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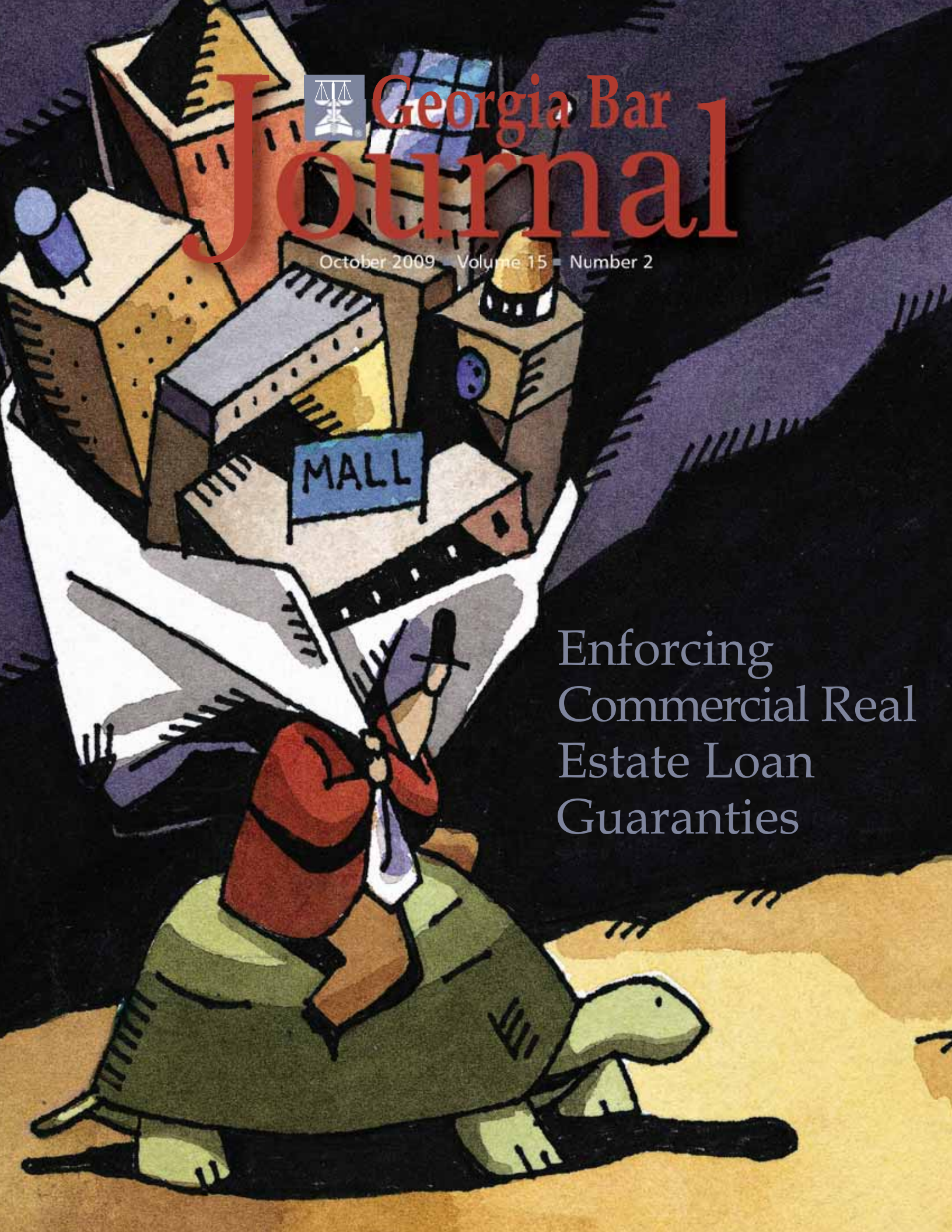
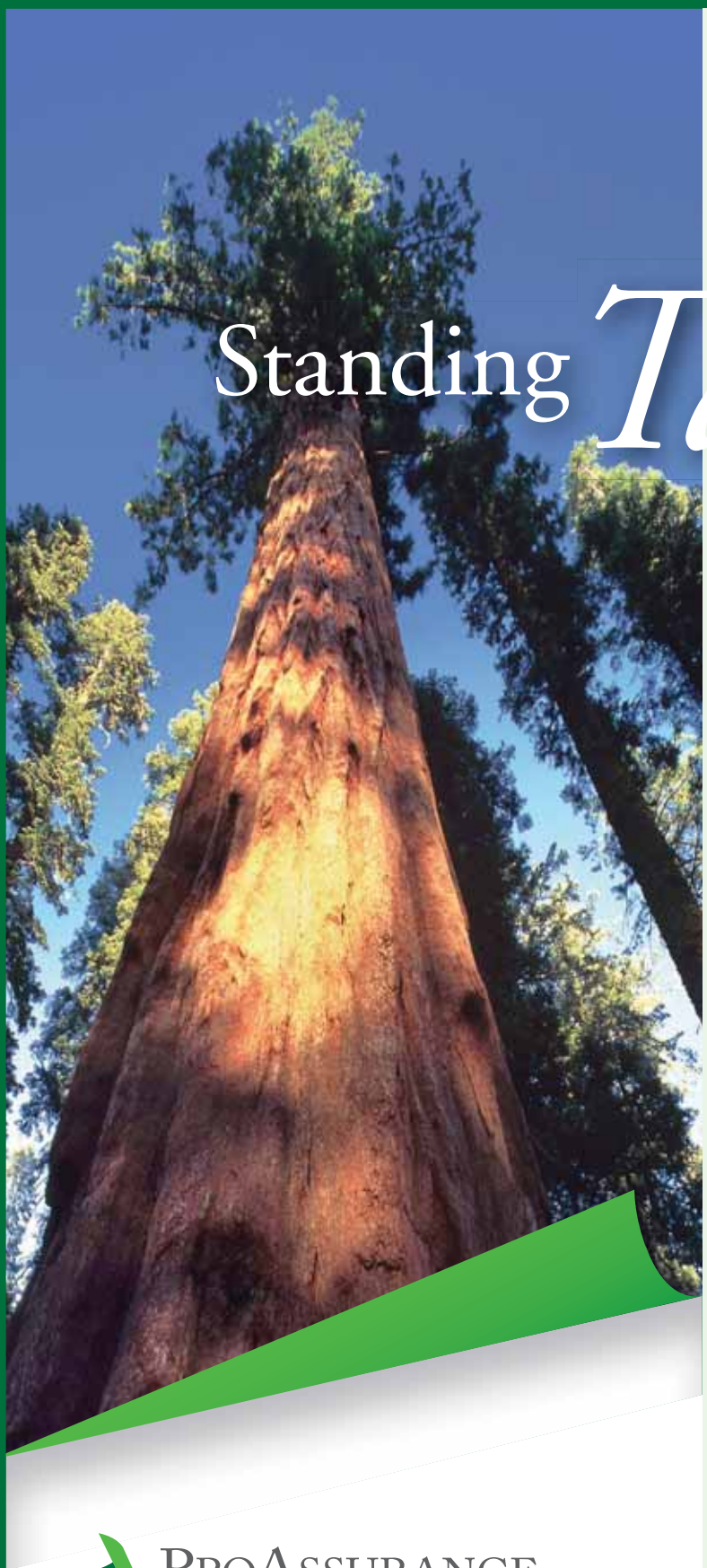


Enforcing Commercial Real Estate Loan Guaranties



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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

The Consequences of an Underfunded Judiciary

Earlier this year, the Georgia General Assembly held its most challenging legislative session, at least from a budgetary standpoint, in recent history. Gov. Sonny Perdue and our lawmakers found themselves in the unenviable position of dealing with a $3 billion shortfall in state revenue, the result of the economic recession. Like most of state government, the judicial branch felt the budget ax in the form of a 13.3 percent cut in funding for the last fiscal year.

"Georgia's citizens suffer when their business and personal disputes cannot be timely heard and fairly resolved. That's why we cannot afford for our courts to close."

Since the end of the 2009 legislative session, the state's revenue picture has continued to worsen, and so has the news about judicial funding. For the fiscal year 2010, which began July 1, state budget deficit projections have already exceeded $1 billion on top of last year's shortfall. The governor's office has requested an additional 5 percent across-the-board budget cut and has asked the judicial branch to prepare fiscal year 2011 budgets based on possible 4 percent, 6 percent and 8 percent cuts.

Article I, Section I, Paragraph II of the Georgia Constitution states: "Protection to person and property is the paramount duty of government and shall be impartial and complete." It does not say that such protection is "an important" or even "one of the most important" duties of government. It is the *paramount* duty of government.

Constitutionally speaking, our judiciary represents one of three separate and equal branches of state gov-

ernment. It is not simply another state department or agency. Budgetarily speaking, however, that is far from the case. Georgia's entire judicial branch operates on a mere 0.87 percent of the state budget, and a majority of this funding is actually covered by revenues generated within the court system through fines and fees.

Because far fewer dollars are appropriated for our courts to begin with, across-the-board percentage cuts are felt much more deeply than by many other state programs. As noted above, the judiciary has specific responsibilities mandated by our state constitution. Further cuts to the budgets of the courts and those of our prosecutors' and public defenders' offices will imperil our justice systems' ability to carry out those mandates. Among the consequences of an inadequately funded judiciary we are witnessing already:

- A reduction in jury trials.
- A weakening of the right to speedy trials in criminal cases. In the Northern Judicial Circuit, a lawsuit has been filed, alleging that some indigent defendants have been without counsel for more than six months, "left to languish in jail."
- Civil cases falling to the bottom of the calendar. In a number of judicial circuits, civil trials have been placed on hold, some for more than a year.
- Divorce and custody cases having to wait in line.
- Increased filings of civil actions.
- Loss of senior judges to handle case backlogs and recusals.
- Jail overcrowding in numerous jurisdictions. The number of inmates awaiting trial has increased from 20,000 four years ago to nearly 24,000.
- People charged with crimes going out on bond and never going to trial.

The full impact of these budget cuts is not known yet.

We are not alone in Georgia. Problems caused by judicial budget cuts are showing up all over the nation. ABA President Thomas Wells, speaking in July in San Francisco, said of the California courts: "The impact on the state's justice system is substantial, including scheduling delays, fee increases and cuts to the staff who normally guide citizens through the court process. Further, state courts are responding to budgetary cuts by curtailing probation and parole services, laying off prosecutor and defense office employees, closing detention facilities and adjusting prison sentences to deal with overcrowding. These actions can be detrimental to public safety.

"Judges know the economy is affecting all government functions and are willing to do what they can to reduce expenditures while striving to maintain essential services. But in a nation that views access to the courthouse door as the ultimate assurance of justice and fairness, we are at risk of losing the keys because of the lack of necessary funding."

In May, my predecessor Jeff Bramlett and I, at the request of former Chief Justice Leah Sears, attended the ABA Summit on Fair and Impartial State Courts in Charlotte, N.C. The ABA's theme for the meeting got right to the point: "Justice is the Business of Government—The Critical Role of Fair and Impartial State Courts." The roundtable discussions involved not just lawyers and judges. State legislators, executive branch officials and educators all participated in the discussions. We will continue this dialogue with our sister state bar associations to seek answers and solutions during these difficult economic times.

According to a report of the National Center for State Courts released during the summer, budget cuts are taking shape in a variety of ways:

- Twenty-eight state courts have imposed hiring freezes.
- Thirteen state courts have frozen salaries.
- Seven states have encouraged judges and staff to accept salary reductions—or have imposed salary reductions.
- Six states have mandated furloughs of court staff.
- Six states have reduced court hours.

No, Georgia is not alone in suffering the consequences of inadequate judicial funding. But in the wake of recent announcements by Chief Justice Carol W. Hunstein that the Supreme Court justices would voluntarily join court employees in taking unpaid furlough days and Chief Judge M. Yvette Miller that the Court of Appeals of Georgia will shut down one day a month the remainder of this year, we are in the media spotlight.

In a Sept. 8 article, "Cases Pile Up in Georgia Courts," *The Wall Street Journal* reported, "The wheels of justice in Georgia are grinding more slowly each day . . . Georgia's situation appears particularly severe. Because schedules and staffing have been reduced so aggressively, judges and attorneys say, the caseload appears to be backing up more quickly than in other states."

The same week, Chief Justice Hunstein told WXIA-TV in Atlanta, "Every day the prosecutors take a furlough day, it backs up 500 criminal cases. That has an incredible impact on the court system . . . It's going to get to the point where there really is a substantial public safety issue because of the backlog in the criminal system. I'm very concerned, and not only about criminal cases not being tried. It's child support not being awarded, visitation or custody of children not being awarded and business cases that cannot be resolved."

The last thing we need is for our courthouse doors to close—especially in these difficult economic times. The business of the courts is every bit as important to society as our schools. Like our hospitals, our courts deal with life-and-death matters and directly impact our citizens across the state.

There are also practical considerations in dealing with the judicial funding issues. First, it is noteworthy that the court fees remitted to state and local governments are down substantially from last year in all classes of courts except Probate Court. The fees generated by Superior Courts are down nearly $19 million. There are numerous possible reasons for this, but clearly the lack of resources for senior judges and the furloughs for district attorneys and public defenders have slowed down the system for the disposition of cases. The amount cut to eliminate funding for senior judges was about $2 million. Losing $19 million to save $2 million does not seem like a very good deal for the taxpayers.

Also, it has been estimated that a restoration of $15 million to $20 million in annual funding would bring the judicial branch back to functional status. That sounds like a lot of money (and it is) but actually represents a miniscule portion (about 0.1 percent) of state appropriations. That amount cannot fix, for example, the state's education or Medicaid funding problems. It would be a drop in the bucket toward the spending cuts those programs have sustained but would keep our courts in operation for the foreseeable future.

Lest you have any doubts, I want you to know the State Bar leadership is working every day toward addressing the judicial funding problem in preparation for the 2010 legislative session. Chief Justice Hunstein and Chief Judge Miller have personally enlisted our support for making our lawmakers and the public aware of why an adequately funded judiciary is so important.

Our Communications/Cornerstones of Freedom®/ Committee is in the process of developing public service announcements for statewide television broadcast this fall and winter. Under the guidance of our Advisory Committee on Legislation, I will be joining our legislative advocacy team in ongoing meetings with the governor and his staff, legislative leaders and budget writers.

I hope you will join the effort. We will present a more specific call to action in the December issue, closer to the opening of the legislative session. You should feel free, though, to go ahead and help make your fellow citizens, business leaders, newspaper editors and especially your elected state representatives and senators aware of the consequences of an inadequately funded judicial branch. Georgia's citizens suffer when their business and personal disputes cannot be timely heard and fairly resolved. That's why we cannot afford for our courts to close. Stay tuned. GBJ

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

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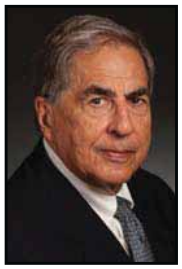

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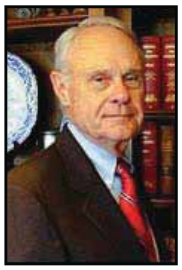

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by Cliff Brashier

Bar Recommends Broker for Health Insurance

During the past five years, we have heard from approximately a third of our members who were seeking assistance with the task of choosing a health insurance plan for themselves, their families and their firms. We regret that these inquiries usually ended at the switchboard because since the early 1990s, the Bar has had no recommendations to make in this area.

"During the past five years, we have heard from approximately a third of our members who were seeking assistance with the task of choosing a health insurance plan for themselves, their families and their firms."

As you can imagine, this is very disappointing to the callers who assume that the group insurance plans available to large employers are equally available to large associations. That is not the case since insurance plans recommended by associations are usually 70 to 90 percent individual policies with the remainder being small group policies. Also, with the constantly changing doctor and hospital networks for PPOs, POSs and other insurance plans that vary greatly from area to area, and with the similar variance in the individual health care provider preferences of 40,000 members, a statewide "one size fits all" solution becomes a very small and moving target.

Georgia lawyers are no different from other small business professionals, or the general public for that matter, when it comes to health care. Over the years, the State Bar has conducted numerous surveys asking our members what they want us to do for them. Time after time, the No. 1 response, with no other need ever coming in a close second, has been affordable health insurance. With this clearly in mind, many presidents and committees have worked diligently for more than a decade to respond to this most important need.

In the August 2002 issue of the *Georgia Bar Journal*, a report by our Medical Insurance Task Force was published to give members guidance and a process for buy-

ing their medical insurance. This was the best we could do at the time to be helpful. But that was not due to a lack of effort by the lawyers on the task force. Over a four-year period, they solicited proposals from every medical insurer licensed in Georgia and surveyed every other state bar in the nation to look for a viable solution. While none was found, the published buyers' guide that the task force produced is still sound advice today for members to use in purchasing health insurance.

