care workers and social services staff about domestic violence.

More than 160 professionals came to a recent GLSP training in Savannah. Everyone from judges

to law enforcement officers to military personnel got a better understanding of how best to handle domestic violence (DV) cases. GLSP trainings focus on holistic representation—not just getting a temporary protective order, but the impact of domestic violence on children, the importance of child support and insurance coverage for the children and a plan to pay for food and rent. GLSP also provides forms, training, support, a trial notebook and malpractice insurance coverage for lawyers who take domestic violence cases through the pro bono program.

Some attorneys find the underlying dynamics of domestic violence difficult to understand and don't want to take these cases. They may think that "these women always go back and it's a waste of my time." In the domestic violence trainings, GLSP brings experts to train on the cycle of violence and the "charming batterer," who looks so normal to the outside world. They also reinforce the importance of setting up an economic support structure. If a victim can't support herself and her children, can't get health care or the rent paid, she's going to go back to the abuser. She has no choice.

GLSP also uses the Council of Superior Court Judges Domestic Violence Benchbook for Judges which includes best practices in domestic violence practice from judicial experts across the nation.⁵ But the struggle is still there in many parts of the state. Recently, even though an abuser had been convicted of violence against his girlfriend, he did not have his gun taken from him. He shot and killed his next girlfriend. Because so many women do not know about legal services available to them before violence occurs, most of GLSP's domestic violence cases come through referrals from the 42 battered women's shelters around the state. GLSP lawyers go to some of the shelters monthly to interview

Where Survivors Can Get Help

Resources for Victims

Emergency Assistance — 911

Georgia Legal Services Program — 404-206-5175
or 800-498-9469, www.glsp.org

Atlanta Legal Aid — (404) 524-5811,
www.atlantalegalaid.org

Georgia Domestic Violence Hotline —
800-33-HAVEN or 800-334-2836
Shelter, Counseling and Safety Planning

Victim's Compensation — Criminal Justice
Coordinating Council — www.cjcc.ga.gov
Up to \$25,000 for medical expenses, costs of
counseling, funeral costs and loss of support.

Office of Child Support Services — [http://ocse.dhr.
georgia.gov/portal/site/DHR-OCSE/](http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE/)

Georgia Coalition Against Domestic Violence —
www.gcadv.org

Local DFCS office — www.dca.state.ga.us/
Temporary assistance for needy families, Medicaid,
Peachcare, food stamps, Department of
Community Affairs (subsidized housing referrals
and free foreclosure counseling)

Resources for Lawyers

Georgia Domestic Violence Benchbook
www.uga.edu/icje/DVBenchbook.html


GLSP Domestic Violence Trial Notebook
www.glsp.org

ABA Committee on Domestic Violence
www.abanet.org/domviol/

clients and talk to the women about the process.

But there is much that cannot be done because GLSP doesn't have enough lawyers to meet the need. 2008-09 State Bar of Georgia President Jeffrey O. Bramlett indicated understanding of this problem in his "Call to Action" to the state Legislature to fund adequately Georgia's judicial system. He pointed to the state program for Legal Services for Victims of Domestic Violence that provides the allocation for GLSP's DV programs. "Without stable funding for this effort, victims of domestic violence and the children affected by this scourge will be cut off from access to the protections available to them in Georgia courts. At best, many of these families will become clients of the overburdened child support recovery office or forced into the child protective services system."⁶ He quoted former State Bar President Linda Klein, who a decade ago got the domestic violence program funded through the Legislature, "I can only imagine the savings to the taxpayer each time a child is not placed into foster care."⁷ The Legislature renewed funding for domestic violence

cases despite cuts in many areas during the recent session during the 2009 session. But this only takes care of a fraction of the need.

GLSP needs more super lawyers who will take the time to become educated on what is going on in a survivor's life and why it takes an average of seven attempts before a victim is finally able to permanently leave an abusive relationship. There are more than 25,000 lawyers in Georgia. If each one took just one case or donated funds for one case to be handled by a GLSP attorney, we would have so many more resources to save lives. On behalf of Andrea Watts and the thousands of victims like her, we want to thank the lawyers who do volunteer their time and resources to protect victims of family violence. 



Vicky O. Kimbrell serves as the Georgia Legal Services Family Violence project director and health law specialist attorney. She has handled numerous federal and state appellate cases dealing with custody, child support, juvenile law, Medicaid and public

benefits. Kimbrell received the Criminal Justice Coordinating Council's Director's award and the Dan Bradley award for her years of service to low-income Georgians. She has served on several state boards and commissions including the Family Violence Commission and the Supreme Court's Committee on Justice for Children.

Susan Wells is a freelance writer and reporter in Atlanta, formerly with the *Atlanta Journal-Constitution*.

Endnotes

1. T.K. Logan & Robert Walker, *Separation as a Risk Factor for Victims of Intimate Partner Violence*, 19 J. INTERPERSONAL VIOLENCE 1478, (2004).
2. Amy Farmer and Jill Tiefenthaler, *Explaining the Decline in Family Violence*, 21 CONTEMP. ECON. POL'Y 158 (2003).
3. <http://cjcc.ga.gov/>
4. www.fatalityreview.com
5. <http://www.uga.edu/icje/DVBenchbook.html>
6. Jeffrey O. Bramlett, *Less Than One Penny* 14 GA. B.J., Feb. 2009, at 6, 8.
7. *Id.*

Sections Expand as Bar Year Ends

by Derrick W. Stanley

The Annual Meeting is the symbolic end of the Bar year and provides Bar members a chance to review accomplishments. Over the past few months, section activities have included a variety of local events and an Annual Meeting featuring receptions and programs, the presentation of section awards and the creation of two new sections.

Local Events

ICLE and the **Intellectual Property Law Section Patent Committee** held a Lunch and Learn program on June 10 at the Bar Center. "The KSR Standard for Obviousness: A Pendulum Shift to 20/20 Hindsight?" featured presenters Mitchell G. Stockwell of Kilpatrick Stockton LLP and Arthur A. Gardner of Gardner Groff Greenwald & Villanueva, PC.

On the same day, the **Technology Law Section** and ICLE presented "Digging the Del.icio.us Facebook Twitter: A Survey of Social Networking Legal Issues" at the office of Troutman Sanders. James A. Harvey, Hunton & Williams LLP, and Stephen B. Combs, HowStuffWorks.com, a Discovery Communications company, delivered an educational program to the large group of attendees. The section also used this gathering to serve as their annual business meeting.



On June 11, the **Government Attorneys Section** hosted a reception and annual meeting at the Bar Center. The section held a vote for new officers while socializing with each other.

The **Copyright Committee** of the **Intellectual Property Law Section** sponsored a program with **ICLE** titled "Too Much of a Good Thing? An Empirical Critique of Lengthy Copyright Terms." The program was held at the office of Kilpatrick Stockton LLP on June 16 and was co-sponsored by the Southeast chapter of the Copyright Society. Professor Paul Heald of the University of Georgia School of Law conducted the program.

The **IP section** also sponsored their annual summer social on June 18 at Tap on Peachtree. The section used the social function for peer networking with summer associates.

ICLE, along with the **In-House** and **Licensing Committees** held "The Intersection of Insolvency and Intellectual Property" at the Bar Center on June 25. Matt Owens of Solvay Pharmaceuticals and Will Sugden of Alston & Bird LLP presented this program to participants who were eager to engage in post meeting conversations.