On a more positive note, there is better news for members today. As State Bar President Bryan M. Cavan recently announced via e-mail and at www.gabar.org, our Board of Governors has selected BPC Financial as the State Bar's recommended broker for members' health, dental and vision plans. This was based on a study done by the Members Benefits Committee which solicited applications from a number of well-qualified brokers. After extensive vetting, it presented the three highest rated candidates to the Board of Governors. This 147 member governing body selected BPC Financial, an experienced broker which also administers programs for members of the Florida Bar, Florida Registered Paralegals and the Florida Association of Legal Support Specialists, among others.

BPC's team is familiar with the insurance needs of lawyers, law firms and their staffs. Their intent is to present our Bar members with multiple products and carriers selected for each member's personal situation. According to BPC, their concept of combining first dollar products with major medical coverage can, in many cases, significantly reduce the cost of purchasing high-quality comprehensive health insurance.

Here are three important points that you should also know about the Board's recommendation of BPC Financial. Unlike many associations, the State Bar will receive no affinity fees, commissions or any sort of royalties from this broker. We made it clear to every applicant that they should instead offer our members the lowest possible premiums for the health insurance coverage that best meets their needs. Secondly, members should conduct their own due diligence in making their insurance or any other purchasing decision. Finally, members' participation is completely voluntary. We are not suggesting that members change their existing broker or coverage. Instead, we offer BPC Financial as an additional resource for those members who want advice on health, dental and vision insurance. They have a proven track record with the Florida Bar as a knowledgeable broker with extensive experience in working with the insurance needs of attorneys. They work with many clients in today's market and plan to stay on top of any new options that may result from the health care legislation currently being considered by Congress.

BPC Financial may be contacted by calling 1-800-282-8626. Their contact information is also available at www.memberbenefits.com/SBOG/ and on BPC's advertising in this and future issues of the *Georgia Bar Journal*.

Finally, much appreciation goes to the Member Benefits Committee for its many years of work for all of us. Thanks to this effort, we are glad that our switchboard receptionists will have an answer when you inquire about health insurance. We hope that their answer will be helpful and that you will keep us informed about your future experiences with this new service.

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

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

by Amy V. Howell

Investing in Young Lawyers

The YLD leadership recently gathered for two days to develop strategies for executing goals for the coming year and to build the relationships that are necessary for successful teamwork. During the course of the meeting, one member, who was only able to attend a portion of the two-day meeting, repeatedly exited the room for lengthy phone calls that seemed to be of high importance. Each time she re-entered the meeting, she looked both frustrated and concerned. When we concluded our meeting, I approached her to make sure everything was all right.

This attorney shared with me that the phone calls were from work colleagues, warning her of their manager's angry response upon learning she was not at work and, instead, was attending our meeting. She told me that when she informed her manager that she intended to take personal time off of work to participate in this leadership meeting, her manager told her she needed to straighten out her priorities and that he did not want to have to talk to her about the YLD again.

As she relayed these details, she also spoke about her disappointment in her manager and the value she held in her involvement in the YLD. She could not understand why her manager did not appreciate the benefits that her involvement would bring to their office. He failed to see that she would make contacts that would lead to referrals or relationships that could ease resolution of cases. He also did not recognize that her involvement was exposing his employee as a leader in the practice. Moreover, the young lawyer stated that she wished her manager understood what it would mean to her if he supported something that was so clearly important to her.

> "In these financially difficult times, I challenge all to invest in a young lawyer—the return of patience, faith and loyalty is a guarantee that will endure throughout our careers."

I do not believe that this young lawyer's experience is unusual. I can easily anticipate several (misled) reasons why the manager does not support active participation in the YLD. It takes time away from billable work. It doesn't contribute to paying for the firm's overhead. There are more direct ways to develop a network of potential clients. The perceived insignificance of the YLD is shortsighted by this manager. For this young lawyer, it is not only a matter of whether her manager sees value in the YLD, but also whether he appreciates something that is important to his employee.

What that young lawyer was looking for from her manager was some acknowledgement of her unique

interests and contributions to the office. The manager's failure to consider her involvement in YLD leadership as a plus will ultimately result in a loss for that office.

I do not think enough can be said about the value of investing in young lawyers. We are often provided responsibilities that are nothing more than a means to an end in litigation and deals. Indeed, sometimes we're even referred to as "cogs." However, there is something to be said about the return on investment that a firm, department or agency gains when an affirmative choice is made to develop young lawyers, both professionally and personally. While it may be true that early in our careers we may require more input than we can put out independently, we are also people who represent the future of the profession and will give back twelvefold when we feel that we are part of the team. If our superiors interest themselves (even if just momentarily) in what it is that we bring to the table, or if we feel we play a role of some material significance, then everyone will succeed.

I recently participated in training on generational differences and heard commentary about Generations X and Y and our "career transience" and alleged self-centered interest in what our employers can do for our personal advancement. While I believe that there may be lessons to be learned from the employment patterns of these generations—indeed, my own early legal career might reinforce some of these not-so-positive reflections—my recent experiences strongly contradict this pattern.

Early in my career, I was focused on what I could accomplish and who was best positioned to help me achieve more. As I impatiently moved through different jobs, I happened to land in a position with a boss who was not only interested in what I could accomplish in the workplace, but he was also interested in challenging me to develop as a professional. While my previous supervisors took time to see me develop, it was not as clear to me whether they had a vision of how I could develop my future with the organization. This employer took time to communicate his thoughts about how he would like to assist my development.

As I experienced the benefits of his investment in my own growth, my loyalty to the workplace and our mission deepened. Working later or harder was no longer a product of indebtedness for compensation, but a personal interest in seeing the organization, *and my boss*, succeed. I consider myself fortunate to have a mentor who has given me opportunities to learn and grow, and as a result I have remained with the organization because I value our mutually beneficial relationship. In the past, when I became aware of new job opportunities, I would quickly leap to what I considered "the next level"—the proverbial greener pasture. Now, I carefully consider the investment that I have made in my current opportunity, as well as the investments made in me. Although I continue to consider the options in front of me, I've recognized that the more time I remain in my current position gathering experience, the more opportunities will come down the road.

It is important to invest in the person. Much has been said about the impatience of younger generations. I dare to say that, although a young lawyer may have high expectations of what an employer should offer, few have been told that the employer cares about where the younger lawyer is headed. In these financially difficult times, I challenge all to invest in a young lawyer—the return of patience, faith and loyalty is a guarantee that will endure throughout our careers. GBJ

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.

Enforcing Commercial Real Estate Loan Guaranties

by Stephen Peterson, Susan Tarnower and Kevin Watters

He who is guarantor for a
Stranger will surely suffer for it,
But he who hates being a guarantor is secure.[1]

Despite ancient admonitions to the contrary, people have been guarantying debt as long as others have been borrowing money. In better times, guaranties were negotiated, executed and delivered with little expectation that the guarantors would be called upon to answer for the debts. In the current economic climate, guarantors and lenders are taking a closer look at their guaranty agreements. This is particularly true in the area of commercial real estate loans.

The May 4, 2009, issue of *Barron's* magazine included an article titled "The Other Shoe," in which the author speculated that, while most analysts have been focusing on the residential real estate market, commercial real estate loans will be the next major problem for banks.[2] The author writes, "Since peaking in early 2007, the value of the nation's commercial property has fallen an estimated 30% to 40% [and] many of the underlying properties aren't worth the value of the loans."[3]

Real estate investment trust (REIT) shares, another measure of commercial real estate values, dropped 19 percent from Feb. 7, 2007, to Sept. 19, 2008. They plummeted another 66.2 percent by March 19, 2009.[4] This precipitous drop may be only the opening chapter of the story because a significant share of the debt on this devalued commercial real estate matures in the next two years.

According to the Real Estate Roundtable, about $500 billion in commercial real estate debt matures in 2009, followed by $525 billion in 2010 and $550 billion in 2011.[5] The lack of available refinancing (demonstrated most dramatically by the collapse of the commercial mortgage-backed securities market, as discussed later in this article), combined with this staggering amount of maturing debt, indicates significantly increased commercial real estate loan defaults in the coming months.

The combination of increasing loan defaults from loan maturities and payment defaults, together with declining commercial property values, will prompt many lenders to look to sources other than their collateral for repayment of their debt. The most likely source of repayment is a high net worth guarantor.

The Guaranty Agreement

A guaranty is a contract to pay the debt of another, owed and payable by the principal debtor to the creditor upon default.[6] In short, a guaranty agreement is simply a contract. The same requirements for the formation of a contract under Georgia law apply to guaranties.[7] The same process used to evaluate the enforceability of a contract is also applied regarding the enforcement of a guaranty. There are some distinctions, however, that relate to the enforcement of a guaranty agreement. Although Georgia once recognized a distinction between a contract of surety and one of guaranty, that common law distinction no longer exists. A contract of guaranty will be treated the same as a contract for surety.[8]

Consideration

As with all Georgia contracts, a guaranty agreement must contain sufficient consideration. The guarantor need not receive a direct benefit under the guaranty agreement. Rather, any benefit flowing to a

common principal of a borrower and guarantor will constitute sufficient consideration to render a guaranty enforceable.[9] Even a nominal amount given in addition to mutual promises and considerations constitutes sufficient consideration for a guaranty agreement to be enforceable.[10] As long as the benefit has been provided to the principal, it is unlikely that lack of consideration will present an obstacle to enforcing the guaranty agreement.

Interpretation

Under Georgia law, the scope of a guaranty agreement is strictly construed, and the guarantor's obligation will not be extended by implication or interpretation.[11] This generally means that a court will not expand the realm of a guarantor's liability beyond that explicitly contained within the agreement.[12] When the terms contained within the guaranty agreement are plain and unambiguous, however, the guaranty agreement is interpreted as strongly as possible against the party giving the guaranty.[13]

Transferability

Under Georgia law, the transfer of the guaranteed obligation is generally held to operate as an assignment of the guaranty.[14] This rule applies, however, only if the assignor of the principal obligation (the loan) is also the obligee of the guaranty.[15] As with all contracts, the actual language of the guaranty agreement controls the transferability of the guaranty agreement. In the case of a securitized loan, a guaranty should and typically does include a clause indicating that the guaranty runs to the benefit of the lender's successors and assigns.

Pursuing Remedies Against the Guarantor

In Georgia, guarantors are jointly and separately liable for the guaranteed obligations, unless stated otherwise in the guaranty agreement.[16] It is important to read the guaranty agreement carefully to determine what remedies

may be pursued by a lender against any guarantor. For example, some guaranty agreements are conditional and may require that action first be brought against the debtor or may otherwise limit the liability of the guarantor only to the extent that the debtor is unable to pay the amounts owed.[17] In these situations, all conditions contained in the guaranty agreement would first have to be met before a lender may proceed against a guarantor.

Release of Guarantor

When a defaulted loan has more than one guarantor, a lender may wish to settle with fewer than all of the guarantors. When there are multiple guarantors, a lender must be careful not to take any action that will adversely affect the right to enforce the guaranty agreement against the remaining guarantors. Georgia law specifically provides that a release of one guarantor will operate as a release of all other guarantors from their obligations.[18] The parties may, and in the context of commercial real estate generally do, contract out of this requirement.[19] If the guaranty agreement does not contain such language, the lender will need to obtain approval from all other guarantors before settling with any one guarantor, or risk losing the right to pursue remedies against the other guarantors.

Notice

A lender's obligation to provide notice to the guarantor of the borrower's default is defined by the guaranty agreement.[20] If the guaranty agreement is silent, the best practice is for a holder to provide all guarantors with any notice of default sent to the debtor.

Novation and Increased Risk

Under Georgia law, if the lender and borrower agree to change the terms of the obligation, or do anything to increase the guarantor's risk under the guaranty without the consent of the guarantor, the guarantor will be released from its obligations.[21] This requirement may be waived by a guarantor, however, if the guaranty provides that the lender may take the action that is alleged to have increased the guarantor's risk.[22] It is very important that the lender's attorney read the guaranty agreement carefully before agreeing to modify any guaranteed obligations.

Generally, a suit on a guaranty is no different from a suit on any other contract. As with all contracts, it is important to understand the terms of the guaranty agreement, as Georgia law allows for the parties to contract around many of the laws governing guaranty agreements.

Post-Foreclosure Enforcement of Guaranties

In Georgia, a lender's ability to pursue a guarantor following a real estate foreclosure is controlled by statute. Generally, there are two options for the lender to pursue.

First, as discussed in more detail below, judicial real estate foreclosure on collateral involves first filing suit against the borrower or guarantors, obtaining a final judgment and a deed of levy[23] and having a sheriff's sale of the property.[24] If a deficiency exists after the sheriff's sale, the lender may immediately pursue the deficiency. A mortgagee with real estate collateral located in Georgia, however, will usually conduct a non-judicial foreclosure under the power of sale granted in the deed to secure debt.

Second, in the case of non-judicial foreclosure, a confirmation hearing is required under O.C.G.A. § 44-14-161 in order to pursue the borrower or a guarantor for a deficiency remaining after the foreclosure sale. Filing to request a confirmation hearing must be made in the appropriate superior court within 30 days of the non-judicial foreclosure.

Judicial Foreclosure

Judicial foreclosure is rarely used in Georgia because it is time-consuming and expensive. Judicial foreclosure involves filing suit against the mortgagor and other obligors, including guarantors, for a monetary judgment. Counterclaims against the lender, as well as any available defense to the obligation, may be asserted in this proceeding. Upon receipt of judgment and a deed of levy, a sale is held, so that the sheriff may levy upon the legal title in the defendant's name and cause a public sale of the property. The sheriff's sale must be preceded by publication of legal advertisement for four weeks prior to the sale.[25] The primary advantage of judicial foreclosure is that, if the debt exceeds the value of the land and the lender definitely intends to collect the deficiency, then the lender may collect any deficiency immediately after the sale without commencing a confirmation proceeding and subsequent deficiency action as required for non-judicial foreclosure, and without regard to whether the land sold at its true or fair market value.

If the lender chooses to undertake a judicial foreclosure, that action may result in a judgment against the guarantor or borrower and a subsequent levy and sale of the subject or other property. Judicial foreclosure avoids the confirmation procedure, but, during the extended period prior to final judgment, a lender's only control of the subject property may be through the court's appointment of a property receiver.

Non-judicial Foreclosure

Should a lender elect to foreclose on a property using the power of sale granted in a deed to secure debt, a non-judicial foreclosure has several advantages. Georgia's non-judicial foreclosure process is swift and less expensive than a judicial foreclosure. The lender who is a successful bidder at the foreclosure sale may

acquire title to the property on the day of the foreclosure sale and, in the process, eliminate subordinate liens.

One factor for a lender to consider when making the decision to use a non-judicial foreclosure is whether there will be a potential post-foreclosure deficiency claim. A deficiency arises when the high bid at the foreclosure sale is less than the outstanding secured debt. If a deficiency is anticipated and the lender wishes to pursue the borrower or guarantor after the non-judicial foreclosure, the lender needs to weigh the expenses of the confirmation action, any subsequent deficiency litigation, and the likelihood of successfully attaching the assets of the guarantor (or borrower) to collect the deficiency.

If the lender elects to proceed against a guarantor or borrower for a deficiency *after* a non-judicial real estate foreclosure, a timely filing of a confirmation action is explicitly required. The Georgia foreclosure confirmation action is a unique action governed by O.C.G.A. § 44-14-161. It arose in the 1930s as a way to protect people from being forced into bankruptcy by deficiency judgments obtained against them by lenders who acquired their property at non-judicial foreclosure sales for nominal or depressed prices.[26]

In order to pursue a deficiency judgment against the borrower and any applicable guarantors or other person who may be responsible for all or part of the debt after a non-judicial foreclosure, a petition for confirmation of the sale must be filed in the appropriate superior court within 30 days after the sale.[27] A Rule Nisi setting the petition for a hearing must also be issued by the court within this 30-day period.[28] The failure to have the Rule Nisi issued subjects the petition to dismissal.[29]

The Court of Appeals has explained the unique nature of the confirmation proceeding:

> A petition for confirmation [under O.C.G.A. § 44-14-161(a)] is not a civil suit in the ordinary meaning of that term, but only an application to the judge of the superior court. . . . The only purpose of the confirmation statute is to subject the creditor's potential deficiency claim "to the condition that the foreclosure sale under power be given by judicial approval." . . . The confirmation proceeding is a statutory proceeding which by law determines only that the sale was properly advertised and brought the fair market value of the land.[30]

At the confirmation hearing, the court hears evidence on only two issues: (a) whether the sale was properly conducted (i.e., the propriety of the notice, advertisement and conduct of the sale); and (b) whether the property brought its fair market value at the sale.[31] The court's inquiry should go only to the value of the real estate on the date of sale. In the course of the hearing, the fairness of the technical procedures of the non-judicial foreclosure may be examined for the purpose of making sure that the bidding at the sale was not chilled

and the price bid was in fact market value.[32] "As a general rule the price brought at a public sale, after proper and lawful advertisement, is prima facie the market value of the property sold, absent anything to indicate that there was chilling of the bidding, fraud or the like adversely affecting the sale."[33]

Defenses that relate to any other matters (e.g., contesting the amounts due under the note, challenging the sufficiency of a default notice, etc.) are irrelevant in a confirmation proceeding, should not be heard by the court and will not defeat confirmation of the sale. These matters may be properly asserted in a subsequent deficiency action.[34]

Generally, expert testimony from an appraiser, along with the testimony of knowledgeable fact witnesses, is heard at the confirmation hearing.[35] The appraisal reports of appraisers for the lender and for the debtor, if any, are often introduced or used as guides for examining witnesses. Any valuation report prepared for the lender should be thoughtfully prepared and well documented. The better practice is for the lender to present a forensic appraisal. In addition, the value of the borrower's personal property must be separately established in the appraisal or valuation because the confirmation proceeding addresses only the reasonableness of the price bid for the real property.