Annual Meeting Events

Several sections took advantage of opportunities during the State Bar's Annual Meeting June 18-20 to hold meetings, socials and receptions.

The **Tort & Insurance Practice** and **Taxation Law Sections** held breakfast meetings June 19.

The **General Practice and Trial Section** honored the Tradition of Excellence award recipients at their annual Friday breakfast. The award recipients were William Q. Bird, Atlanta (plaintiff), Hon. G. Alan Blackburn, Atlanta (judicial), Robert E. Hicks, Atlanta (general practice) and Jonathan C. Peters, Atlanta (defense).

The **Appellate Practice** and **Criminal Law sections** met over lunch. The Criminal Law Section



2009 Tradition of Excellence Award Recipients. (Left to right) William Q. Bird, (plaintiff), Robert E. Hicks, (general practice), Hon. G. Alan Blackburn, (judicial), Jonathan C. Peters, (defense) and Chair Adam Malone.

Photos by Sarah I. Coole and Derrick W. Stanley

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Tina Shadix Roddenbery, incoming chair of the Family Law Section, accepts the 2009 Section of the Year Award from President Jeffrey O. Bramlett during the plenary session of the Annual Meeting.

included a program on computer forensics and the **Judicial Section** held their annual meeting later in the afternoon. Sections closed out the day with receptions hosted by **Labor & Employment Law** and **General Practice and Trial**.

Awards

Jeffrey O. Bramlett presented the **Section of the Year** award to the **Family Law Section**, chaired by Edward J. Coleman III. Tina Shadix Roddenbery accepted the award on behalf of Coleman during the plenary session of the Annual Meeting. The **Section Award of Achievement** was also presented and Patrice Perkins-Hooker accepted the award on behalf of the **Real Property Law Section**, chaired by Susan Langley Elliott. The awards are presented to outstanding sections for its members' dedication and service to their areas of law practice and for devoting endless hours of volunteer effort to the profession.

New Sections Formed

Two new sections were approved by the Board of Governors at the Annual Meeting.

Following a report by Paulette A. Bradham and Michael Monnolly,

the Board of Governors, by unanimous voice vote, approved the creation of an Employee Benefits Law Section and the proposed bylaws that were submitted. The mission of the section is as follows:


The Employee Benefits Law Section seeks to: promote knowledge and understanding of laws regulating employer sponsored benefit plans through continuing legal education opportunities in the field of executive compensation, pensions, health and welfare and ERISA litigation; establish a liaison with the Department of Labor, Internal Revenue Service and employee benefit practitioners; and develop collegiality among practitioners within the employee benefits area of practice.

Following a report by Claudine Wilkins, the Board of Governors, by unanimous voice vote, approved the creation of an Animal Law Section and the proposed bylaws that were submitted. The purpose of the section is as follows:

The purpose of this Section shall be to provide member-

ship to licensed attorneys in the state of Georgia so they may develop their knowledge and professional abilities in the area of animal law in order to render better service to their clients and the general public. The establishment of an Animal Law section under the State Bar of Georgia will provide a needed forum by which Georgia attorneys may share knowledge and experience to further develop their legal knowledge and skills.

Information will be available at www.gabar.org/sections on how to join one of these new sections.

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



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

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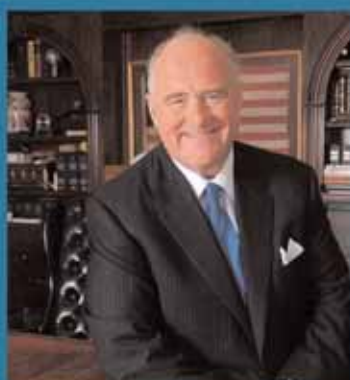
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Advance Navigational Tools in Casemaker 2.1

by Sheila M. Baldwin

In the past several issues of the *Georgia Bar Journal*, we have been discussing Casemaker 2.1, the newest version of Casemaker. We have covered the basics of how to log on, how to navigate the toolbar and how to do basic searches. In case you have misplaced your past issues, we have them conveniently linked on the website at www.gabar.org where you will also find other useful resources.

In this issue, highlights of several advanced settings on the navigation toolbar are explored. Logging on to Casemaker, you will be taken to the Georgia library. Choose the area you are searching, such as case law, and enter your search terms. The next screen contains the navigation bar containing tools that will ease the searching process within the documents (see fig. 1).

Notice the bread-crumb navigation feature just below the blue toolbar (see fig. 1). In this portion of the screen you can use your cursor to go directly to past screens without using the back button. The words Texas, Case Law, Search and Results are highlighted in blue. If you click on the "Results" or "Search" tab you return to the previous page but if you click on "case law" you will see the same page telling you when the database was last updated. If you click on "Texas" you will return to the front page of the Texas state library.


"Previous Results" and "Next Results" are used to navigate to additional cases that were brought up in your original search (see fig. 1). This makes reviewing cases trouble-free by avoiding the extra step of going back to the results page. If you filter your search by "Rank" instead of the default filter of "Descending Order" you will find the most relevant cases at the beginning of your search, and then you will be able to quickly search the cases using this navigation tool. Notice that in our example the total number of results

are seen between the "Previous Results" and "Next Results" buttons. When you consider that the search netted 195 results, having an easy way to navigate is a valuable feature.

"Previous Hit" and "Next Hit" are useful in navigation within a document (see fig. 1). These options are similar to the two previously mentioned tools, but take you to the terms and phrases within the specific case you are viewing. They will not appear in the navigation toolbar until you click on a particular case. When you click "Next Hit" you are taken to the next place in the document that has the term or terms mentioned in your search. They are highlighted in red and the exact number of hits is shown in the bar between the "Previous Hit" and "Next Hit" buttons. This is helpful when determining case relevance.

As an example, search *Beam v. State* in the Georgia library, and use the search terms "malice murder" and "life imprisonment" with the Rank sort option (see fig. 2). You will find two results seen as "1 of 2" in the navigation toolbar (see fig. 3).

The top result, 265 Ga. 853 *Beam v. State*, shows a total of six hits on terms and phrases (see fig. 4). As you can see "malice murder" was the first hit and is highlighted in red (see fig. 4). Using the "Next Hit" button, the user is taken to the phrase "life imprisonment" (see fig. 5). Jumping back and forth within a document is a great time saver, and with legal research costs being scrutinized, every tool that adds efficiency is valuable.

Each issue of the *Georgia Bar Journal* contains helpful Casemaker information. As you find tips or shortcuts in your Casemaker searches, feel free to send them to sheilab@gabar.org for inclusion in our upcoming articles. In the next issue of the *Bar Journal*, we will take an in-depth look at the Advanced Field boxes on the Case Law Full Search page. 