When the court determines that the sale was conducted properly and the bid price for the real estate equaled or exceeded the fair market value of the property at the time of the sale, the sale is confirmed.[36] The lender may then bring an action against a guarantor or the borrower for any deficiency. If the court determines that the property did not bring its fair market value, it may either deny the confirmation or order a resale of the property.[37] Either way, a written order setting forth the basis for the ruling must be issued by the court and may be appealed by either party.

Non-Recourse Carve Out Guaranties

During the boom years of the late 1990s and early 2000s, commercial real estate owners became increasingly reliant on capital provided by commercial mortgage-backed securities (CMBS). The CMBS process aggregates commercial mortgages into a trust and issues mortgage-backed securities through the mechanism of real estate mortgage investment conduits, otherwise known as REMICs. During the height of the commercial real estate boom in 2007, $230,193,000,000 in CMBS were issued, which accounted for approximately 40 percent of the overall commercial real estate loans made in that year.[38] In 2008, that number dropped to $12,145,900,000, with most CMBS issuance occurring prior to July 2008. As of the end of the second quarter of 2009, the number dropped to $638,500,000 (that's three fewer zeros than the previous numbers).[39]

Mary MacNeil, managing director of Fitch Ratings, reports that the default rate for CMBS loans was 3.78 percent at the end of March 2009 and will likely exceed 5 percent by year end.[40] The overall percentage of CMBS loans that are at least 60 days delinquent or in foreclosure remains fairly modest (2.84 percent as of July 31, 2009), but that represents an increase of more than 200 basis points over the delinquency rate at the end of 2008. Despite hopes that multi-family real estate would perform well in an economic downturn, delinquencies in all categories of CMBS loans (lodging, multi-family, office, retail and industrial) are trending dramatically upward, and as of the end of the second quarter of 2009, multi-family CMBS loans had a delinquency rate of 5.35 percent.[41] Retail-based CMBS loans had a delinquency rate of 6.05 percent. In the absence of the recovery of the CMBS market or some new form of financing, those delinquencies will spike as existing debt matures without being repaid due to the combination of reduced property values, requirements for lower leverage and lack of capital for refinancing.

CMBS loans are almost invariably "non-recourse" or limited recourse loans, meaning that the lender is to look solely to the real estate collateral to satisfy the debt. For this reason, CMBS loans are less likely to be a source of guarantor liability. Most CMBS loans however, include a guaranty of certain recourse "carve outs," or events that make the loan recourse to the borrower and the guarantor.

An essential structural component of a CMBS loan is the "separateness" of the borrower from other related parties' activities. The operations of the CMBS borrower are governed by extensive loan covenants included in the loan documents (the Separateness Covenants). The Separateness Covenants prohibit the borrower from: (1) engaging in business other than ownership, operation and maintenance of the collateral property; (2) acquiring assets other than the collateral property; (3) merging with another entity; (4) incurring debt other than the subject loan; and (5) commingling the borrower's assets with the assets of any other person. The borrowing entity subject to the Separateness Covenants is called a single or special purpose entity (SPE), and its only assets serve as collateral for the loan. SPEs may also be subject to cash management agreements that allow the lender to trap the collateral property's cash flow in the event of a loan default.

In theory, the Separateness Covenants both isolate the lender's collateral (including the real estate and the cash flow) and make the CMBS borrower entity "bankrupt remote," meaning that the borrower entity will not be consolidated with the bankruptcy of a parent or affiliate of the borrower. By making bankruptcy of the borrower a recourse triggering event, and by

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segregating the collateral, CMBS lenders hoped to discourage a borrower's bankruptcy, and to insulate the lenders from losses due to the bankruptcy of any related entities or the failure of other assets in the borrower parent's portfolio. Many of the recourse events are designed to enforce the Separateness Covenants.

CMBS guaranty agreements generally include two categories of events that will create recourse rights against the guarantor, or "recourse triggers." The first group of recourse triggers generally entitle the lender to recourse for the amount of the lender's losses arising from the subject recourse trigger, including: (1) misapplication of insurance proceeds; (2) misapplication of condemnation proceeds; (3) misapplication of security deposits or rents; (4) waste; (5) failure to pay taxes or assessments; (6) environmental liability; or (7) fraud or failure to disclose a material fact by the borrower.

The second category of recourse triggers generally renders the entire loan recourse to the guarantor. These include: (1) violation of the Separateness Covenants; (2) breach of any due-on-sale or due-on-transfer clause; or (3) filing of voluntary or involuntary bankruptcy.

In the event of a CMBS loan default, lenders would be well served to review their non-recourse guaranty agreements in order to determine whether the guarantor might have some liability. In this difficult era, distressed borrowers may have violated one or more of the Separateness Covenants in an effort to keep other assets afloat. Lenders should also review loan applications and other submittals used in underwriting to determine whether there may have been fraud or misstatement of a material fact in connection with the initial loan closing. Meanwhile, borrowers should scrupulously observe their loan covenants so as to avoid triggering a recourse event for the guarantors.

The bankrupt-remote nature of SPEs is currently being tested by the much-watched bankruptcy of General Growth Properties, Inc. (GGP). GGP is the second-largest retail shopping mall REIT in the country. Perimeter Mall, Cumberland Mall and North Point Mall are among its Georgia assets, and the following information concerning it is current as of August 2009.

In a move that was anticipated, GGP filed for bankruptcy on April 16, 2009. Many observers were stunned, however, when GGP included approximately 80 SPE borrowers in its bankruptcy filing in the U.S. Bankruptcy Court for the Southern District of New York.[42] In effect, the inclusion of these SPEs in the bankruptcy petition placed healthy, performing and supposedly segregated assets under the jurisdiction of the bankruptcy court and allowed GGP's creditors to access cash flow from those performing assets in order to satisfy the obligations of the distressed corporate parent. Judge Gropper of the Bankruptcy Court of the Southern District of New York has to this point approved this gambit over the vehement objections of GGP's secured lenders, most of whom believed themselves to be protected by the Separateness Covenants in the loan documents executed and delivered by the SPEs.[43] GGP avoided its non-recourse carve out guarantees by having its guarantors file for bankruptcy as well. Many observers are profoundly concerned that this ruling, if unchanged, may prevent a recovery of the critical CMBS market.

Since the initial rulings, Judge Gropper has blunted some observers' gravest concerns by clarifying that he was not substantively consolidating any estates and by providing the lenders with some protection against GGP's use of their SPE's cash collateral. Nevertheless, five of GGP's SPE lenders made a motion to dismiss the SPEs from the bankruptcy based, in part, on bad-faith arguments. Judge Gropper denied those motions in a nearly 50-page opinion on Aug. 11, 2009. In his opinion, Judge Gropper rejected the bad-faith arguments due in large part to his apparent sympathy for GGP's complete inability to refinance maturing debt.[44] The full effects of GGP's bankruptcy on its secured lenders will not be realized until the plan is confirmed, but it is already clear that the bankruptcy has created further uncertainty in the already distressed CMBS market.

Conclusion

One central and often ignored principle concerning guaranties has remained true from the time of Solomon through the era of structured finance—a guaranty is only as good as the guarantor. As for potential guarantors, they would be well-served to observe the opening quote of this article. Even a non-recourse loan can turn into a recourse obligation when things go wrong, and no guarantor should guaranty a loan when it does not have control over the borrower. GBJ

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6. *See* O.C.G.A. § 10-7-1 (2009).
7. *See id.* § 10-7-4.
8. *Id.* § 10-7-1.
9. *See id.*; Steiner v. Handler, 229 Ga. App. 833, 835, 495 S.E.2d 132, 134 (1997).
10. *See* Jolles v. Wittenberg, 148 Ga. App. 805, 807, 253 S.E.2d 203, 205 (1979) (one dollar is sufficient consideration).
11. *See* O.C.G.A. § 10-7-3 (2009).
12. *See* Capital Color Printing, Inc. v. Ahern, 291 Ga. App. 101, 107, 661 S.E.2d 578, 584, *cert. denied* (2008).
13. *See* Town Ctr. Assocs. v. Workman, 227 Ga. App. 55, 58, 487 S.E.2d 624, 626 (1997).
14. *See* Hurst v. Stith Equip. Co., 133 Ga. App. 374, 377, 210 S.E.2d 851, 854 (1974).
15. *Id*. at 377, 210 S.E.2d at 854.
16. *See* O.C.G.A. § 10-7-1 (2009).
17. *See* Holland v. Holland Heating & Air Conditioning, Inc., 208 Ga. App. 794, 796, 432 S.E.2d 238, 241 (1993) ("[T]he true nature of the guarantor's liability is established by the terms of the guaranty, which may render the guarantor only secondarily liable on the principal's inability to pay, or otherwise condition or limit liability in any number of ways.").
18. *See* O.C.G.A. § 10-7-20 (2009).
19. *See* Smith v. Great S. Fed. Sav. Bank, 184 Ga. App. 433, 433, 361 S.E.2d 847, 848 (1987) ("It is well established under Georgia law that '[a] surety or guarantor may consent in advance to a course of conduct which would otherwise result in his discharge.'") (quoting Dunlap v. Citizens & S. DeKalb Bank, 134 Ga. App. 893, 896, 216 S.E.2d 651, 653 (1975)).
20. *See* Nobel Lodging, Inc. v. Holiday Hospitality Franchising, Inc., 249 Ga. App. 497, 498-99, 548 S.E.2d 481, 483 (2001).
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25. *See id.* § 9-13-140.
26. *See* Taylor v. Thompson, 158 Ga. App. 671, 671-72, 282 S.E.2d 157, 158 (1981).
27. O.C.G.A. § 44-14-161 (2002).
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29. *See* Henry v. Hiwassee Land Co., 246 Ga. 87, 89, 269 S.E.2d 2, 4-5 (1980).
30. *See* Sparti v. Joslin, 230 Ga. App. 346, 346, 496 S.E.2d 490, 491 (1998) (quoting Vlass v. Sec. Pac. Nat'l Bank, 263 Ga. 296, 297, 430 S.E.2d 732, 734 (1993), and Harris & Tilley, Inc. v. First Nat'l Bank, 157 Ga. App. 88, 91, 276 S.E.2d 137, 140 (1981)); *see also* McCain v. Galloway, 267 Ga. App. 505, 505, 600 S.E.2d 449, 450 (2004) ("A confirmation proceeding is a statutory proceeding limited to determining only that the sale was properly advertised and brought the fair market value of the land on the date of the sale.").
31. *See* O.C.G.A. § 44-14-161 (2002).
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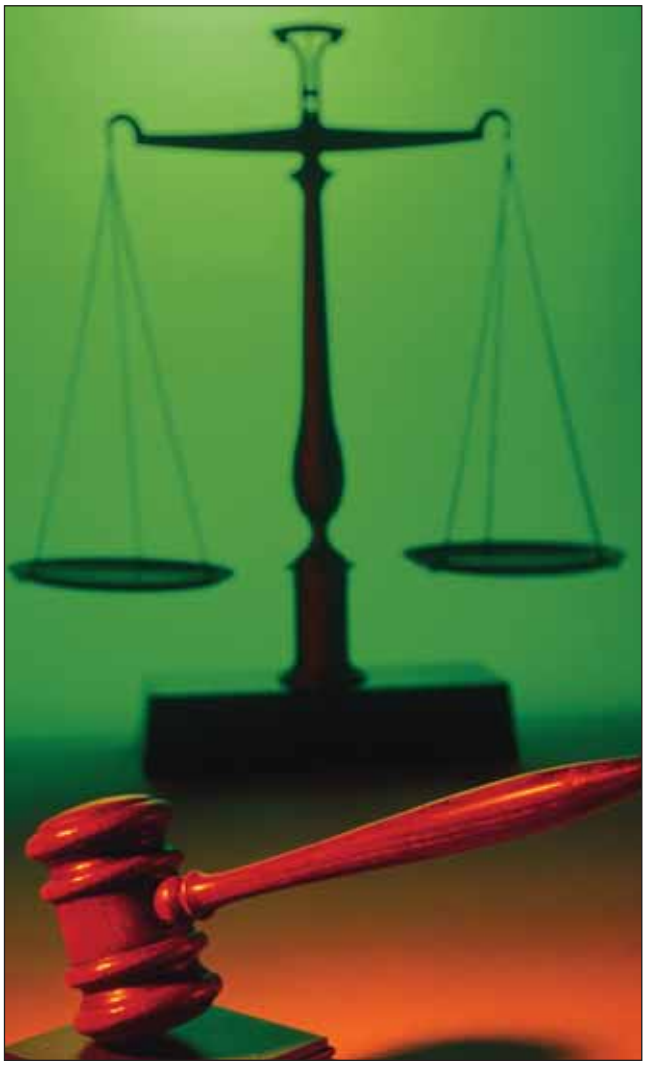
Ethics for Georgia Lawyers Representing Clients in Mediations

by John A. Sherrill and Chelsea L. Wilson

Many of us remember the early beginnings of mediation in Georgia from the old "settlement days" in the 1970s when, at the request of trial court judges, local litigators would volunteer to meet with lawyers in pending cases to see whether resolution could be reached short of trial. Over the years, mediation has become a much more commonly used practice, as well as an increasingly sophisticated process, with its own set of standards, rules and procedures.



In fact, today, a progressively larger percentage of the activity of civil dispute resolution occurs through mediation, and it is now the preferred method of alternative dispute resolution (ADR) for business disputes.[1] In addition to offering potential cost savings, mediation is consensual, with the mediator acting as a neutral facilitator, and thus offers the possibility of maintaining long-term business relationships between disputants.

As the popularity of mediation has increased, rules and standards have been adopted to address the ethical standards to which mediators must adhere. There is far less formal guidance, however, regarding the ethical standards that the attorneys representing the medi-

ation participants should follow. Some commentators assert that the role of the lawyer in mediation should go beyond advocating for the client by requiring the attorney to help ensure that the process itself is a fair one that seeks to attain the goal of a settlement satisfactory to all participants.[2] Yet, should the goals of representation within mediation be any different from those in the more traditional adversarial setting of litigation or arbitration? This article addresses emerging ethical standards for mediators, ethics for mediation advocates, allocation of authority between lawyers and their clients in mediation, the obligation for truthfulness in mediation, mediation confidentiality and good-faith requirements in mediation.

Emerging Standards—Ethics for Mediators

As mediation has become more widely used, much has been written and many sets of rules and standards have been adopted to address the ethical responsibilities of mediators. In 1993, the Supreme Court of Georgia created the Georgia Commission on Dispute Resolution (the Commission). The Commission promulgated the Georgia Alternative Dispute Resolution Rules (Georgia ADR Rules), Appendix C of which contains Ethical Standards for Mediators.[3] These standards include a requirement for mediator neutrality, an obligation to ensure that each party has the capacity to participate in the mediation and admonitions against coercion of parties to obtain a settlement.[4] The Commission also has issued Model Court Mediation Rules,[5] which overlap with some principles found in the Georgia ADR Rules. State and superior courts may, but are not required to, adopt these Model Court Mediation Rules, and thus local rules of a referring court should be consulted.[6]

At the national level, in September 2005, the American Bar Association (ABA), the Association for Conflict Resolution and the American Arbitration Association (AAA) jointly adopted Model Standards of Conduct for Mediators (the Model Standards).[7] Although only advisory, the Model Standards addressed many of the ethical issues facing mediators, including self-determination, impartiality, conflicts of interest and competence of the mediator, confidentiality, quality of the process and advancement of mediation practice.