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Summer Beach Reading

by Karen J. Sneddon and David Hricik

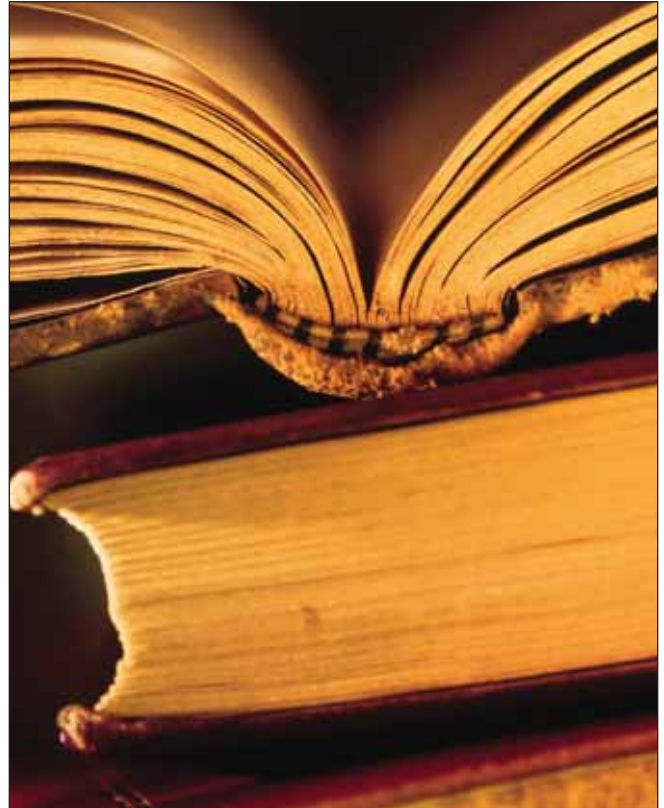
As the humidity climbed throughout the summer, the siren call of the shore hopefully at some point became impossible for you to resist. With the salty spray in your face and toes digging into gritty sand, there are few things more relaxing than reading a breezy summer book. Breezy summer beach reads (which for some are not all that breezy)¹ can not only entertain, they can inform your approach to legal writing.

Writers often identify five elements of fiction:² (1) character, (2) setting, (3) plot, (4) theme and (5) style. Lawyers are somewhat limited in directly using these elements. For example, lawyers cannot knowingly misrepresent the facts.³ However, the elements fiction writers use can help legal writers craft an effective brief, from the Statement of Facts to the Argument Section. Apart from ethical limitations, the elements of fiction can be effective tools in legal writing.

Character

The most vital element is often character. “Character” is a person, entity or even concept that is a participant in the story. There are main characters, supporting characters and minor characters. Fiction typically needs at least two characters: a protagonist (the good guy) and an antagonist (the bad guy). Creating a vivid, three-dimensional protagonist requires describing the character’s physical and emotional side, as well as the character’s actions (past, present and future).

In contrast, fiction writers omit or shorten their descriptions of the antagonist, often leaving the antagonist depicted more as a one- or two-dimensional character. By giving an in-depth examination to the protagonist and a somewhat superficial sketch of the antagonist, the fiction writer increases the reader’s empathy for the protagonists and, more importantly, their plight.



Related to character is point of view. The four possible points of view are (1) first person, (2) third person, (3) objective and (4) omniscient. Through point of view, fiction writers share a character’s perspectives with the reader. Some argue that the most gripping point of view is first person. (Think of Sookie Stackhouse’s first person narrative in Charlaine Harris’s *Dead Until Dark*.⁴) First person and third person allow the writer to firmly place the reader in the shoes of the client.

For the legal writer, these lessons can inform how to introduce parties to the dispute, and more. For example, when representing an employee in a contract dispute, the writer could introduce the plaintiff by describing why the employee began working with the company and an anecdote about his work or work experience. This snippet can transform the employee from a flat, generic character to Jan from accounting, who came to the company because of her life-long passion for numbers.

Setting

Setting is the location, time and context of the story. It's "the dark and stormy night." Whether the setting is the misty Pacific Northwest of today,⁵ a hovering space station of the future⁶ or Regency England,⁷ setting allows the writer to transport to the reader to the client's world.

While briefs may not need to travel quite so many miles, anchoring the client's story to a particular place and time provides the context for each party's actions. If, for example, a business tort occurs in a growing, new market, leaving out that context may undermine the facts that show the defendant had significant reason to tortuously interfere with the plaintiff's contract, for there was money to be made. Setting matters.

Plot

The order of events (beginning, middle and end) is the plot. The plot need not, and for effect often should not, follow strict chronological order. The TV shows "Lost" and "Battlestar Galactica" are two recent examples of effective, non-chronological storytelling.

Thus, for the legal writer, ordering may be particularly powerful. In a business tort case, for instance, it may be best to start at the end—the plaintiff went bankrupt after a brief success, and then show the reader how the defendant caused this—or at the beginning, with a description of the market, the plaintiff's expertise and success, but then the defendant's dark activities and plaintiff's demise. There are choices for the legal writer to make about plot.

Theme

Theme is the universal truth relayed by the story. Fiction writers often identify seven basic themes: (1) Man Against Man, (2) Man Against Self, (3) Man Against Nature, (4) Man Against Society, (5) Man Against Machine, (6) Man Against God and (7) God Against Everybody.⁸


Attorneys frequently develop the theme or theory of the case. Good trial lawyers, often say that the story is more important than the law. Often, man against man will be the theme in civil litigation, but in sentencing matters and other areas different themes might have greater effect. Again, there is a choice.

Style

Fiction writers call the language conventions used to tell the story "style." Among other topics, style includes sentence structure (both syntax and sentence length), voice (active and passive) and word choice.

In prior installments of Writing Matters, we've discussed many aspects of style. Yet, as you look back on or finish up your summer reading, be sensitive to the word choice used by authors. The careful selection of words allows a writer to bring to life vibrant, forceful images. For example, the word "bolted" conveys a totally different image than "walked quickly."

Conclusion

So, as you devote a few of the dog days of summer to the shore, grab a novel and relax. Be cognizant of how your author manipulates the elements of fiction. When you get back to the office—which, sadly, will come all too soon—see if you can also learn from your relaxation.⁹ 



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



David Hricik is an associate professor at Mercer Law School who has written several books and more than a dozen articles. Mercer's Legal Writing Program is currently ranked as the number one legal

writing program in the country by *U.S. News & World Report*.

Endnotes

1. For a list of new and classic books for summer beach reads ranging from Katherine Howe's *The Physick Book of Deliverance Dane* to Leo Tolstoy's *Anna Karenina*, see Sara Nelson, "Meet Your New Favorite Book," *Real Simple* 190-93 (June 2009).
2. There are several incarnations of the elements of fiction. For example, "point of view" can be listed as a separate element or be subsumed in the element of character, as we have done in this article.
3. Model Code of Prof'l Conduct R. 3.3(a)(1).
4. This series of Charlaine Harris's Southern Vampire Mysteries has inspired the popular HBO series "True Blood."
5. Stephenie Meyer, *Twilight*.
6. Orson Scott Card, *Ender's Game*.
7. Jane Austen, *Pride and Prejudice*.
8. Brian Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459, 469 (2001) (citing Josip Novakovich, *Fiction Writer's Workshop* 74-75 (1995)).
9. For a further examination of using fiction to improve legal writing, see the following sources: Anthony G. Amsterdam & Jerome Bruner, *MINDING THE LAW* 143-64 (2000); Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigms of the Archetypal Hero's Journey*, 29 Seattle U. L. Rev. 767 (2006); Tam D. Cowden, *Telling the Client's Story: Using Fiction-Writing Techniques to Craft Persuasive Briefs*, 14 Nev. Law. 32 (Sept. 2006); Shaun B. Spencer, Dr. King, Bull Connor, and *Persuasive Narratives*, 2 Ass'n Legal Writing Directors 209 (2004); Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459 (2001); Jethro K. Lieberman, *The Art of the Fact*, 5 Legal Writing: J. Legal Writing Inst. 25 (1999).