Muddy Waters—Ethics for Mediation Advocates

At the threshold level, should attorneys be mandated by ethical standards or rules to behave differently in mediations than when representing clients in other dispute resolution settings such as arbitration or litigation? Alternatively, do clients have the right to expect their attorneys to zealously represent them within mediation by acting to maximize their interests? Would such a supposition mean that meditation is merely another adversarial proceeding that must be handled in the same manner as litigation? To address these issues, it is helpful to consult the Georgia Rules of Professional Conduct (GRPC),[8] which are based generally on the ABA Model Rules of Professional Conduct (ABA Model Rules),[9] and which have been adopted by the Supreme Court of Georgia.[10] In addition, advisory comments have been added to the GRPC to assist Georgia lawyers in determining their ethical responsibilities.[11]

The preamble to the GRPC notes the various functions that an attorney assumes. These functions include the obligation as an advocate to "zealously [assert] the client's position under the rules of the adversary system," as well as the lawyer's duty as a negotiator to seek "a result advantageous to the client but consistent with requirements of honest dealing with others."[12] This acknowledgement within the GRPC of the multiple roles that an attorney performs supports the proposition that the GRPC are intended to apply to lawyers representing clients in mediation, as well as in traditional adversarial settings.

Zealous Advocacy is Not Incompatible with Mediation

Some commentators seem offended by the notion that litigators should play a meaningful role in mediation.[13] Lawyers who represent clients in mediation, however, should not allow this argument to compromise the fundamental principle that an attorney should zealously advocate on behalf of a client in mediation, just as is required in arbitration or litigation. Nevertheless, the lawyer representing a client in mediation may find it appropriate to exercise that zeal in a less adversarial manner that is more consistent with the tone of mediation.[14]

Allocation of Authority in Mediation Between Lawyer and Client

Rule 1.2(a) of the GRPC (Scope of Representation) states in pertinent part as follows: "A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."[15] The rule makes no setting-based distinction as to its application, and thus it applies to representation in business transactions, mediation or litigation. Indeed, a client often may play a bigger role in the mediation process than he/she might assume in a business transaction or in the trial of a case. Additionally, it is important to remember that it is also up to the client to describe the objectives of representation, which may range from complete vindication to preserving a contin-

uing business relationship with the other party. In all cases, however, the objectives and means of representation should be defined through consultation between lawyer and client.[16]

Of course, the client must decide whether he/she wants to enter into mediation in the first place, as well as decide whether to accept an offer of settlement.[17] The attorney, however, must provide the client with the information necessary to make such decisions. Specifically, Rule 1.4 of the GRPC (Communication) obligates the lawyer to explain the matter "to the extent reasonably necessary to permit the client to make an informed decision."[18] Further, Rule 2.1 of the GRPC (Advisor) requires that the attorney deliver this advice in a candid manner and "not be deterred . . . by the prospect that the advice might be unpalatable to the client."[19]

The advisory comments to Rule 2.1 go into more detail with respect to this duty of candor in providing information and advice to a client. The commentary states that a client is entitled to straightforward advice expressing the lawyer's honest assessment, which often may involve presenting unpleasant facts and alternatives.[20] It also indicates that in providing advice, an attorney may refer "not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation."[21] Accordingly, an attorney's advice in mediation must address issues beyond the mere merits of the controversy. Rather, the attorney must invite the client to examine issues such as reasonable alternatives to a monetary settlement; the client's psychological preparedness to endure the expense, delay and intrusiveness of a trial; and the likelihood and cost of a total victory. Nevertheless, because no case is risk-free, after all is said and done, the final decision on all of these issues belongs to the client.[22]

Telling Lies—Obligation for Truthfulness in Mediation

Rule 4.1 of the GRPC (Truthfulness in Statements to Others), in pertinent part, states:

> In the course of representing a client a lawyer shall not knowingly:
>
> (a) make a false statement of material fact or law to a third person; or
>
> (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. . . .[23]

Assuming that Rule 4.1 applies to mediation,[24] ethical issues abound when attempting to define a material fact that must be accurately represented. First, there is the "puffing" issue. Although Rule 4.1 requires lawyers to be truthful, the comments to the rule recognize puffing as part of the negotiation process, as long as that puffing does not materially misstate facts. Specifically, Comment 2, in pertinent part, reads as follows:

> This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Comments which fall under the general category of "puffing" do not violate this rule. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category. . . .[25]

The ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-439,[26] which analyzed the obligations of Model Rule 4.1 (Truthfulness in Statements to Others) even more thoroughly in the context of mediation. Although not per se binding on Georgia lawyers, the analysis of ABA Formal Opinion 06-439 is informative. Referring to the Restatement of the Law Governing Lawyers, the opinion states:

> Certain statements, such as some statements relating to price or value, are considered nonactionable hyperbole, are a reflection of the state of mind of the speaker and not misstatements of fact or law. Whether a statement should be so characterized depends on whether the person to whom the statement is addressed would reasonably regard the statement as one of fact or based on the speaker's knowledge of facts reasonably implied by the statement, or instead regarded as merely an expression of the speaker's state of mind.[27]

The opinion goes on to add that "statements regarding negotiating goals or willingness to compromise . . . ordinarily are not considered statements of material fact within the meaning of the Rules."[28]

The final footnote to Opinion 06-439 opines that there may be circumstances in which a greater degree of truthfulness may be required in mediation in order to achieve the client's goals. The footnote states that additional information may be required "to gain the mediator's trust or provide the mediator with critical information regarding the client's goals or intentions so that the mediator can effectively assist the parties in forging an agreement."[29] In such cases, a failure to be forthcoming, though probably "not in contravention of Model Rule 4.1, could constitute a violation of the lawyer's duty to provide competent representation under Model Rule 1.1."[30]

Telling Secrets—Confidentiality in Mediation

It is a well-recognized proposition that confidentiality is necessary for the success of mediation because parties may be hesitant to engage in settlement discussions if statements made during the negotiation process can be used against them in subsequent litigation. In addition, if a mediator is required to testify with respect to the mediation proceedings, the mediator's neutrality might be compromised.

Rule 1.6(a) of the GRPC (Confidentiality of Information) states, in pertinent part, as follows: "A lawyer shall maintain in confidence all information gained in the professional relationship with a client. . . ."[31] In the mediation context, the confidentiality and inadmissibility of communications made and information generated during mediation are generally accepted.[32] In Georgia, the privilege was first clearly enunciated and discussed at length in a criminal case, *Byrd v. State*.[33] In *Byrd,* the Court of Appeals reversed the defendant's conviction of theft by taking because it found that the trial court erred in allowing evidence from an earlier related mediation proceeding in a related civil proceeding.[34] The court hearing the criminal matter had initially stayed the prosecution to see whether a resolution could be reached in the civil case before proceeding, but settlement was not reached.[35]

The Court of Appeals of Georgia noted that "no criminal defendant would agree to 'work things out' and compromise his position if he knows that any inference of responsibility arising from what he says and does in the mediation process will be admissible as an admission of guilt in the criminal proceeding which will eventualize if mediation fails."[36] The court pointed out that the policy reasons for excluding from later court proceedings offers of compromise and other information from mediation were based partially upon the fact that offers of compromise are privileged[37] because public policy encourages the settlement of disputes without trial.[38]

Georgia ADR Rule VII (Confidentiality and Immunity)[39] follows this principle of confidentiality. The rule makes it clear that in court-annexed mediation in Georgia any statement, evaluation, document or other evidence generated in connection with mediation is not subject to discovery, and the neutral or anyone present at the mediation may not be subpoenaed or otherwise required to testify concerning any of this information created during a mediation process.[40]

The Commission's Committee on Ethics elaborated on Rule VII in Advisory Opinion 6.[41] Based upon the principle that "confidentiality is the attribute of the mediation process which promotes candor and full disclosure,"[42] the opinion states that a mediator (and presumably parties and counsel, as well) "may not directly or indirectly share with courts any information, including impressions or observations of conduct, from a mediation session."[43] The opinion also cites certain instances in which this confidentiality principle does not apply, such as when there are threats of imminent violence, possible child abuse or a statutory duty to report information.[44] In addition, confidentiality does not apply to documents relevant to a disciplinary complaint against a mediator arising out of the ADR process or to the executed mediation agreement itself.[45] The opinion, however, emphasizes that even information falling within one of these specific exceptions may be revealed only "to the extent necessary to prevent the harm or meet the obligation to disclose."[46]

Despite the advice contained in Advisory Opinion 6, the Supreme Court of Georgia recently issued a troubling decision that permitted

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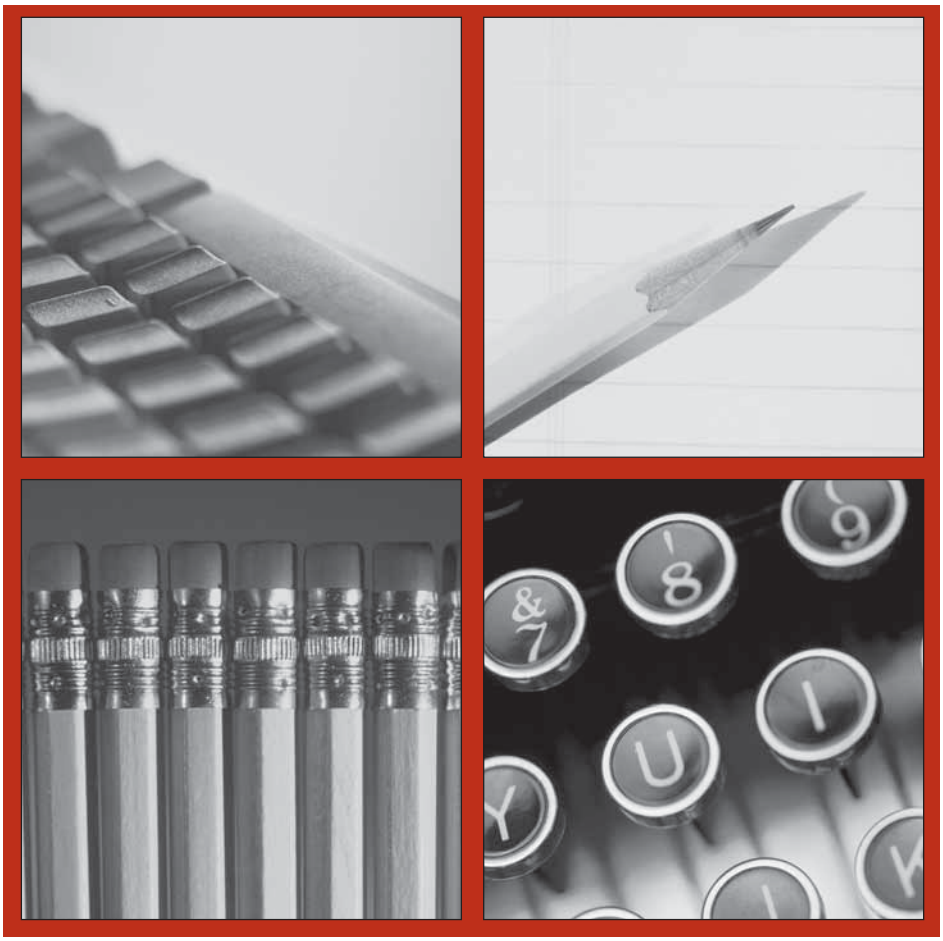

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the admission into evidence of a mediator's testimony concerning his observations on the capacity of one of the parties to enter into the written settlement agreement reached at the mediation. In *Wilson v. Wilson*,[47] the parties in a divorce action participated in a mediation without their attorneys and entered into a settlement agreement as a result. When Mrs. Wilson sought to enforce the agreement, Mr. Wilson raised issues concerning his mental capacity to enter into the agreement on the day of mediation.[48] Citing concerns for fairness and the integrity of the mediation process, the court created an exception to mediation confidentiality based on case law and section 6(b)(2) of the Uniform Mediation Act,[49] which exception had not previously been adopted in Georgia by either the courts or the Commission.[50] The court noted that section 6(b)(2) provides as follows:

> [W]hen a party contends that a mediated settlement agreement is unenforceable, the mediator may testify regarding relevant mediation communications if a court determines that "the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, [and] that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality."[51]

The Supreme Court of Georgia found that the trial court did not err in calling the mediator to testify where the "mediator did not testify about specific confidential statements that [a party] made during the mediation, but only testified about his general impression of [that party's] mental and emotional condition."[52] The Court noted the fact that the mediator was the only witness to virtually all of Mr. Wilson's conduct during the mediation, as well as the difficulty that the trial court would face in resolving the issue of enforceability without the mediator's testimony.[53] The Court also recognized, however, the importance of mediation confidentiality along with supporting policy considerations and "urge[d] trial courts to exercise caution in calling mediators to testify."[54]

Other cases outside Georgia further illustrate that the confidentiality principle may not be completely ironclad. For example, in a California case, *Olam v. Congress Mortgage Co.*,[55] Judge Wayne Brazil, a U.S. Magistrate who is well-respected with regard to ADR-related issues, ordered a mediator to waive confidentiality and testify about what had led to the alleged agreement reached at the mediation. Judge Brazil explained that he was balancing the benefits to justice of receiving the evidence against the burden on the mediator and the mediation process, and he allowed the testimony after concluding that in the case at hand the benefit was great and the burden was modest.[56] Similarly, in *Lawson v. Brown's Day Care Center*,[57] the Vermont Supreme Court held that reporting unethical or illegal conduct in mediation was appropriate and was not a violation of mediation confidentiality unless the complaint was made in bad faith by the reporting party.[58]

Nevertheless, it remains clear that a strong presumption of confidentiality generally exists for any document or information created or developed in connection with mediation conducted in Georgia, as well as in virtually all other states. Accordingly, the confidential nature of these documents or information must be honored by lawyers and clients involved in the mediation process.

"Using" Mediation—Is Good Faith Required?

The Georgia ADR Rules create a requirement for a mediator to "fully explain the mediation process" to the parties, including an explanation that parties who participate in mediation are expected to negotiate in an atmosphere of good faith and full disclosure.[59] In fact, it has been suggested by some commentators that a good-faith requirement in mediation should be imposed by rule or statute.[60]

If good-faith participation in mediation were to be required, however, how would good faith be defined? For instance, would lawyers and parties be required to alter their negotiating style to meet this requirement, and, if so, what would that mean? Further, although lawyers are obligated not to pursue litigation tactics solely for delay,[61] if a lawyer believes that mediation may bring the parties closer to settlement, should he/she be able, in good faith, to recommend mediation, even though other motivation to mediate also may be present, such as the desire to obtain "free discovery" or even to secure a needed delay? When considering many of the issues that would be involved, the inevitable conclusion is that trying to define what constitutes good faith in some, or all, aspects of mediation would be extremely difficult and might well create more problems and issues than the imposition of any such obligation would solve.

Furthermore, the principle of mediation confidentiality would probably prevent any effective enforcement of such a requirement. In the aforementioned Advisory Opinion 6, the Georgia Committee on Ethics notes that the principle of confidentiality trumps any ability of a mediator to report a lack of good-faith participation in the mediation to a referring court.[62] The committee stated that the mediator must maintain confidentiality regarding a party's good faith or lack thereof, and that the unwillingness of a party to bargain in good faith is consistent with the party's *right* to "refuse the benefits of mediation."[63]

Several adjacent states are in agreement that mediators cannot testify about the parties' good faith or lack thereof during a mediation. For example, a Florida Mediator Ethics Advisory Committee expressed similar concerns about mediation confidentiality as related

to a requirement to mediate in good faith. The committee acknowledged that while "[t]here are no [Florida] statutes, rules or common law governing court-ordered mediation that require the parties to negotiate in good faith," a mediator may be faced with a court order that incorporates a good-faith requirement and calls for the mediator to report a party's noncompliance to the court.[64] The committee, however, went on to find that that the mediator who sought guidance on this issue could not comply with both the applicable Florida rules for court-appointed mediators and any such order requiring the mediator to "report a party who fails to mediate in good faith."[65] In fact, the committee advised that a mediator should decline to participate in mediation "when a mediator is informed by the court in advance of the mediation that the confidentiality of the session would not be honored."[66] Further, in a decision of the Tennessee Supreme Court Alternative Dispute Resolution Commission, the Commission suspended a mediator, finding that the mediator's disclosure to the court that a party did not mediate in good faith violated court rules, including the rule providing for confidentiality of ADR proceedings.[67]

Therefore, although everyone generally agrees that parties and counsel should approach mediation in good faith to make the process effective and successful, there unfortunately appear to be no legal consequences to a party or lawyer who fails to bargain in good faith in a mediation.

Conclusion

There are few bright-line requirements that differentiate the ethical obligations of lawyers representing clients in mediations from those in other types of representation. Conclusions and inferences from the materials cited above, however, do provide guidance on appropriate conduct for lawyers and clients in mediation. In particular, the mediation advocate certainly must be familiar with, and prepared to explain, the subtleties of mediation to the client, especially if the client is not familiar with the mediation process. The lawyer should assist the client in the identification of goals and should put together the right mediation team to achieve those goals. The attorney also must be cognizant of the nuances of employing negotiating techniques that fall within the parameters of the requirement for truthfulness found in Rule 4.1 of the GRPC, as well as the requirement for confidentiality in the mediation process and the admonition that parties should be prepared to negotiate in good faith. When all is said and done, however, the primary objective of the lawyer representing a client in mediation is and must be the same as in any other representation—the successful implementation of the client's goals and objectives. GBJ

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Endnotes

1. *See, e.g.,* David B. Lipsky & Ronald L. Seeber, The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations, at 9 (1998), *available at* http://digitalcommons.ilr.cornell.edu/icrpubs/4 ("We conclude that ADR has made substantial inroads into the fabric of American business, with [general] counsel overwhelmingly preferring mediation (63 percent); arbitration was a distant second (18 percent).")
2. *See* Steven H. Hobbs, *Facilitative Ethics in Divorce Mediation: A Law and Process Approach*, 22 U. RICH. L. REV. 325, 338-39 (1988); Cary Menkel-Meadow, *Ethics in ADR Representation: A Roadmap of Critical Issues,* DISP. RESOL. MAGAZINE, Winter 1997, at 2.
3. GA. ALTERNATIVE DISP. RESOL. RULES app. C (1993), *available at* http://www.godr.org/adrrules.html.
4. *Id.* at art. I & app. C, ch. 1, §§ I.A. & D.
5. GA. MODEL CT. MEDIATION RULES (2005), *available at* http://www.godr.org/model_rules.html.
6. Of course, in Georgia, when a court orders parties to mediate, the parties are normally free to choose their own mediator, either from a court-approved list or some other outside source. Although the Georgia ADR Rules by their own terms apply only to court-annexed programs, GA. ALTERNATIVE DISP. RESOL. RULES at 1 (1993), they do provide guidance regarding the conduct of mediation and should be consulted by any mediator conducting mediations in Georgia.
7. MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005), *available at* http://www.abanet.org/dispute/news/ModelStandardsofConductforMediatorsfinal05.pdf.
8. GA. RULES OF PROF'L CONDUCT (2001).
9. MODEL RULES OF PROF'L CONDUCT (2002).
10. Per Rule 4-101 of the GRPC, the Supreme Court of Georgia delegat-

ed to the State Bar of Georgia the authority to administer and enforce the GRPC, and the authors gratefully acknowledge the review and provision of comments for this article by State Bar of Georgia Ethics Counsel Paula Frederick and Tina Petrig.

11. GA. RULES OF PROF'L CONDUCT pmbl. § 21 (2001).
12. *Id.* pmbl. § 2.
13. *See* Menkel-Meadow, *supra* note 2, at 2.
14. *Id.* at 4-5.
15. GA. RULES OF PROF'L CONDUCT R. 1.2 (2001).
16. *Id.* R. 1.2 cmt. 1.
17. *Id.* R. 1.2(a).
18. *Id.* R. 1.4.
19. *Id.* R. 2.1.
20. *Id.* R. 2.1 cmt. 1.
21. *Id.* R. 2.1 cmt. 2.
22. *Id.* R. 1.2.
23. *Id.* R. 4.1.
24. In litigation or arbitration, a lawyer is bound by Rule 4.1 insofar as the lawyer is dealing with third parties. To the extent that the lawyer is dealing with a tribunal (i.e., a court or an arbitration panel), then Rule 3.3 of the GRPC (Candor Toward the Tribunal) would control the truthfulness requirement. It is generally recognized, however, that a mediator is not a "tribunal" as defined by Rule 3.3, and that the requirements of Rule 4.1, therefore, govern the conduct of lawyers in mediation as to the obligation for truthfulness. *See* GA. RULES OF PROF'L CONDUCT R. 3.3 (2001); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-439 n.2 (2006) ("Although Model Rule 3.3 also prohibits lawyers from knowingly making untrue statements of fact, it is not applicable in the context of a mediation or a negotiation among parties. Rule 3.3 applies only to statements made to a 'tribunal.' It does not apply in mediation because a mediator is not a 'tribunal' as defined in Model Rule 1.0(m).")
25. GA. RULES OF PROF'L CONDUCT R. 4.1 cmt. 2 (2001).
26. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-439 (2006).
27. *Id.* at 3 n.3 (citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 98 cmt. c (2000) (citations omitted)).
28. *Id.* at 6.
29. *Id.* at 8 n.22.
30. *Id.*
31. GA. RULES OF PROF'L CONDUCT R. 1.6(a) (2001). This principle of confidentiality also is effectuated in a related doctrine, the attorney-client privilege.
32. *See In re* RDM Sports Group, Inc., 277 B.R. 415, 426-32 (Bankr. N.D. Ga. 2002) (summarizing the similar federal mediation confidentiality privilege).
33. 186 Ga. App. 446, 447-49, 367 S.E.2d 300, 302 (1988).
34. *Id.* at 448-49, 367 S.E.2d at 303.
35. *Id.* at 448, 367 S.E.2d at 302.
36. *Id.* at 448, 367 S.E.2d at 302.
37. The evidentiary principle dealing with the inadmissibility of offers of compromise is found in FED. R. EVID. 408 and O.C.G.A. § 24-3-37 (1995). Of course, these evidentiary rules address only the inadmissibility of settlement negotiations and offers; the broader principle of mediation confidentiality means that the mediator and all parties in mediation agree to forgo any further use of the protected information.
38. *Byrd*, 186 Ga. App. at 448, 367 S.E.2d at 303.
39. GA. ALTERNATIVE DISP. RESOL. RULES R. VII (1993).
40. *Id.* Rule VII excludes from protection any information or document that is "otherwise discoverable." Accordingly, if a document was created outside the context of mediation, it is not protected from discovery by the mere fact that it was used or referred to in a mediation.
41. Ga. Comm'n on Dispute Resolution's Comm. on Ethics, Advisory Op. 6 (2005).
42. *Id.* at 1 (citing GA. ALTERNATIVE DISP. RESOL. RULES app. C, ch. 1, § II).
43. *Id.* at 1.
44. *Id.* at 2.
45. *Id.*
46. *Id.*
47. 282 Ga. 728, 653 S.E.2d 702 (2007).
48. *Id.* at 731-32, 653 S.E.2d at 706.
49. UNIFORM MEDIATION ACT (2003).
50. *Wilson*, 282 Ga. at 732-33, 653 S.E.2d at 706.
51. *Id.* at 732, 653 S.E.2d at 706 (quoting UNIFORM MEDIATION ACT § 6(b)(2)).
52. *Id.* at 733, 653 S.E.2d at 707.
53. *Id.* at 733, 653 S.E.2d at 707.
54. *Id.* at 733, 653 S.E.2d at 707.
55. 68 F. Supp. 2d 1110 (N.D. Cal. 1999).
56. *Id.* at 1136-39.
57. 776 A.2d 390 (Vt. 2001).
58. *Id.* at 393-94.
59. GA. ALTERNATIVE DISP. RESOL. RULES app. C, ch. 1, § I.A. (1993).
60. *See, e.g.*, Kimberlee K. Kovach, *Lawyer Ethics in Mediation: Time for a Requirement of Good Faith,* DISP. RESOL. MAGAZINE, Winter 1997, at 9.
61. GA. RULES OF PROF'L CONDUCT R. 1.8 (2001).
62. Ga. Comm'n on Dispute Resolution's Comm. on Ethics, Advisory Op. 6, at 5 (2005).
63. *Id.* at 6 (citing Ethical Standard IV).
64. Mediator Ethics Advisory Comm. Advisory Op. 2004-006, at 3 (citing Avril v. Civilmar, 605 So. 2d 988, 989-90 (Fla. 4th Dist. Ct. App. 1992), *available at* http://www.flcourts.org/gen_public/adr/bin/MEAC%20opinions/MEAC%20Opinion%202004-006.pdf).
65. *Id.*
66. *Id.*
67. *In re* Finney, Tenn. Sup. Ct. ADR Comm'n on Grievance (Jan. 3, 2006), *available at* http://www.tsc.state.tn.us/geninfo/Publications/ADR/Rule%2031%20Mediator%20ADRC%20Grievance%20Decision%2011-2-06.pdf.

Georgia Training Georgia

by W. Scott Henwood and Brittany H. Cone

How better to introduce the process of appellate review under trial by jury to a country seeking to implement the same, the country of Georgia, except to bring a Court of Appeals of Georgia judge, the former Reporter of Decisions for the Supreme Court and Court of Appeals of Georgia, the managing partner of a recognized litigation firm and a law school professor experienced in leading legal training exercises and seminars around the world together? On May 30-31, just such a group made the trip to Tbilisi, Georgia, to offer training in appellate review.

The group included Court of Appeals of Georgia Judge Herbert E. Phipps, W. Scott Henwood, of-counsel and head of the appellate practice group of Hall Booth Smith & Slover, P.C. (HBSS), as well as former Supreme Court and Court of Appeals Reporter of Decisions, HBSS Managing Partner Alex H. Booth and Professor Paul J. Zwier II of Emory University School of Law. The instructors traveled through the U.S. Agency for International Development (USAID). John

Photos courtesy of training participants.

(Standing) Professor Paul J. Zwier II, Emory University School of Law, (left to right) Georgia legal professional and Judge Herbert E. Phipps, Court of Appeals of Georgia, during a training session in Tbilisi, Georgia.

Hall, HBSS founding partner and chairman of the Atlanta Tbilisi Sister City Committee (ATSCC), also traveled with the group. The ATSCC was responsible for coordinating the training and received funding from the USAID to achieve its goals. The USAID recognizes that advancing of the rule of law is a key objective to ensuring the long-term survivability of Georgia's democratic transition.

Founded in 1988, the ATSCC is one of 18 Atlanta Sister City Committees between Atlanta and various cities around the world, and endeavors to build economic, legal, educational and humanitarian progress in Georgia. The committee leads great efforts in humanitarian assistance to Georgia as well as encouraging economic development and growth. The committee hosted its fourth Open World delegation last year, when it organized a week of jury trial observation in Atlanta for a group of Georgian attorneys and judges' clerks. In April 2008, the committee hosted a delegation of Georgian lawyers who participated in a National Institute for Trial Advocacy Mock Trial Program at the Emory University School of Law taught by Professor Zwier and hosted another delegation of Georgian lawyers in 2007. With significant efforts of the developing friendships between these two great countries, the ATSCC hopes to assist and further promote stability and economic growth within the country of Georgia.

Judicial reform has been acknowledged as a priority and the constitutional reforms resulting in the right to jury trials in criminal cases are one of the most visible and important components of this reform. The success of the new jury trial system and the subsequent appellate procedure are critical to bolstering the public perception of fairness in the judicial process. The instructors recognized that as the Georgian legal system progresses, Georgian judges must learn to protect the reforms made to the crimi-

Georgia law professionals putting their new appellate process knowledge to practice.

nal system through an effective appellate system. Without training in appellate writing, research and oratory techniques, their ability to effectively review cases will be hindered. The committee understood that an effective appellate process:

> 1) provides the mechanism to preserve the rights of the parties in a jury trial in the event of procedural error;
> 2) opens the very dialogue by which attorneys come to understand how judges interpret the law; and
> 3) instills in the public a confidence that parties have the right to appeal decisions they believe to be erroneous.

Prior to 2009, criminal cases in the country of Georgia were decided by a tribunal. However, 2009 marked new and exciting progress when the country adopted trial by jury. Although it is still in the process of being implemented, the instructors used the opportunity granted to them to invoke their knowledge upon the judges of the country of Georgia who were open and ready to seek such information. The primary objective of the training seminar was to give Georgian judges the tools they need to conduct efficient and zealous review of cases on appeal. With a focus on appellate writing techniques, oral arguments and legal research, the seminar sought to impart essential methods and raise the standard of advocacy at the appellate level in Georgia.

Around 30 participants were involved in the training, including judges and law clerks. A total of six 30-to-45-minute sessions were held during the two-day period, with each session led by Phipps, Zwier, Booth or Henwood, and included such topics as appeals based on jury nullification, improper voir dire, ineffective assistance of counsel, legal research as it relates to appellate briefs, oral argument techniques, verdicts based upon insufficient evidence and judicial opinion writing. Following the lectures, the participants took part in break-out groups where the instructors engaged the participants with hands-on teaching sessions in an appellate courtroom setting, or alternatively, had them undergo an appellate writing exercise session focusing on the topic at hand. The participating Georgian judges served as both lawyers and judges during the break-out sessions while the instructors provided guidance and critiqued the participants. With his extensive experience in hearing oral arguments and appeals, Phipps received, and impressively addressed, many questions stemming from the audience.

Overall the training was a success, and the participants showed an incredible desire to learn the ins and outs of an effective appellate process. With this foundation of knowledge, it is believed that the implementation of trial by jury will be met with the efficiency of zealous review on appeal common to our very own state, and a higher public confidence in the judicial system itself. GBJ

William Scott Henwood was born in Toronto, Ontario, Canada. He spent his entire professional career in various positions with the Supreme Court and Court of Appeals of Georgia, including serving for 21 years as reporter of decisions. He has extensive knowledge of Georgia appellate procedure and rules. Upon his retirement from these courts, he joined the firm of Hall, Booth, Smith & Slover, P.C., as of counsel, where he chairs the firm's appellate practice group. Henwood is a member of the State Bar of Georgia, the Lawyers Club of Atlanta, Inc., where he served as president during the 2003-04 term and the Lamar Inn of Court. He may be reached at whenwood@hbss.net.

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Georgia Bar Foundation Awards $2,468,200 in Grants

by Len Horton

At its annual grants meeting on July 17, the Georgia Bar Foundation (the Foundation) awarded grants totaling $2,468,200 to 12 different law-related organizations. The reduced IOLTA revenues available to be awarded challenged the 19-member Board of Trustees as it grappled with how best to distribute much less than what was available for grant awards last year.

"I was pleased at how the Board dealt with this challenging financial situation," said President Joe Brannen. "Lively discussion characterized the meeting as the Board allocated the available funds to meet the needs of competing applicants. We really struggled to try to be fair to each of the 50 applicants, but, sadly, we had to say no to many worthy organizations we have supported in the past."

Due to the reduced funds, 38 of the 50 grant applicants were denied funding. In addition, the 12 organizations receiving grant awards were awarded much less than in the recent past.

Atlanta Legal Aid and Georgia Legal Services together received $1,970,000, which was about half what was awarded to them last year. Civil legal services for disadvantaged Georgians is the primary purpose of the Foundation, and approximately 81 percent of all grant awards at this meeting went to fund those organizations. The Georgia Law Center for the Homeless, another organization devoted to providing civil legal services to the poor, received $25,000.

The Foundation also funded civil legal services for battered mothers and their children living temporarily in shelters. The Halcyon Home in Thomasville received $2,000. The Northeast Georgia Council on Domestic Violence, a consortium of five battered women's shelters providing civil legal assistance to residents such as temporary restraining orders and, in some instances, divorce and custody representation, was the recipient of $10,000.

Disputed custody cases is a major focus of the Guardian Ad Litem Program of the Atlanta Volunteer Lawyers Foundation (AVLF), which since 1991 has received $909,400 in grant awards from the Foundation. A total of $117,000 was awarded at this meeting. AVLF, under the able leadership of Marty Ellin and with the help of Dawn Smith, created the Domestic Violence Project in Fulton County. Almost 1,200 victims and children have been served by attorneys who have volunteered about 1,800 hours to this project.

Custody, divorce and other legal services vital to the well-being of incarcerated mothers and educational programs to inform those mothers about their legal rights were supported in a $5,000 grant to the Civil Pro Bono Family Law Project. A number of these prisoners have children who are severely affected by their mother's imprisonment. This program is designed to help these women and their families who are at much greater risk because of the absence of their mother.

The Foundation has a rich history of funding programs to assist children at risk. Even with available funds at only 37 percent of what was available at the grants meeting last year, a number of such programs received grant awards. Ash Tree Organization in Savannah received $7,000 to support its Juvenile Offender Intervention Program, which served 76 families, including 76 teenagers, and involved more than 1,600 contacts with parents in 2008.