20th Anniversary Commemorative Celebration

by Avarita L. Hanson

Partnering with the Lawyers Foundation of Georgia (the Foundation), the Chief Justice's Commission on Professionalism (the Commission) commemorated its 20th anniversary at the Foundation's annual dinner on Friday, June 19, during the State Bar of Georgia's Annual Meeting. Georgia judges, lawyers, families and friends gathered in the Amelia Island Conference Center's Cumberland Ballroom that had been transformed into a tropical paradise. Attendees outfitted in "island formal" attire entered to the sounds of Caribbean music provided by The Blake Group. They were treated to a delicious dine-around buffet, with four food stations featuring menu selections from Argentina, Cuba, Jamaica and Puerto Rico.

The Foundation, represented by its Board of Trustees Chair Rudolph Patterson and Executive



Photos by Len Horton

Prof. A. James Elliott, one of the Commission's founders, addresses guests at the LFG/CJCP dinner.

Director Lauren Larmer Barrett, showcased sponsored programs and activities. Guests viewed a video on the

Foundation's signature program, BASICS, an anti-recidivist program. A highlight of the evening was Patterson's announcement that the Foundation would receive a \$430,000 *cy pres* award to support its programs, due largely to the efforts of State Bar Past President Robert Ingram and former Gov. Roy Barnes.

The Commission was represented by founder and Emory Law Prof. A. James Elliott, who served as the evening's emcee. Elliott acknowledged the Commission's other founders, Hon. Harold B. Clarke, Rev. Dr. James T. Laney, the late Hon. Thomas O. Marshall and the late Hon. Charles L. Weltner, members and executive directors. Also appearing on the program was Avarita L. Hanson, the Commission's current executive director, who introduced the commemorative video highlighting the Commission's history. All guests were given a copy of the video, which provided a look at 20 years of the world's first court-created entity to address lawyer professionalism.

Presiding Justice Carol W. Hunstein and Patterson paid fitting tributes to retiring Chief Justice Leah Ward Sears, who was given a standing ovation from the ballroom crowd. Chief Justice Sears evidenced her appreciation to all present for their gracious applause and the gifts she received as she prepared to pass the gavel to Justice Hunstein. Guests came from across the South to salute the Commission and to show their gratefulness to Chief Justice Sears, including Dean Richardson Lynn, Atlanta's John Marshall Law School; Dean Steven Kaminshine, Georgia State Law School; and Dean Darby Dickerson, Stetson Law School. In addition to celebrating Chief Justice Sears, a special presentation was made to Vivian R. Ingersoll, a public member of the Commission, who devoted much time and talent to making this event a success.

The Foundation and the Commission wish to thank the following for their generous financial

Creative Connections

The State Bar Committee on Professionalism's **Creative Connections** project made its second appearance at the 2009 Annual Meeting. Supreme Court Justice Robert Benham, a talented toy maker, developed the concept for this program to foster positive associations among attorneys and promote professionalism in attorney interactions. Attorneys throughout Georgia are invited to display their artistic talents to their peers and perhaps form new friendships through shared interests.

Volunteer attorneys JaDawnya Butler and Hilary Young greeted members of the Bar at the display which featured of a variety of products made by attorneys. This year, the following judges and attorneys participated with Creative Connections: Overtis Hicks Brantley, retired Fulton County attorney and quilter; Sonya Cromwell, attorney and painter; Michael C. Daniel, attorney and painter; Sharon Kaye Gipson, attorney and quilter; Rosalind A. Rubens-Newell, McKenna Long & Aldridge LLP attorney and quilter; Robert Steed, senior partner, King & Spalding and author; and Gwendolyn Fortson Waring, Savannah attorney and photographer.

Some participants donated items for the auction for the benefit of the Lawyers Foundation of Georgia. A lively bidding war ensued for some of the highly sought after art items. Fulton County Superior Court Judge Gail Tusan was present for a special signing of her book, *Misjudged*, which she wrote under her pen name, Susan Washington.

Creative Connections is an innovative way for local bar associations to bring members together for charitable events and business networking. A project manual is available. For more information, contact Nneka Daniel at nneka@cjcpga.org.

Tenth Annual Service *Juris*: A Special Day of Lawyers Serving the Community

by Avarita L. Hanson

Service Juris is a collaboration of the Lawyers Foundation of Georgia and Hands on Atlanta with a team of sponsors and volunteers from law firms and legal service support companies.

"Many hands make light work," said John Heywood, English playwright and poet. That was so true on June 27, 2009, a hot Georgia summer Saturday when nearly 500 attorneys, family members and friends came out to paint and improve the landscape around the Atlanta Area School for the Deaf. Giving a fresh look and feel to the school, volunteers worked inside and outside and were visited by such dignitaries such as State School Superintendent Kathy Cox.

This year, in commemoration of the 20th Anniversary of the Chief Justice's Commission on Professionalism and its ideals, including community service, the Young Lawyers Division of the State Bar brought out its volunteers. Shiriki Cavitt, chair, YLD Community Service Committee, and Kasi Renee Whitaker of Savell & Williams, LLP, worked at the Atlanta Area School for the Deaf as part of the YLD team.

As we often share, a component of professionalism ideals is for lawyers to engage in community service. Lawyers can be found in all capacities serving the community outside of their practices or judicial responsibilities. Lawyers not only serve as leaders in the boardrooms, they served as workers in the classrooms, halls and grounds of the Atlanta Area School for the Deaf during *Service Juris*. This year, lawyers who landscaped and painted left their indelible marks on the school and a legacy of service for years to come.

State Bar of Georgia

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Law Practice Management Program

The Law Practice Management Program is a member service to help all Georgia lawyers and their employees put together the pieces of the office management puzzle. Whether you need advice on new computers or copiers, personnel issues, compensation, workflow, file organization, tickler systems, library materials or software, we have the resources and training to assist you. Feel free to browse our online forms and article collections, check out a book or videotape from our library, or learn more about our on-site management consultations and training sessions, 404-527-8772.

Consumer Assistance Program

The Consumer Assistance Program has a dual purpose: assistance to the public and attorneys. CAP responds to inquiries from the public regarding State Bar members and assists the public through informal methods to resolve inquiries which may involve minor violations of disciplinary standards by attorneys. Assistance to attorneys is of equal importance: CAP assists attorneys as much as possible with referrals, educational materials, suggestions, solutions, advice and preventive information to help the attorney with consumer matters. The program pledges its best efforts to assist attorneys in making the practice of law more efficient, ethical and professional in nature, 404-527-8759.

Lawyer Assistance Program

This free program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment, 800-327-9631.

Fee Arbitration

The Fee Arbitration program is a service to the general public and lawyers of Georgia. It provides a convenient mechanism for the resolution of fee disputes between attorneys and clients. The actual arbitration is a hearing conducted by two experienced attorneys and one non-lawyer citizen. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Arbitration is impartial and usually less expensive than going to court, 404-527-8750.