Closely allied with Ash Tree, Metro Savannah Baptist Church received an award of $2,500 to teach children how America's free enterprise system can be used to make money and have a rewarding, productive life. This program is implemented by Morris Brown, executive director of Ash Tree, under the tutelage of Ed Menifee, executive director of the State Bar's BASICS program. Menifee's BASICS program application was not funded by the Foundation for the first time since 1988 after State Bar of Georgia President Bryan Cavan volunteered that a cy pres gift to the Lawyers Foundation of Georgia would support BASICS for the next year. This freed up significant funds for other programs at this meeting. In grant awards annually since 1988, the Foundation has provided $1,316,401 to the BASICS program.

The Truancy Intervention Project (TIP) of Georgia, under the creative leadership of Terry Walsh and managed effectively by Jessica Pennington, received $70,000 to continue exporting its truancy program statewide. Walsh and Pennington expanded TIP statewide at the encouragement of the Foundation, so this maintenance grant at this time of reduced funds showed a commitment to TIP's efforts to keep children in school and minimize their risk of getting in trouble with the law. This program recruits volunteer lawyers to represent children who are chronically absent from school.

Education always has been a major focus of the Foundation, and it continued to receive support at this meeting. The state YMCA of Georgia received $10,000 for its Youth Judicial Program. Each year when students visit Georgia's Capitol building and learn about our different branches of government, the Foundation supports the judicial part of that program. Participants prepare briefs, make oral arguments and simulate the experience of being on the Supreme Court of Georgia. The Foundation has funded this program since 1986.

Several organizations usually receiving grant awards from the Foundation received direct support this year from the State Bar. The Pro Bono Project, co-sponsored by the Georgia Legal Services Program and the State Bar of Georgia, received $100,000. The Law-Related Education Program was granted $130,042 and the Young Lawyers Division Mock Trial Program, long a favorite of Justice George Carley, received $70,000. Since 1986, the Foundation has awarded $869,400 to the Pro Bono Project, $1,402,622 to Law-Related Education and $1,007,500 to the Mock Trial Program. So thanks are in order to the State Bar, under the leadership of 2008-09 President Jeff Bramlett, for helping the Foundation and our grantees during this time of reduced revenues.

As impressive as this support was, the State Bar continued to do more. In May 2009, President Bramlett and President-Elect Bryan Cavan convened a meeting of the sections of the State Bar to

Hon. Patsy Y. Porter Elected President of the Georgia Bar Foundation

by Len Horton

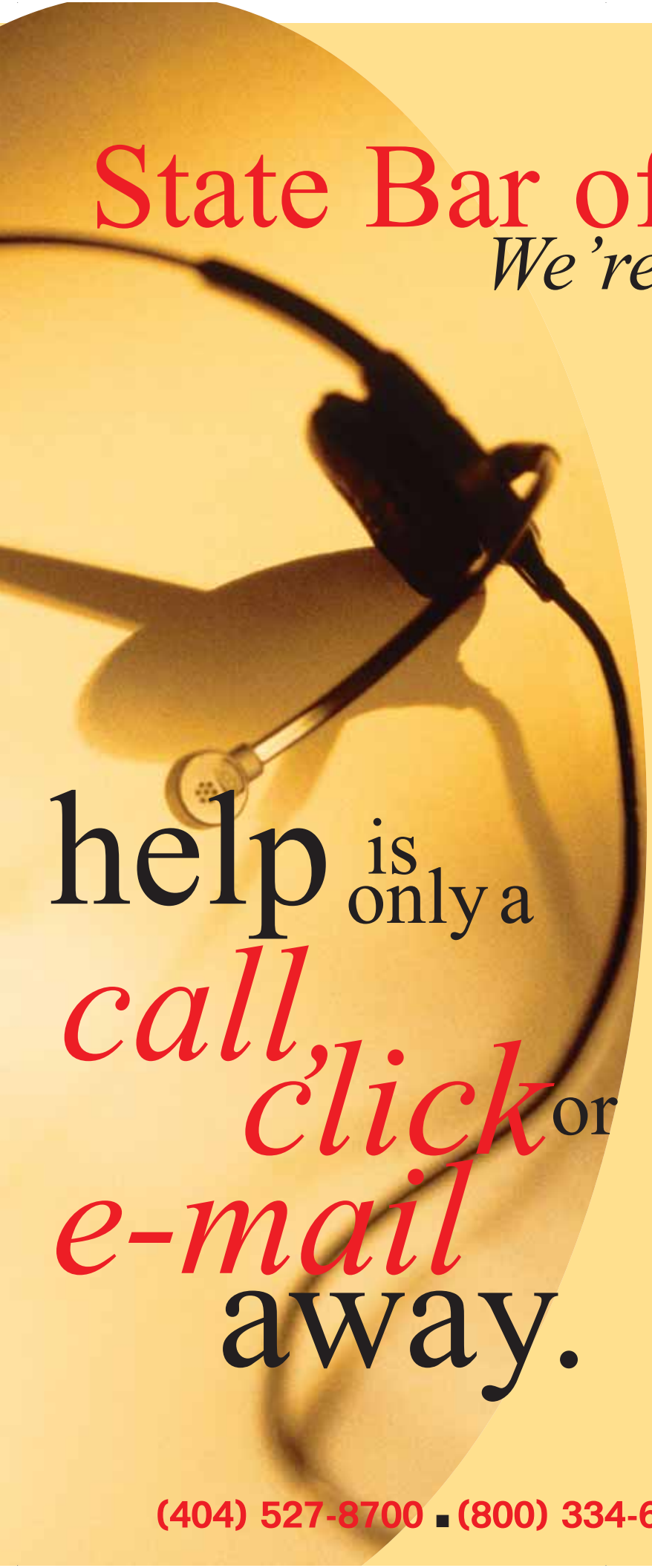
At the Board of Trustees meeting of the Georgia Bar Foundation on July 17, Hon. Patsy Y. Porter, judge of the State Court of Fulton County, was elected president for the fiscal year 2009-10.

Porter has previously served as secretary, treasurer and vice president of the Georgia Bar Foundation. She is taking office as revenues from Interest On Lawyer Trust Accounts (IOLTA) are significantly reduced by the lowered interest rates and the economic recession.

"I am honored to be named by the Board to lead the Georgia Bar Foundation during this challenging year," said Porter. "We will get through these demanding economic times and increase our revenues to the point where we will fulfill the goal of IOLTA as the major funding source for civil legal services to disadvantaged Georgians and to support a number of other law-related organizations throughout the state."

Porter is actively involved in numerous professional and civic associations including being chair of the Board to Determine Fitness of Bar Applicants, co-chair of the Board of Directors of the Andrew and Walter Young YMCA, past president and member of the Advisory Board of Atlanta Legal Aid, member and past president of the Georgia Association of Black Women Attorneys, member of the Gate City Bar Association and an alumna of Leadership Atlanta.

She has received the Leah Ward Sears Award for Distinction in the Profession, Jurist of the Year Award from Mount Moriah Grand Masonic Lodge, Judge With A Heart Award from the Minority Judges of Georgia, Leadership Award from the Atlanta Job Corps Center and the Millenium Award of Excellence in Law from the Women of Morris Brown College.



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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.

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Photo by Lisa Smith

(Left to right) Hon. Patsy Y. Porter, newly-elected president of the Georgia Bar Foundation, J. Joseph Brannen, outgoing president/president emeritus, and Chief Justice Carol Hunstein after Brannen was presented with a gift in recognition of his service to the Georgia Bar Foundation.

enable the Foundation to ask for their financial support and a number of sections responded. The Labor and Employment Law Section sent the Foundation $21,319.61. The Immigration Law Section gave $1,000 directly to Catholic Charities Immigration Services and $1,000 to the Georgia Commission on Interpreters. More recently, the Family Law Section gave $30,000 to the Atlanta Volunteer Lawyers Foundation.

The State Bar still was not finished with its support for the Foundation, which was scrambling for funds. It also provided $100,000 to the Georgia Appellate Practice and Educational Resource Center, which is the state organization doing death penalty work in Georgia. Because of recent cutbacks in state funding, this important organization needs the support of Georgia's lawyers. Last year the Foundation provided $792,000, but this year it could only grant $249,700. Add that to the State Bar's extraordinary $100,000 gift, and the lawyers of Georgia provided $349,700 to this well-managed organization led by Tom Dunn. The magnitude of support provided to this organization, which does important work for unpopular clients, speaks well of the legal profession.

In a down year dominated by diminishing revenues, shattered expectations and enough worry to produce wrinkles on the faces of the fairest of Georgia's youngest lawyers, this was a meeting where the different members of the Board of Trustees came together. Bankers and lawyers sat down and talked, and, when they stood up, a recognition that they had done the best they could pervaded the room. This wasn't really surprising; it has been that way for decades as bankers and lawyers on the Board of the Georgia Bar Foundation talk and work things out. But this year, engulfed in economic worries, these men and women once again worked out their differences and produced reasonable results, foretelling a good 2009-10. It might have seemed the worst of times, but it was the best of times. GBJ

Len Horton is the executive director of the Georgia Bar Foundation. He can be reached at hortonl@bellsouth.net.

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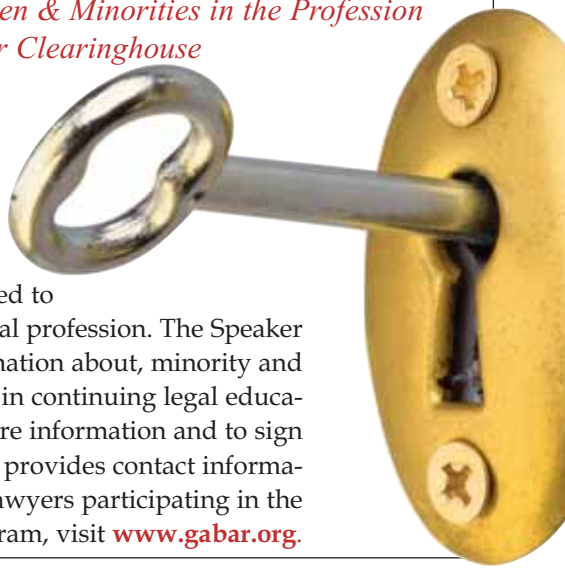


About the Clearinghouse

The Women and Minorities in the Profession Committee is committed to promoting equal participation of minorities and women in the legal profession. The Speaker Clearinghouse is designed specifically for, and contains detailed information about, minority and women lawyers who would like to be considered as faculty members in continuing legal education programs and provided with other speaking opportunities. For more information and to sign up, visit **www.gabar.org.** To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit **www.gabar.org**.

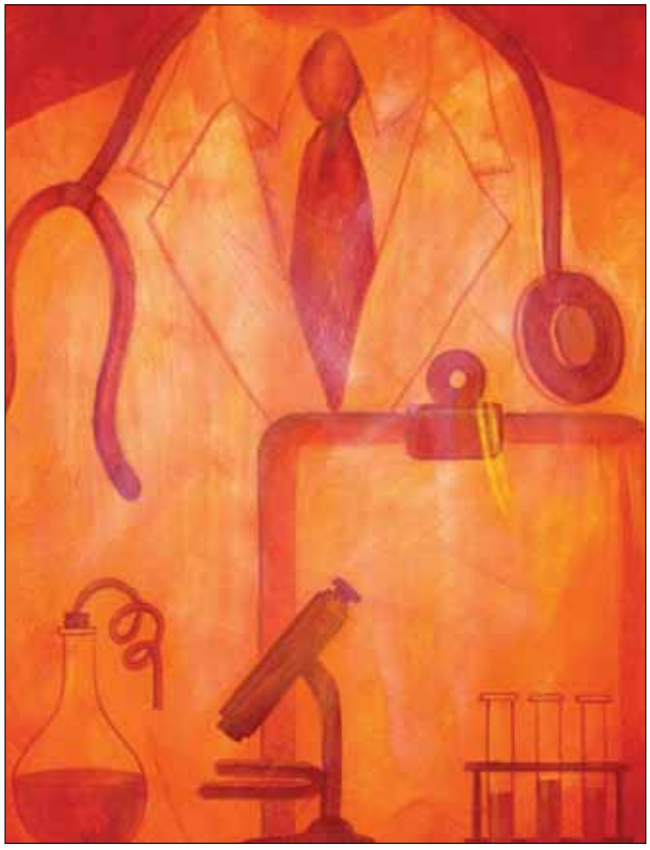
A Court's Nightmare

by Chief Justice Carol Hunstein and Justice Harold Melton

It's Monday morning, Nov. 9, 2009. You arrive at work a few minutes before 8 a.m., grateful you still have a job and relieved that last week's election is behind you. This is the first year as a superior court judge that you had a bona fide challenger, but you prevailed. As you unlock the door to your chambers, the phone on your secretary's desk is ringing. You answer, a little surprised she's not in yet. The first call is from a citizen who has been summoned for jury duty and wants to know where and when he should report. You can't even get the coffee maker going before the phone rings again. Where is your secretary? This time, it's your clerk. Her daughter is sick—very sick—and they are on their way to the emergency room. But you have court today, and you haven't a clue how to access the case management system. Who will print out the docket so you know which case comes first? The phone is now ringing rapid-fire. Another call from a member of the public: He has a DUI before the court today, but given the governor's announcement last night, he's asking if there will even be court today.

"What announcement?" you ask.

For more than a year, the Georgia Judicial Emergency Management Committee has been working hard to make sure that our courts could continue to operate in the event of a global pandemic. Chaired by Justice Harold Melton, the Committee has created tools that are now available to help you prepare. Whether you are a judge, clerk, court administrator, sheriff, parole officer or some other officer of the judicial system, if you have not yet put in writing a plan to respond, wait much longer, and it may be too late.



Consider the news since spring: April 21, the U.S. Centers for Disease Control and Prevention (CDC) announces that an unknown strain of swine flu has popped up in two people in California. Three days later, Mexico announces hundreds of cases and 68

deaths. June 12, in a stunning announcement, the World Health Organization (WHO) declares the seven-week old "H1N1" swine flu virus a global pandemic, meaning that it is now capable of infecting as much as one-third of the world's population. By mid-June, the United States has 13,000 cases. But other, more reassuring, accounts soon follow: stories that the virus is less lethal than initially expected and news that a vaccine could soon be available. We were lucky, some experts say, because that first surge hit at the end of the school year. But by mid-summer, the news again shifts. July 13: The virus needed for the vaccine is growing half as fast as ordinary strains. It is unlikely a vaccine will be ready by fall, when the second surge of swine flu is due to hit. And then there is this disturbing headline: "H1N1 Virus More Dangerous Than Suspected."

So what does all of this mean to you? It means you could suddenly be looking at a reduction in force of 40 percent or more. Let's go back to the fictional scenario:

As your phone continues to ring, the county sheriff suddenly appears at your door. You and he have been friends for years, and you can tell from his expression something's wrong. He throws down the morning paper on your desk, and you read the headline striped across the top of the page: "Governor Declares Public Health State of Emergency." But it's the subheading that makes your blood run cold: "Surge in Mortality Expected." "Judge, we've got a problem," the sheriff says. He tells you that on Friday night, one of the jail inmates became sick with high fever, chills and a hacking cough. To be on the safe side, he sent him to the hospital. This 25-year-old man, the sheriff has just learned, is now dead.

What should he do, he asks you. He doesn't want to sound like an alarmist, but over the weekend, more inmates started exhibiting flu-like symptoms. He would separate them, but as you know, the jail is already overcrowded. Should he quarantine the sick ones and put the others in another part of the jail? And what do you want him to do with the defendants due in court this morning? Should he still bring them to the court building where people are already showing up for jury duty and other court appearances? Do you want them in your courtroom, putting their hands on your Bible and putting you and everyone else at risk? He's also worried about his officers, who have no face masks, no gloves, no hand sanitizer or any other kind of personal protective equipment. What does he do if they refuse to come to work? You're beginning to wonder whether you have the authority to require the officers, or your own staff for that matter, to work in a contagious environment.

Suddenly someone rings the bell at the front desk, wanting to pay a traffic

fine. The phone rings and you pick it up. It's your secretary calling. She is unable to get out of bed.

You sense a disaster looming, but you don't even realize that in just two weeks, the governor will have taken all your healthy law enforcement officers to enforce isolation and quarantine. Your local hospital will have run out of ventilators, and people will be trying to file lawsuits in your court, claiming they have been denied access to medical care and vaccinations. Your municipal, magistrate and probate courts will all have closed and transferred their cases up to your court. Your clerk will remain at home with her sick children, yet you and your remaining staff have no experience with gun licensing, marriage licensing or probating wills, nor do you have access to any of the other courts' records. Within two months, instead of just 40 percent of your staff being out, you may know of deaths in your own community, the local grocery store may no longer be stocked and people may be hoarding gasoline, food and over-the-counter prescription drugs.