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and in-kind support for this event: Alston & Bird LLP; Atlanta Chapter of the Links, Inc.; Atlanta's John Marshall Law School; Baker Donelson Bearman Caldwell & Berkowitz, PC; Balch & Bingham LLP; Bondurant Mixson & Elmore LLP; Butler, Wooten & Fryhofer LLP; Coca-Cola; Cochran, Cherry, Givens, Smith, Sistrunk & Sams, PC; Daughtery, Crawford, Fuller Brown, LLP; A. James Elliott, Emory Law School; George E. Mundy, PC; Gate City Bar Association; Georgia Association of Black Women Attorneys; Georgia-Pacific; Georgian Bank; Georgia Association for Women Lawyers; Georgia State College of Law; ICLE of Georgia; Avarita Hanson and William Alexander, MD; IKON; John & Vivian Ingersoll; King & Spalding LLP;

Malone Law; Mauldin & Jenkins CPAs, LLC; Miller & Martin PLLC; Oliver & Maner LLP; Patrise Perkins-Hooker; Pope, McGlamry, Kilpatrick, Morrison & Norwood LLP; Mercer Law School; Print Time; Teresa and Joseph Roseborough; Sandy Springs Bar Association; Stetson University College of Law; Strickland Brockington Lewis LLP; University of Georgia Law School; United Parcel Service; Watson Spence LLP; William R. Jenkins; and the YLD.

The Commission now moves into its next era well-equipped to carry out its duties. Its mission is to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts and the public, to fulfill their obli-

gations to improve the law and the legal system, and to ensure access to that system. This dinner, co-sponsored by the Foundation and the Commission commemorating the Commission's 20th anniversary, was not merely a night of dining and entertainment. It was a historic collaboration of two special entities which share common ideals. With the continued support of the bench and bar, both will provide important services to Georgia's legal community today and into the future. 



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

The Lawyer's Foundation of Georgia Dinner: Celebrating the 20th Anniversary of the Chief Justice's Commission on Professionalism.



Justice Leah Ward Sears with LFG Board of Trustees Chair Rudolph Patterson after Sears was recognized for the work she has done on behalf of the Chief Justice's Commission on Professionalism.



(Left to right) Hon. Lamar W. Sizemore, Jim Wiggins and Pat O'Connor enjoy their time during the island-themed LFG annual dinner.



Hon. Philip C. Smith and Lauren Larmer Barrett enjoy the evening at the LFG dinner.



Gwendolyn S. Fortson Waring and Avarita L. Hanson during the 20th anniversary celebration.

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.

Linda Abrams

Seminole, Fla.
Indiana University School of Law
(1988)
Admitted 1989
Died May 2009

Charles Lloyd Clay

Clayton, Ga.
University of Georgia School
of Law (1998)
Admitted (1964)
Died May 2009

Alfred L. Evans Jr.

Atlanta, Ga.
University of Virginia School
of Law (1956)
Admitted (1961)
Died April 2009

Hewell Donald Fleming

Elberton, Ga.
Emory University School of Law
(1977)
Admitted (1978)
Died May 2009

John Robert Harvey

Pembroke, Ga.
University of Georgia School
of Law (1966)
Admitted 1966
Died May 2009

Sanford Joe Jones

Fairburn, Ga.
Woodrow Wilson College of Law
(1977)
Admitted 1977
Died May 2009

Harold Andrew Lane

Douglasville, Ga.
Atlanta Law School (1962)
Admitted (1963)
Died May 2009

Janice Braziel McNatt

Atlanta, Ga.
Woodrow Wilson College of Law
(1989)
Admitted 1989
Died January 2009

Claude T. Moorman II

Plymouth, N.C.
William & Mary Law School
(1978)
Admitted 1979
Died April 2009

Kenneth W. Musgrove

Albany, Ga.
Woodrow Wilson College of Law
(1979)
Admitted 1979
Died March 2009

Leigh Lawson Reeves

Atlanta, Ga.
Mercer University Walter F.
George School of Law (1991)
Admitted 1991
Died May 2009

Jacquelyn Sanders

Dublin, Ga.
Mercer University Walter F.
George School of Law (1986)
Admitted 1986
Died April 2009

Charles E. Sellner

Andrews, N.C.
University of Denver College
of Law (1996)
Admitted 1996
Died March 2009

Norman Smith

Barnesville, Ga.
University of Georgia School
of Law (1972)
Admitted 1972
Died June 2009

William Thomas Vernon

Columbia, S.C.
University of South Carolina
School of Law
Admitted 1988
Died January 2009

Charles Melvin Voyles

Fayetteville, Ga.
Woodrow Wilson College of Law
(1964)
Admitted 1964
Died April 2009

Richard W. Watkins Jr.

Jackson, Ga.
University of Georgia School
of Law (1947)
Admitted 1948
Died February 2009

Prominent Jackson attorney and religious and civic leader **Richard Wright Watkins Jr.** died in February 2009. He was born in February 1920 in Indian Springs, son of the late Richard Wright Watkins and Dovie Bryans Watkins. He graduated with honors from Gordon Military High School in Barnesville and attended the University of North Carolina. Watkins graduated from Maryville College in Maryville, Tenn. He served in the U.S. Army during WWII where he worked with B-17 bombers and was discharged in September 1945 with the rank of sergeant.

Watkins graduated from the University of Georgia School of Law in 1947 and shortly after passed the Georgia Bar exam. He was called back into service during the Korean War where he served for 17 months at Fort Benning as the post legal officer. He practiced law in all of Georgia

courts, including the Court of Appeals of Georgia and Supreme Court of Georgia, as well as the federal district courts for the middle and northern districts of Georgia, the 11th Circuit U.S. Court of Appeals and the U.S. Supreme Court.

He was a former president of the Flint Circuit Bar Association and served on the B.A.S.I.C.S. committee of the State Bar of Georgia. He served for two terms as Butts County Ordinary. He was appointed at the behest of his former law school classmate, Carl E. Sanders, by Gov. Ernest Vandiver to the Georgia State Board of Corrections. Sanders approved the Board's request to elect Watkins as chairman after he was sworn in as governor. While serving on the Board of Corrections, Watkins urged the executive director to build a diagnostic prison for the state, and obtained permission from the board and Gov. Sanders to have it built in Butts County. The prison is now the largest employer in Butts County.

Watkins was a member of the Board of Trustees of the Jackson-Butts County Library for many years and served on the Board of

Directors of the Flint River Regional Library. He was a long-time member of the Jackson Presbyterian Church where he served as an elder. Watkins was a member for many years of the Jackson Kiwanis Club and was a former president. He was a member of the Gordon College Foundation and established several scholarships there. He was a former director of the Old Pepperton Cotton Mill and the C&S Bank of Jackson, now Bank of America. He retired several years ago after practicing law for over 60 years.

The Hon. Sanford Joe "Sammy" Jones passed away in May 2009. Jones served as the presiding judge of Fulton County Juvenile Court. He was known as a compassionate advocate for troubled children.

Jones was born in Fairburn, Ga., on the family farm in July 1952 and lived there all his life.


He graduated from the University of Georgia and from Woodrow Wilson College of Law in Atlanta.

Jones presided over the contentious House of Prayer custody battle, and never shied away from

taking on the most controversial issues involving families and children—giving troubled kids a second chance when he could, trying to keep families together when he could, raising money for a fund to pay for programs that the county could not afford.

Jones set up a non-profit fund for juvenile justice in Fulton County that funded many innovative programs that are now models for programs all over the country. His work with juveniles went beyond the courtroom, into the communities, into resettlement programs, into juvenile drug court programs and all types of assistance for families.

On the bench, Jones was professional, judicial and personable. Off the bench, working with children and families in the community, as he did so often, he was funny, putting people in the most dire circumstances at ease, and doing all he could, above and beyond the call of duty, to help.

He passed up chances to retire. He stayed on because he loved helping children, and working to improve the juvenile court system from the inside out. 



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Information

For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 659-6867 or 104 Marietta St. NW, Suite 630, Atlanta, GA 30303.

More Summer Reads

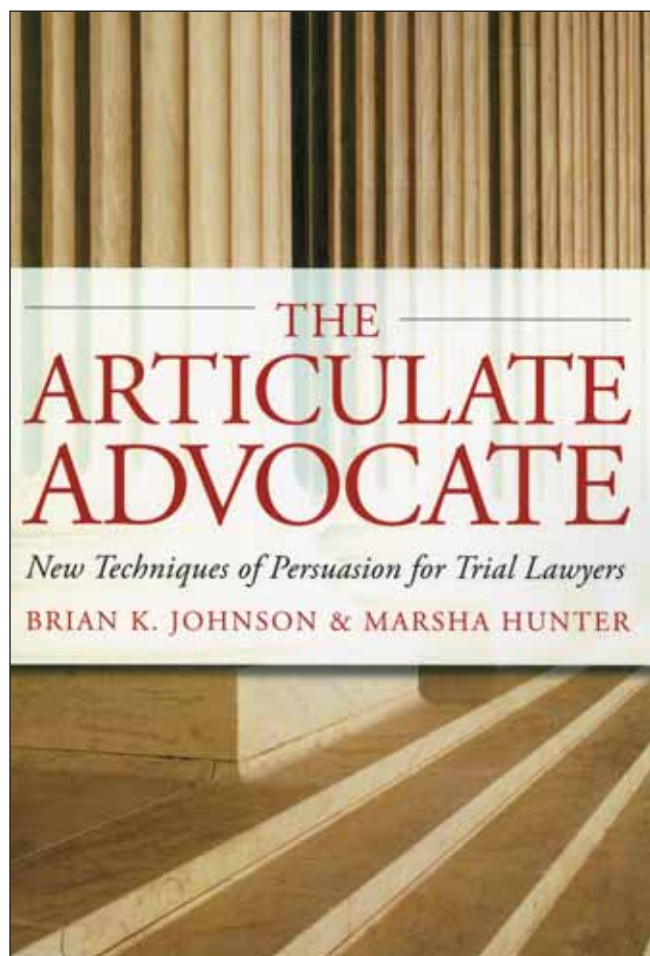
The Articulate Advocate: New Techniques of Persuasion for Trial Lawyers

by Brian K. Johnson and Marsha Hunter
Crown King Books, 206 pages

reviewed by David R. Hughes

INASMUCH as trial advocacy is an art and not a science,¹ there are as many styles of trial advocacy as there are lawyers who practice in the courtroom. Not all styles are equal, however; some are decidedly better than others. Few, if any, are perfected. So, what elevates some trial presentations to Shakespearean heights, while others languish in nondescript doggerel? How can the new or average trial advocate transform a lackluster style into an inspiring work of persuasive beauty, one worthy of a Clarence Darrow?

The authors of *The Articulate Advocate: New Techniques of Persuasion for Trial Lawyers* posit that the answer rests in the mastery of “a solid technique that will provide you with reliable answers to all those challenging questions about how to look, sound and feel natural in the courtroom.” In short, their book is about the logistics or tools that undergird persuasive trial presentations, providing practical examples and guides for honing the communication skills that make up the form through which the advocate’s substantive message is conveyed. As its back cover touts, this book teaches how to say and



do it, rather than what to say and do in the courtroom. Both authors, Brian K. Johnson and Marsha Hunter, are trial advocacy instructors who focus on teaching communication skills through the National Institute for Trial Advocacy.

The book begins with the stated paradox that, in order to look “natural” and credible in court, one must consciously employ unnatural behaviors. The natural and unconscious behaviors of everyday life, such as fiddling with one’s pen or jewelry, shifting weight from one leg to another or holding a hand in a

pocket can seem distracting and unnerving to a jury. Similarly, some behaviors required of lawyers in the courtroom, such as asking questions to which the answer is already known, or projecting one's voice in an authoritative manner, come across as odd in normal non-courtroom conversation and are not part of one's natural mannerisms. For these reasons, say the authors, a "technique" must be learned to teach the advocate self-control in his or her courtroom demeanor, allowing the advocate to appear "natural" to the judge or jury.

Johnson and Hunter take the reader through a succinct discussion about developing such a technique with focus on three areas: Your Body; Your Brain; and Your Voice. The advice draws on snippets from various scientific disciplines, including basic physiology, linguistics, physics and performance psychology. Each chapter ends with a list of mantras for self-instruction, and the entire book concludes with a brief chapter on how to practice what was explained in the book's preceding pages. The techniques range from the very basic (such as how to stop saying "um") to the more sublime (such as how to tap into the jury's use of echoic memory). For the experienced student of trial advocacy, the emphasis may be a bit too much on the former, but the book's no-nonsense approach allows for quick reading and absorption of tips for immediate application in the courtroom.

Examples of techniques for body control include, among other things, understanding the physiological effects of adrenaline and learning the mechanics of conscious breathing to cope with them. The authors also describe a rectangular zone of gesture, extending from the waist to the nose and about two feet to either side of the body. Persuasive courtroom gestures should flow naturally from the shoulders to the hands and fill this imaginary zone.

Effective posture and the use of the hands, face and eyes are examined, as well.

The chapter on brain control begins with a discussion of the relationship between adrenaline and the time warp effect, which makes time slow to a relative crawl in the mind of the adrenaline-pumped advocate. The authors explain how to enter the zone of concentration to perform at peak levels, much the way that athletes do in major sports events. Of particular note is the description of trial advocacy as a "structured improvisation," a form of verbal jazz, whereby the trial lawyer plans the examinations around topics and improvises the questions as the exam unfolds. Johnson and Hunter assert that, with practice, one "can learn to be comfortable living in this cognitive state, poised between the opposites of well-planned structure and free-form improvisation." The reader might wonder, however, whether the ability to maintain that state comfortably is not, in fact, what inherently distinguishes the great trial lawyers from the lesser ones, and whether the comfort of that cognitive state can be learned at all.

Voice is the third area of technique explored. The authors explain the physics of sound vibration and discuss strategies for proper breath control and voice projection. The topics of phrasing, articulation, pitch and intonation are also covered, with a solid discussion of the use of rising and falling intonation for purposeful effects.

The final chapter deals with how to practice the techniques learned for actual use in the courtroom. Johnson and Hunter rightly assert that practice is a skill itself. Unfortunately, too many trial lawyers overlook the importance that practice has in improving their ultimate presentation. Practice should be out loud, simulating as closely as possible the manner in which the

delivery will be made in the courtroom. The authors provide a simple guide and checklist for effective practicing.