Experts estimate that the swine flu pandemic will occur in three waves of 90 days each. In 1918, the Spanish flu—the first and most severe pandemic of the 20th century—killed an estimated 50 million people after the virus mutated. Like the H1N1 virus, it first appeared in the spring. But no one knows exactly what will happen with this new strain of virus come October and November. It is nevertheless possible that court operations could be dramatically affected for an extended period. That's why courts must have in place a short-term and a long-term plan.

But you, unfortunately, have just been too busy. And you never really thought it would come to this. You begin to think: Good that I just got re-elected because this could be a career-ender. Had you started asking questions when the news first broke in April that there was a serious flu associated with pigs that was now spreading among people, or in June, when the WHO declared swine flu a global pandemic, you might not be in this situation.

You would have already read the document entitled *Emergency Preparedness in the State Courts* available on the Georgia Courts website (www.georgiacourts.org). That would have convinced you to take action and led you to the *Continuity of Court Operations Planning Guide* or COOP, available on the same website. The guide walks you through how to create a plan tailored to your court. It tells you step by step how you can continue to perform the constitutionally and statutorily mandated functions of the court. For instance, anyone who's been arrested must have an initial appearance within a mandated time frame before a judge, and a flu pandemic can't stand in the way.

The first thing you would do is *appoint a committee and develop your plan.* The committee should be made up of people with good organizational skills, such as your clerk, court administrator and sheriff. They would begin to identify your court's essential functions—who performs them and what steps are taken to complete them. The person who pulls up the docket, for instance, needs a computer, Internet access, a user name and password. And if he or she is not there, your plan would identify who would have that information and be able to do the job.

If you already have a COOP—and every court should as a part of its overall emergency preparedness—the next step is to *develop an appendix* that speaks to the unique aspects of a pandemic, which will differ from those of other emergencies. You can flesh out that appendix with the help of the fill-in-the-blank *Pan-Flu Appendix Template* found on the website. With a pandemic, for instance, in addition to your own workforce being down 40 percent, you must anticipate that everyone who supports you could also be down 40 percent. What if your online research service is compromised due to a loss of its staff? Yet, you may have an immediate need for research on public health law.

In anticipation of a different breed of lawsuits, you also need to be armed with specific orders. For those, go to the *Georgia Pandemic Influenza Bench Book* on the Georgia Courts website. This reference book outlines all the statutes related to public health emergencies, including laws that deal with involuntary treatment, quarantine and isolation and property issues. And it has model orders, such as an order requiring someone to undergo medical treatment, or another for upholding a quarantine. You might decide to postpone certain civil cases, such as small claims, landlord-tenant, mergers and acquisitions, or suspend criminal traffic, drug and DUI cases, while keeping statutorily mandated functions open, such as initial appearances. Or, you may decide to hold your initial appearances via videoconferencing from the jail. If you need to totally close your court, the *Bench Book* contains model closure orders you can print out and sign. It also includes the name and title of the person who represents public health in your county. In a pandemic, this person could become your best friend, and if you haven't already met him or her, now is the time.

Of course, hopefully this is the worst-case scenario. As the sheriff said, the purpose here is not to be an alarmist. Rather, it's to prompt everyone connected to the court system to plan, and to plan now.

With children and young people back in school, there are still a lot of unknowns about this virus. One CDC expert recently said this pandemic ultimately may be no worse than a severe flu season. And yet, the bad news keeps coming: Emory University quarantines students

sick with swine flu; Georgia colleges worst hit in the nation; the CDC reports weekly growth of cases and by Sept. 4, swine flu has resulted in 9,079 U.S. hospitalizations and 593 deaths; the World Health Organization predicts an "explosion" of cases, calling growth of swine flu "unstoppable" and estimating it will infect up to a third of the world's population. Meanwhile, experts say, it is unlikely a vaccine will be available before mid-October, and even then, it will be limited. GBJ

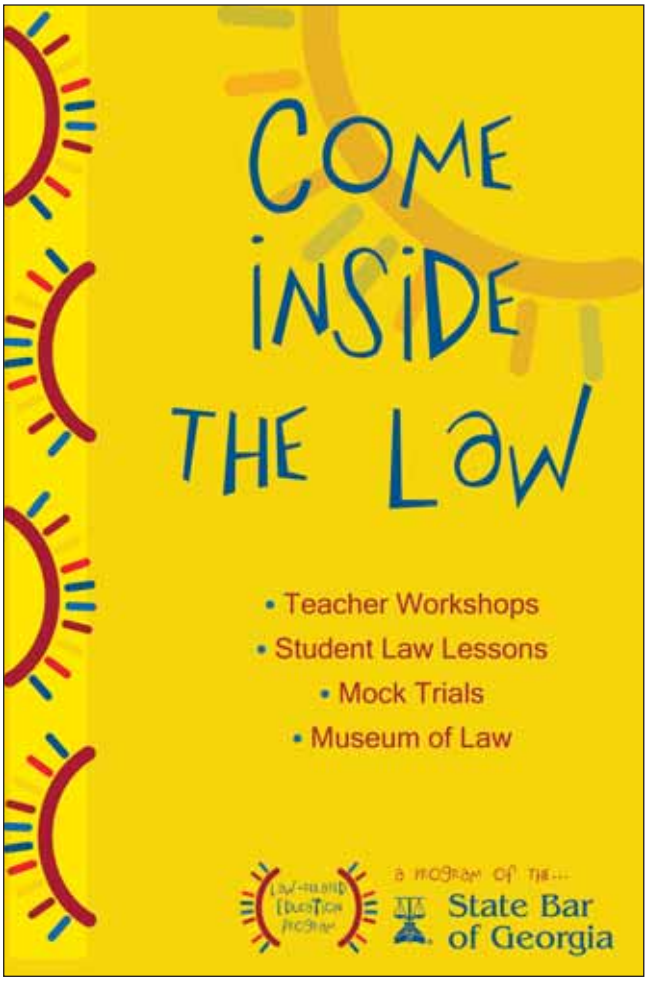
Chief Justice Carol W. Hunstein was appointed to the Supreme Court in November 1992 by then Gov. Zell Miller. She is the second woman in history to serve as a permanent member of the Court. In 1984 Justice Hunstein won election to the Superior Court of DeKalb County. Prior to serving on the bench, Justice Hunstein was in private practice. She has been a member of the State Bar of Georgia since 1976. Justice Hunstein received her J.D. in 1976 from Stetson University College of Law. She received a B.S. degree from Florida Atlantic University in 1972 and an A.A. degree from Miami-Dade Junior College in 1970. Justice Hunstein was the first woman to serve as President of the Council of Superior Court Judges. She chaired the 1993, 1998 and 2001 State Commissions on Child Support Guidelines. She is a member of the American Bar Association's Public Perceptions Committee, the Bleckley Inn of Court and has served as liaison to the Chief Justice's Commission on Professionalism since 1992. In addition to her judicial duties, Justice Hunstein frequently serves as an adjunct professor at Emory University School of Law.

Justice Harold Melton was appointed to the Supreme Court of Georgia by Gov. Sonny Perdue in July 2005. Prior to joining the Court, he served as the executive counsel to Gov. Perdue.
Before serving as executive counsel, Justice Melton spent 11 years in the Georgia Department of Law. He received a B.S. degree from Auburn University and his J.D. from the University of Georgia in 1991. Justice Melton serves as chairman of the Supreme Court Pandemic Commission and is a member of the Commission on Court Interpreters.

Law-Related Education for All

by Deborah C. Craytor

In his keynote address at the American Bar Association's Annual Meeting in August, retired Supreme Court Justice David Souter asked American lawyers to help improve civic education in the United States. "Consider the danger," Justice Souter urged, posed to the continued existence of an independent judicial branch by a society in which two-thirds of the citizens cannot even name the three branches of government. Lawyers "have to go to work" to ensure that "civic understanding becomes a birthright of every American." After all, Justice Souter asked, "What better work could you do?"



The members of the State Bar of Georgia can take pride in knowing that it didn't take a wake-up call from a Supreme Court justice for us to get to work. The Law-Related Education (LRE) Program has been actively working with students and teachers throughout the state, not only to educate them about the law and the judicial branch, but also to instill in our chil-

dren a respect for the rule of law and to give them early positive experiences with lawyers and judges. Among the highlights:

- During the 2008-09 school year, the LRE Program conducted 25 days of teacher workshops for 587 teachers from 25 counties. In addition to teachers from the metropolitan Atlanta area, we worked with educators from Whitfield, Effingham, Lowndes and Schley counties.
- The interest in Journey Through Justice, our interactive field trip program for students in grades 3 through 12, has exploded. During the past school year, the LRE Program conducted 94 Journeys Through Justice for more than 4,200 students. We enjoyed visits from public and private schools, home school groups and community programs, such as the First Impressions Project created by Judge Larry Mims of the State Court of Tift County. We even had the opportunity to work with boys from the Bakers Ferry Center, an emergency shelter care facility for teens awaiting court dates for delinquency or status offenses. This experience was particularly rewarding for both the LRE Program staff and the students; the teacher reported that two of the boys found Journey Through Justice such a positive learning experience that they asked her to help them get back into school, and the Center has scheduled eight trips to the Bar for the 2009-10 school year.
- The Georgia Law Honor Society of Secondary Schools (GLHS) completed its first full year with eight chapters and 76 student members. These students were recognized for their strong academic achievement and their active involvement in both law-related activities, such as the High School Mock Trial Competition, and law-related community service.
- The LRE Program has become *the* law-related education resource for a variety of organizations, from the Georgia Department of Education to the American Legion's Boys State, from the Girl Scouts to Environmental Education in Georgia. Through the activities of the LRE Program, Georgia's lawyers are setting the course for the civic education of thousands of children.

It would be easy for the State Bar of Georgia to rest on these laurels and give itself a well-deserved pat on the back. As of the writing of this article, the LRE Program has already trained more than 200 teachers and scheduled more than 135 Journeys Through Justice for the 2009-10 school year. But as Justice Souter pointed out, a strong civic understanding should be the birthright of every Georgian, and more than 120,000 new Georgians enter the first grade every year. To maintain our leadership role in law-related education for Georgia's teachers and students, we need each one of you, as individuals, to respond:

- Come see Journey Through Justice. Show our teachers and students that Georgia lawyers are interested in the education of Georgia's youth.
- Sponsor a GLHS chapter. Join GLHS members in their law-related activities and community service projects. Go to their induction ceremonies and encourage them in their studies and in their involvement in their communities.
- Talk about what the LRE Program is doing. Tell your friends, your neighbors, your child's teacher, the local Scoutmaster, the parent standing next to you in the line at the grocery store.

The LRE Program appreciates your continued support as we show Georgia students, teachers and parents that the justice system is not a vast, impersonal machine to be feared, but the last and best line of defense of our cherished rights and freedoms. Thanks for working with us; what better work could we do? GBJ

Deborah Craytor is the director of the Law-Related Education Program for the State Bar of Georgia and can be reached at deborahcc@gabar.org.

For more information on the Law-Related Education Program of the State Bar of Georgia, visit the website at www.gabar.org/law-related_education.

The Wilkes County Courthouse at Washington

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Wilkes County built a brick courthouse at Washington in 1817. With the single exception of the old colonial courthouse at Savannah, the only brick courthouses built in Georgia before 1820 were in the Piedmont. While counties in the Cotton Belt and the Coastal Plain settled for crude frame courthouses or even log structures, by 1817 brick court buildings also graced the upcountry squares of Augusta, Madison, Sparta, Jefferson, Appling, Milledgeville, Greensboro and Clinton. Here was a convincing architectural testament to the growing allure of the Piedmont and to western population migration.

By 1790, over one-third of Georgia's 82,548 inhabitants lived in Wilkes County. In that year,

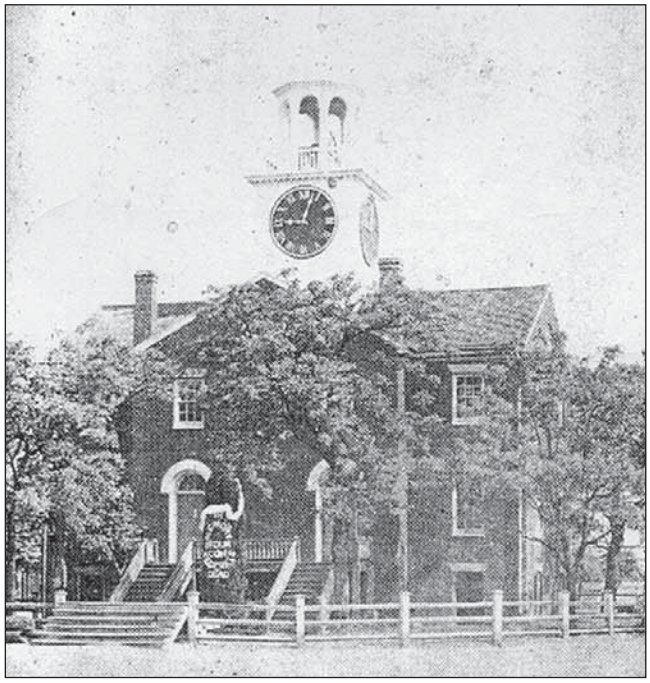


Photo Courtesy of Mary Willis Library, Washington, Ga.

Wilkes County Courthouse in 1817.

Washington was "a thriving village of 34 dwellings, a courthouse, a temporary jail and an academy." Establishing a branch of the Georgia State Bank in 1820, the town flourished in the hospitable waters of cotton's rising tide. In that same year, Wilkes County

counted 14,237 residents, 8,960 of whom were slaves laboring to turn Wilkes County white each fall.

The 1817 Wilkes County Courthouse boasted Georgia's first court clock tower, a feature which was to become an almost obligatory part of courthouse architecture in the late 19th century. The tracery in the fan lights above the doorways and in the oval roundel in the pediment are hallmarks of the Federal Style. With its rather vernacular look, the 1817 building appears typical of the work of that generation of untrained "architect/builders" who practiced in rural America in the first decades of the 19th century. Of the "architect," Frederick Ball, we know little, except that he was a "carpenter" originally from New Jersey living in Savannah, and that he died in 1820 of a "fever."

In the years that followed the Civil War, Ball's courthouse presided over a Wilkes County reeling from the collapse of the plantation system, but by the late 1890s things had begun to change in Washington. Brick buildings began to sprout everywhere. Part of this was a result of a series of disastrous fires. Substantial portions of the town burned in 1895 and again in 1898.

In Washington, the building boom was spurred by railroad speculation, which fueled the dream of ending the town's isolation at the end of an insignificant spur line. It was a dream, which begot a dream, and it resulted in one of the most bizarre courthouses in Georgia. By the mid-1890s, the new courthouse movement in Washington was well underway. In July of 1896, The *Manufacturer's Record* reported that there was "talk of a new courthouse" in Wilkes County. As railroad speculation continued, the new courthouse movement gained strength, and the county commissioners finally purchased the courthouse lot in 1899.

The selection of Frank Milburn as architect was no doubt accomplished by a survey of new courthouses in the area. The proximity of Milburn's 1897 Anderson County Courthouse in Anderson, S.C., can be no coincidence, for the similarities are striking. The county commissioners in Wilkes undoubtedly thought Milburn's work in nearby Anderson to be the very essence of the modern rail center they envisioned at Washington. Milburn was retained, and although he did not exactly copy his earlier work in South Carolina, he captured exactly its soul in Wilkes County. It is interesting to note that upon the completion of the Anderson County Courthouse in 1897, Milburn was accused of copying his own design for the 1893 Forsyth County Courthouse in Winston, N.C.

In the years after the turn of the century, Frank Milburn became arguably the South's pre-eminent

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.

Photos by Wilber W. Caldwell

Built in 1904, Frank Pierce Milburn, architect

Anderson Co., S.C., 1897

architect. His prestigious retainer by The Southern Railway added many depots to his lengthy credits including the main passenger depots at Augusta, Rome and Savannah, Ga.; Columbia, Spartanburg, Greenville and Charleston, S.C., and Durham, N.C. He worked on the remodeling of four state capitol buildings and designed myriad courthouses across the South, including four in Georgia and three in South Carolina. With his roots in 19th century eclecticism, Milburn designed in many Picturesque styles, and he later seemed equally comfortable and competent working in Neoclassical and Beaux-Arts idioms as evidenced by his fine early 20th century courthouses at Valdosta, Thomaston and Abbeville.

Here in Washington, we find a dying gasp of the Picturesque in Milburn's highly eclectic court building. The structure, complete in 1904, burned in 1956 and was restored without its original clock tower. The squat misproportioned tower we see today is the product of a recent clumsy restoration. It lacks detail, appears compressed and bulky in scale and omits the central section of the original, stunningly tall and slender tower. Despite its wounds, the building is a grand example of the limits to which eclecticism was pushed.