In summary, *The Articulate Advocate* is a worthy addition to a trial lawyer's library of instructional books. The authors' suggestion in the book's title of providing new techniques of persuasion, however, is a bit of a stretch. Given the proliferation of trial technique manuals, seminars, videos, books, etc., it is hard to discern what is new versus what are variations on previous themes. In any event, the organized and practical presentation of the material in *The Articulate Advocate* should prove useful to anyone learning or brushing up on courtroom technique. Trial advocacy is indeed an art with many different styles. The more one learns about the form behind the art, the more creative one can be in delivering a persuasive, substantive message in the courtroom.



David R. Hughes is a partner at Davis, Pickren & Seydel, LLP, in Atlanta. He is an experienced litigator who focuses on business,

employment and catastrophic injury litigation. He has litigated and tried cases throughout the eastern United States involving the Federal Employers' Liability Act. Hughes received his undergraduate and law degrees from Emory University and a Masters of Divinity degree from Harvard University.

Endnote

1. United States federal courts have often referred to trial advocacy as such. See, e.g., *Strickland v. Washington*, 466 U.S. 668, 681 (1984) ("Because advocacy is an art and not a science, and because the adversary system requires deference to counsel's informed decisions, strategic choices must be respected in these circumstances if they are based on professional judgment.").

The Nine: Inside the Secret World of the Supreme Court

by Jeffrey Toobin,
Doubleday, 384 pages

reviewed by Bob Beer

With the resignation of Justice David Souter and the confirmation hearings of Judge Sonia Sotomayor, there is no better time to read and thoroughly enjoy *The Nine: Inside The Secret World of the Supreme Court*.

This book, brilliantly written by Jeffrey Toobin, CNN's Senior Legal Analyst and a former federal prosecutor, is a page-turner that you won't be able to put down. Why? After reading this book, one comes away with the sense that the nine justices are involved in a gigantic "tug of war" between the conservative (Alito, Roberts, Scalia and Thomas) and liberal (Breyer, Ginsburg, Souter and Stevens) blocs of the Court, with the goal being to garner at least five votes. As former Justice William Brennan stated, the "rule of five" reigns supreme (no pun intended). Toobin's underlying thesis seems to be that there has been a seismic shift from the liberal Warren Court to the conservative Roberts Court.

Toobin deals with the historical, legal and political perspectives of the Court and its members over the years. Each and every member of the current Supreme Court and his or her respective decisions are reviewed and analyzed at length. Toobin spends a great deal of time on the pivotal role played by former Supreme Court Justice Sandra Day O'Connor. Like her predecessor on the Court, Justice Lewis Powell, O'Connor was the "swing vote" until her recent

retirement from the bench. Toobin describes O'Connor, a former Arizona legislator, as the most pragmatic justice on the high court.

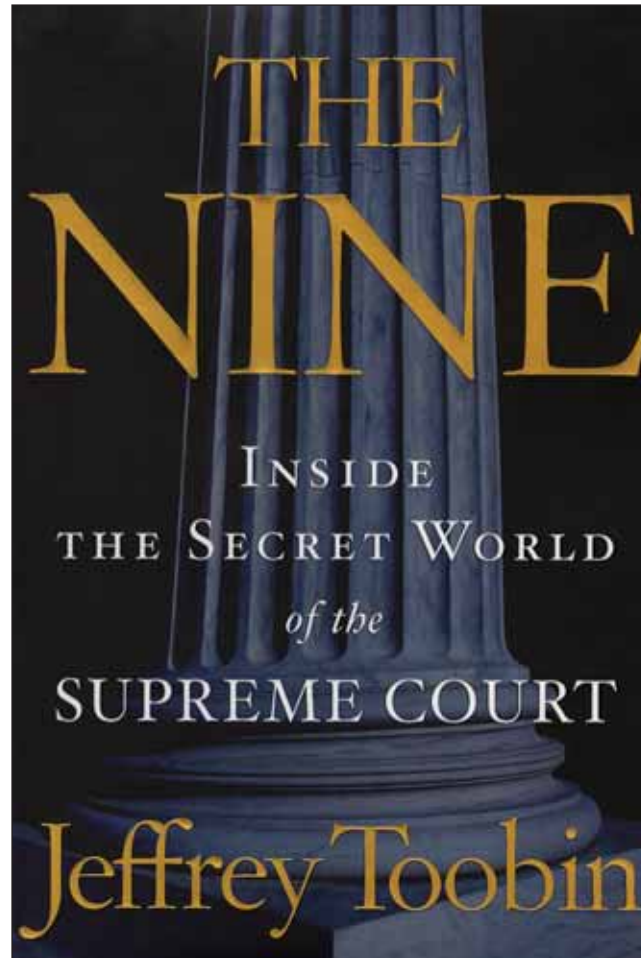
As opposed to O'Connor, Justice Scalia, who carried a gun with him while commuting to school on the subway in New York City, is described as an originalist (a strict constructionist) who does not believe in either the

justices, as well as former Justice O'Connor. Two of my favorites were when: (1) Justice O'Connor described herself as the "yenta of Paradise Valley" in her attempts to fix up Justice Souter, a bachelor (Justice Ginsburg also tried to fix up Justice Souter); and (2) Justice Souter, who had been confused with Justice Breyer, said that one of his highlights on the Court was the privilege that he had of serving with "Justice Souter."

According to Toobin, Justice Thomas never spoke at oral argument and was probably the most conservative justice on the Court since FDR's Court-packing plan in 1937. Toobin also describes Justice Ginsburg as shy, and writes that Justice Breyer has a sing-song voice. During his nomination process, a colleague of future Chief Justice John G. Roberts said that the G in his middle name stood for God. Indeed, Chief Justice Roberts had been sent by George W. Bush after the 2000 election to Tallahassee to help in his legal challenge of the vote. Justice Alito and Chief Justice Roberts, who took great pride in their conservatism, both worked in the Reagan administration. Toobin sees Justice Scalia as bored on the Court.

Toobin also spends a great deal of time discussing the major legal issues of the day, including abortion and affirmative action. The politicization of the Supreme Court, such as efforts by the Federalist Society and others trying to influence the Court with the nominations of persons to be considered for appointment to the Court by both Presidents Clinton and Bush, is also described.

The interaction between politics and the Supreme Court is especially dealt with when Toobin describes




constitutional right of privacy or the use of international law and treatises in rendering Supreme Court decisions. Justice Kennedy (the new "swing vote" on the Court), Justice Breyer and Justice O'Connor are described as internationalists, who enjoy traveling abroad and meeting with members of foreign judiciaries.

There are also light-hearted and heart-warming descriptions of each of the current

the case of *Bush v. Gore*. Toobin's thesis appears to be that the Supreme Court erred not only when it decided to hear *Bush v. Gore* but also by the unusual speed with which that decision was made. Indeed, Justice Souter seriously considered resigning from the Court after *Bush v. Gore* was decided. Indeed, that controversial decision

and the decisions of the Bush administration seemed to be pivotal in the eventual decisions of both Justices O'Connor and Souter to resign. Indeed, Justice O'Connor saw President Bush as a threat to judicial independence, a fact that was politely alluded to in the resignation letter that she sent to the White House.

A great read. I highly recommend it. 



Bob Beer practices immigration law in Marietta, Ga. He is also a member of the *Georgia Bar Journal* editorial board.

Resources for Unemployed Attorneys



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- ⌘ Law Practice Management Program
- ⌘ Lawyers Assistance Program
- ⌘ Georgia Law Schools' Careers Centers
- ⌘ Court Appointed Work by County
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August-September

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AUG 7-8	ICLE <i>Environmental Law Summer Seminar</i> St. Simons Island, Ga. See www.iclega.org for location 8 CLE Hours	AUG 28	Georgia Association of Criminal Defense Lawyers <i>Voir Dire Voyage</i> Atlanta, Ga. 6 CLE Hours
AUG 12	Lorman Education Services <i>Medical Records Law</i> Savannah, Ga. 6 CLE Hours	SEPT 4	ICLE <i>Professionalism, Ethics and Malpractice</i> Kennesaw, Ga. See www.iclega.org for location 3 CLE Hours
AUG 17	NBI, Inc. <i>Estate Planning and Recovery for Elderly Clients</i> Atlanta, Ga. 6 CLE Hours	SEPT 4-5	ICLE <i>Urgent Legal Matters</i> St. Simons Island, Ga. See www.iclega.org for location 12 CLE Hours
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AUG 20	ICLE <i>Contract Litigation</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	SEPT 10-11	ICLE <i>City and County Attorneys Institute</i> Athens, Ga. See www.iclega.org for location 12 CLE Hours
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AUG 20	NBI, Inc. <i>Mixed-Use Development from A to Z</i> Atlanta, Ga. 5 CLE Hours	SEPT 11	ICLE <i>Law Practice Management</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours

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Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2008-2009 *State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as "*Handbook*").

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

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
Organization and Government

MOTION TO AMEND 2009-1 MOTION TO AMEND THE RULES AND REGU- LATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors, and upon the concurrence of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, 2008-2009 *State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

Proposed Amendments to Part I, Creation and Organization, of the Rules of the State Bar of Georgia

It is proposed that Rule 1-202(e) of Part I of the Rules of the State Bar of Georgia regarding Disabled

Members be amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

Rule 1-202. Classes of Members.

.....

(e) **Disabled Members.** Any member of the State Bar of Georgia who is found to be permanently disabled by the Social Security Administration or is in the process of applying to the Social Security Administration for such status may retire from the State Bar of Georgia upon petition to and approval by the ~~Board of Governors~~ Executive Committee. Such a disabled member shall hold disabled status and shall annually confirm in writing to the Membership Department this disabled status. A disabled member of the State Bar of Georgia holding disabled status under this paragraph shall not be privileged to practice law nor be required to pay dues or annual fees. A disabled member may be reinstated to active membership upon application to the State Bar of Georgia.

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

Rule 1-202. Classes of Members.

.....

(e) **Disabled Members.** Any member of the State Bar of Georgia who is found to be permanently disabled by the Social Security Administration or is in the process of applying to the Social Security Administration for such status may retire from the State Bar of Georgia upon petition to and approval by the Executive Committee. Such a disabled member shall hold disabled status and shall annually confirm in writing to the Membership Department this disabled status. A disabled member of the State Bar of Georgia holding disabled status under this paragraph shall not be privileged to practice law nor be required to pay dues or annual fees. A disabled member may be reinstated to active membership upon application to the State Bar of Georgia.

II.

Proposed Amendments to Part I, Creation and Organization, of the Rules of the State Bar of Georgia

It is proposed that Rule 1-208 (b)(3) of Part I of the Rules of the State Bar of Georgia regarding Resignation from Membership be amended by the addition of a subsection (i) to section (b)(3) as follows:

Rule 1-208. Resignation from Membership

.....

(b) Readmission within five years after resignation: for a period of five years after the effective date of a voluntary resignation, the member of the State Bar who has resigned while in good standing may apply for readmission to the State Bar upon completion of the following terms and conditions:

(1) payment in full of the current dues for the year in which readmission is sought;

(2) payment of a readmission fee to the State Bar equal to the amount the member seeking readmission would have paid if he had instead elected inactive status; and,
(3) submission to the membership section of the State Bar of a determination of fitness from the Board to Determine Fitness of Bar Applicants.

(i) provided the former member seeking readmission has applied to the Board to Determine Fitness of Bar Applicants before the expiration of the five year period after his or her resignation, the former member shall be readmitted upon submitting a determination of fitness even if the five year period has expired. This provision shall be applicable to all former members who applied to the Board to

Determine Fitness on or after January 1, 2008.

III.

Proposed Amendments to Part I, Creation and Organization, of the Rules of the State Bar of Georgia

It is proposed that Rule 1-506 of Part I of the Rules of the State Bar of Georgia regarding the Clients' Security Fund Assessment be amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

Rule 1-506. Clients' Security Fund Assessment

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of ~~\$20.00~~ \$25.00 for a period of ~~five (5)~~ four (4) years. Each new



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member of the State Bar will also be assessed a similar amount upon admission to the State Bar. This fee shall be used only to fund the Clients' Security Fund and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in ~~\$20.00~~ \$25.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

If the proposed amendments to the Rule are adopted, the new Rule 1-506 would read as follows:

Rule 1-506. Clients' Security Fund Assessment

(a) The State Bar is authorized to assess each member of the State Bar a fee of \$100.00. This \$100.00 fee may be paid in minimum annual installments of \$25.00 for a period of four (4) years. Each new member of the State Bar will also be assessed a similar amount upon admission to the State Bar. This fee shall be used only to fund the Clients'

Security Fund and shall be in addition to the annual license fee as provided in Rule 1-501 through Rule 1-502.

(b) For a member who joins the State Bar after taking the Georgia Bar Examination, the Clients' Security Fund assessment shall be due and payable in \$25.00 installments on July 1 of each year until the balance of \$100.00 is paid. The failure of a member to pay the minimum annual installments shall subject the member to the same penalty provisions, including late fees and suspension of membership, as pertain to the failure to pay the annual license fee as set forth in Bar Rules 1-501 and 1-501.1.

(c) For a member who is admitted as a Foreign Law Consultant or who joins without taking the Georgia Bar Examination, and who has not previously paid the Clients' Security Fund Assessment, the full assessment shall be due and payable prior to or upon registration with the State Bar.

SO MOVED, this ____ day of _____, 2009

Counsel for the State Bar of Georgia

Robert E. McCormack
Deputy General Counsel
State Bar No. 485375

OFFICE OF THE GENERAL COUNSEL
State Bar of Georgia
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Atlanta, Georgia 30303
(404) 527-8720

Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit and to Addendums Four and Six Therto

Pursuant to 28 U.S.C. "2071(b) and 332(d)(1), 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 and to the following Addendums thereto: Addendum Four, "Eleventh Circuit Plan Under the Criminal Justice Act," and Addendum Six, "Rules and Regulations of the Judicial Council and the United States Court of Appeals for the Eleventh Circuit for the Selection of Nominees, the Appointment of Bankruptcy Judges, and the Reappointment of Bankruptcy Judges."

A copy of the proposed amendments may be obtained on and after July 31, 2009, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, Georgia 30303 (phone: 404-335-6100). Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by Aug. 31, 2009.



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