The 1904 Wilkes County Courthouse and its older sibling at Anderson are bold and original mixtures incorporating elements of several Picturesque modes of the day. The primary ingredients in these unlikely amalgams are the Richardsonian Romanesque and the Dutch Renaissance Revival. The bold low arch of the courthouse entrance at Washington is typically Richardsonian, as is the fenestration of both buildings with their ordered groupings and broad architraves. Richardsonian models are more clearly revealed at Anderson with the use of stone banding and massive stone voussoirs in the second story windows. These details are articulated in brick in the court building at Washington presumably owing to budgetary considerations. The patterned brick polychrome and scrolling parapets of the Northern European Renaissance cap these Romanesque elevations. The marriage of strikingly different styles is a great deal more graceful in Anderson, where decorative polychromatic brick courses are carried all the way around the building. These intricate brick designs flow into the high parapets with little interruption. In Washington, a broad cornice separates the Dutch parapets from the Richardsonian mass of the building destroying continuity and compartmentalizing the historical elements. It is difficult to say whether this cornice is original. It is probably an addition of recent restorations. As previously noted, the tower of the Washington restoration bears little resemblance to the original. Old photographs of the original building reveal a tower very much like the one at Anderson with Gothic elements in its upper stages.

Milburn's courthouses at Washington and Anderson offer fine illustrations of the Picturesque Eclectic movement in the late 19th century. Like many so-called "drawing board" designs of the era, both were without doubt original, but the nobility of the creative aesthetic at work here is at best questionable. GBJ

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

Notice of Expiring BOG Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2010. These incumbents and those interested in running for a specific post should refer to the election schedule (posted below) for important dates.

Alapaha Circuit, Post 2 .....Thomas C. Chambers III, Homerville
Alcovy Circuit, Post 2 .....Michael R. Jones Sr., Loganville
Atlanta Circuit, Post 2.....Brian DeVoe Rogers, Atlanta
Atlanta Circuit, Post 4 .....Patrise M. Perkins-Hooker, Atlanta
Atlanta Circuit, Post 6.....Dwight L. Thomas, Atlanta
Atlanta Circuit, Post 8.....J. Robert Persons, Atlanta
Atlanta Circuit, Post 10.....Myles E. Eastwood, Atlanta
Atlanta Circuit, Post 12 .....Elena Kaplan, Atlanta
Atlanta Circuit, Post 14 .....Edward B. Krugman, Atlanta
Atlanta Circuit, Post 16.....William N. Withrow Jr., Atlanta
Atlanta Circuit, Post 18 .....Foy R. Devine, Atlanta
Atlanta Circuit, Post 20 .....William V. Custer IV, Atlanta
Atlanta Circuit, Post 22.....Frank B. Strickland, Atlanta
Atlanta Circuit, Post 24 .....Joseph Anthony Roseborough, Atlanta
Atlanta Circuit, Post 26.....Anthony B. Askew, Atlanta
Atlanta Circuit, Post 28 .....J. Henry Walker IV, Atlanta
Atlanta Circuit, Post 31.....Viola Sellers Drew, Atlanta
Atlanta Circuit, Post 33 .....S. Kendall Butterworth, Atlanta
Atlanta Circuit, Post 35 .....Terrence Lee Croft, Atlanta
Atlanta Circuit, Post 37 .....Samuel M. Matchett, Atlanta
Atlantic Circuit, Post 1 .....H. Craig Stafford, Hinesville
Augusta Circuit, Post 2.....William James Keogh III, Augusta
Augusta Circuit, Post 4 .....William R. McCracken, Augusta
Bell Forsyth Circuit .....Philip C. Smith, Cumming
Blue Ridge Circuit, Post 1 .....David Lee Cannon Jr., Canton
Brunswick Circuit, Post 2 .....J. Alexander Johnson, Baxley
Chattahoochee Circuit, Post 1 .....Joseph L. Waldrep, Columbus
Chattahoochee Circuit, Post 3.....Peter John Daughtery, Columbus
Cherokee Circuit, Post 1 .....Randall H. Davis, Cartersville
Clayton Circuit, Post 2 .....Harold B. Watts, Jonesboro
Cobb Circuit, Post 1 .....Dennis C. O'Brien, Marietta
Cobb Circuit, Post 3 .....David P. Darden, Marietta
Cobb Circuit, Post 5 .....J. Stephen Schuster, Marietta
Cobb Circuit, Post 7 .....Andrew Woodruff Jones, Marietta
Conasauga Circuit, Post 1 .....James H. Bisson III, Dalton
Coweta Circuit, Post 1 .....Gerald P. Word, Carrollton
Dougherty Circuit, Post 1 .....Gregory L. Fullerton, Albany
Douglas Circuit.....Robert J. Kauffman, Douglasville
Eastern Circuit, Post 1.....Walter C. Hartridge, Savannah
Eastern Circuit, Post 3 .....Patrick T. O'Connor, Savannah
Enotah Circuit .....Steven Keith Leibel, Dahlonega
Flint Circuit, Post 2 .....John Philip Webb, Stockbridge
Griffin Circuit, Post 1 .....Charles David Jones, Griffin
Gwinnett Circuit, Post 2 .....Judy C. King, Lawrenceville
Gwinnett Circuit, Post 4 .....Phyllis Miller, Lawrenceville
Houston Circuit .....Carl A. Veline Jr., Warner Robins
Lookout Mountain Circuit, Post 1 .....Larry Bush Hill, LaFayette
Lookout Mountain Circuit, Post 3.....Lawrence Alan Stagg, Ringgold
Macon Circuit, Post 2 .....Thomas W. Herman, Macon
Member-at-Large, Post 3*.....Laverne Lewis Gaskins, Valdosta
Middle Circuit, Post 1 .....John Kendall Gross, Metter
Northeastern Circuit, Post 1.....Matthew Tyler Smith, Gainesville
Northern Circuit, Post 2 .....R. Chris Phelps, Elberton
Ocmulgee Circuit, Post 1 .....Wayne B. Bradley, Milledgeville
Ocmulgee Circuit, Post 3.....Donald W. Huskins, Eatonton
Oconee Circuit, Post 1.....James L. Wiggins, Eastman
Ogeechee Circuit, Post 1 .....Daniel Brent Snipes, Statesboro
Out-of-State, Post 2 .....Catrina Celeste Creswell, Chattanooga
Paulding Circuit.....Martin Enrique Valbuena, Dallas
Rockdale Circuit.....William Gilmore Gainer, Conyers
Rome Circuit, Post 2 .....David Clarence Smith, Rome
South Georgia Circuit, Post 1.....George C. Floyd, Bainbridge
Southern Circuit, Post 1.....James E. Hardy, Thomasville
Southern Circuit, Post 3 .....W. Pope Langdale III, Valdosta
Stone Mountain Circuit, Post 1 .....John J. Tarleton, Tucker
Stone Mountain Circuit, Post 3 .....J. Antonio DelCampo, Decatur
Stone Mountain Circuit, Post 5 .....William Lee Skinner, Tucker
Stone Mountain Circuit, Post 7 .....Anne Workman, Decatur
Stone Mountain Circuit, Post 9.....Edward E. Carriere Jr., Decatur
Tallapoosa Circuit, Post 2 .....Brad Joseph McFall, Cedartown
Tifton Circuit .....Gregory C. Sowell, Tifton
Waycross Circuit, Post 1 .....Douglass Kirk Farrar, Douglas
Western Circuit, Post 2.....Edward Donald Tolley, Athens

**Post to be appointed by President-Elect*

State Bar of Georgia 2010 Election Schedule

OCT	Official Election Notice, October issue *Georgia Bar Journal*
DEC 4	Mail Nominating Petition Package to incumbent Board of Governors Members and other members who request a package
JAN 7-9	Nomination of Officers at Midyear Board Meeting, W Atlanta Midtown Hotel, Atlanta
JAN 31	Deadline for receipt of nominating petitions for incumbent Board Members (Article VII, Section 2)
MAR 4	Deadline for receipt of nominating petitions by new candidates
MAR 18	Deadline for write-in candidates for Officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))
APR 2	Ballots mailed
MAY 3	11:59 p.m. deadline for ballots to be cast in order to be valid
MAY 7	Election results released to the State Bar

Kudos


Autry


Hall

Autry, Horton & Cole, LLP, announced that partners **Charles T. Autry** and **Roland F. Hall** have co-authored ***The Law of Cooperatives***. The first of its kind, this book provides a practical, insightful overview of cooperative law and how this form of business differs from other business entities. It is a must read for all executives and attorneys working with cooperatives as well as those seeking to form a new business.


Poloche


Rosenblatt


Bogan

Kilpatrick Stockton announced that associate **Sonny Poloche** was added as a member of **The Georgia Association of Latino Elected Officials (GALEO) Board of Directors** for 2009. GALEO is a nonprofit and non partisan organization focusing on leadership development and increased civic engagement of the Latino community. GALEO also provides a voice for the growing Latino population in Georgia and a framework for collaborative and proactive legislative initiatives for Georgia's Hispanic community.

Paul Rosenblatt, a partner on the firm's leading Bankruptcy & Financial Restructuring Team, was awarded the "**2008 Transaction of the Year**" by the Chicago/Midwest Chapter of the Turnaround Management Association in May.

Partner **Jay Bogan** was formally admitted as a **fellow** into the prestigious **Litigation Counsel of America (LCA)**. The LCA is a trial lawyer honorary society comprised of experienced and effective litigators throughout the United States and represents less than one-half of 1 percent of American lawyers.


Griffith


Krause

Patricia G. Griffith, a partner with **Ford & Harrison LLP**, was appointed to the **Board of Directors of Girls on the Run of Atlanta**, an international organization focused on educating and preparing girls for a lifetime of self-respect and healthy living.

Associate **Rachel R. Krause** was elected as **northern district representative** to the Executive Council for the Young Lawyers Division of the State Bar of Georgia. Krause will hold the position for two years, serving from 2009-11.


Hendrix


Bring

Arnall Golden Gregory LLP announced that managing partner **Glenn P. Hendrix** was inducted as **chair** of the **American Bar Association's Section of International Law**. As chair, he will lead the more than 23,000-member section which serves as a gateway between U.S. lawyers and the rest of the world. Hendrix also joins the Board of Directors of the ABA's Rule of Law Initiative.

Partner **Jason Bring** was inducted as a **fellow** of the **Litigation Counsel of America**, an invitation-only trial lawyer honorary society representing less than one-half of 1 percent of American lawyers.

The office of Lt. Gov. Casey Cagle announced that **Richard Smith** was appointed to serve on the **Georgia Aviation Authority**. The Authority serves as the governing body for all state aviation assets, providing aviation services for the entire state and overseeing all state aviation operations. Smith is the co-founder and managing partner of the firm **Smith, Ronick & Corbin, LLC**, which specializes in transactional law.

Dana K. Maine, a partner with **Freeman Mathis & Gary, LLP**, was selected as a participant in the **2009 Regional Leadership Institute** (RLI) program sponsored by the Atlanta Regional Commission. The RLI is a week-long conference that brings together leaders from across the metro-Atlanta region to learn more about the complex dynamics of the growing Atlanta region and to share experiences and knowledge relevant to advancing the region.

Parker, Hudson, Rainer & Dobbs LLP has been ranked No. 1 in health care; No. 2 in banking and finance and in bankruptcy/restructuring; and No. 4 in corporate/M&A and in litigation: general commercial in the ***2009 Chambers USA: America's Leading Business Lawyers***. Additionally, eight of its partners have received top ranking, including **C. Edward Dobbs**, who was ranked No. 1 in the practice areas of banking & finance and bankruptcy/restructuring, and **John H. Parker**, who was ranked No. 1 in health care.

Additional firm partners recognized among the top in their fields of expertise include the following:

Bobbi Acord Noland, ranked No. 2 in banking & finance; **Eric W. Anderson**, ranked No. 2 in bankruptcy/restructuring; **Armando L. Basarrate**, ranked No. 2 in health care; **Rufus T. Dorsey**, ranked No. 2 in bankruptcy/restructuring; **William J. Holley II**, ranked No. 3 in litigation: general commercial; **Paul L. Hudson**, ranked No. 2 in health care and ranked No. 4 in corporate/M&A.

Amy Kaye, a family law practitioner and partner with **Ellis Funk P.C.**, won a **silver medal** in the **18th Maccabiah Games** that took place in Israel in July. Kaye played singles tennis in the Masters 45+ division. Seven thousand athletes from 56 countries participated in this Jewish Olympic-style competition held every four years.

DeKalb County Assistant District Attorney **Jill Polster** worked as part of an **International Criminal Court** (ICC) team building a case against Jean-Pierre Bemba Gombo, a political and military leader operating in the Central African Republic. The ICC, the first and only independent permanent international criminal tribunal is headquartered at The Hague, Netherlands. The mandate of the ICC is to prosecute people accused of genocide, crimes against humanity and war crimes.

Don Geary, one of DeKalb County's chief assistant district attorneys, received the **Outstanding Advocacy Award in Capital Litigation** from the Association of Government Attorneys in Capital Litigation (AGACL). The AGACL provides resource and research support to district attorneys who are handling capital punishment cases and their appeals.

Nelson

Marshall

Haas

Constangy, Brooks & Smith, LLP, annonced that **Clifford H. Nelson Jr.** and **Townsell G. Marshall Jr.** of the Atlanta office and **W. Melvin Haas III** of the Macon office were named to the list of **Top 100 Labor Attorneys** in the United States for 2009, by the Labor Relations Institute, Inc., a leading industry information source. Inclusion on the list puts these attorneys in the top 1 percent of labor attorneys in the United States, making these attorneys among the most active in representing companies in National Labor Relations Board-monitored elections.

Additionally, Haas was named **vice chairman** of the **Labor Relations Committee of the U.S. Chamber of Commerce**. He was also selected to *Human Resource Executive Magazine's* list of **"Top 10 Most Powerful Labor Attorneys for 2009."**

The District Attorneys' Association of Georgia selected **Stephen D. Kelley**, district attorney of the Brunswick Judicial Circuit, as the **2009 District Attorney of the Year**. **Van Pearlberg**, assistant district attorney of the Cobb Judicial Circuit, was selected as the **2009 Assistant District Attorney of the Year**.

The Georgia Association of Solicitors-General selected **Brian Fortner**, solicitor-general of Douglas County, as their **2009 Solicitor-General of the Year**. **Sandra Guest,** assistant solicitor general of Lowndes County, was named the **2009 Assistant Solicitor-General of the Year**.

The American-Israel Chamber of Commerce recently announced that **Locke Lord Bissell & Liddell** partner **Phillip A. Cooper** joined their Board of Directors. The AICC is a not-for-profit (and non governmental) business organization formed in 1992 to boost both the Israeli and Southeastern economies by helping companies develop business relationships with each other and explore new market opportunities.

Partner **Jeffrey Yost** was announced by **CURE Childhood Cancer** as a member of their **Board of Directors.** CURE was formed in 1975 and remains dedicated to providing resources to patients, families and the medical community in the fight against childhood cancer.

Enoch Overby, Calhoun attorney, was awarded an **Amicus Curiae certificate** by the **Supreme Court of Georgia**—one of the highest honors given by the state's high court. Signed by all seven justices, the certificate recognizes Overby's outstanding service to the state's judicial system, his constant concern for justice for his fellow man and his loyalty to the aims and aspirations of our court system.

JAMS announced that neutral **R. Wayne Thorpe** is serving as **chair-elect** of the **ABA Section of Dispute Resolution**. Thorpe has extensive experience in resolving civil disputes, including class actions, mass torts and other complex cases involving employment, business, commercial, construction, health care and intellectual property claims.

> The Rotary Club of Savannah South announced that attorney **James Drake,** was named **Savannah Rotarian of the Year**. The award is presented annually to a Savannah Rotarian who best exemplifies Rotary International's motto of Service above Self. Cited for his work as chairman of the Georgia Rotary Student Exchange Program and for the various offices that he has held in Rotary District 6920, Drake was selected from a pool of candidates who all have demonstrated selfless service to others through Rotary.

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Philip W. Engle, vice president and general counsel of **Prenova, Inc.**, was admitted to the rolls as a **solicitor** of the **Law Society of England and Wales**, regulated by the Solicitors Regulation Authority. Engle is also chair of the Southeastern Chapter of the North American Branch of the London-based Chartered Institute of Arbitrators (CIArb) and is a fellow of the CIArb.

> **McGuireWoods LLP** was named a **2009 "Best Law Firm for Women"** by *Working Mother* magazine and Flex-Time Lawyers LLC. The list was published in the August/September issue of *Working Mother* magazine. The 50 winning firms were selected based on their workforce profile, family-friendly benefits and policies, flexibility, leadership, compensation, advancement and retention of women, among other criteria.

> **Alan F. Rothschild Jr.**, a partner with Hatcher, Stubbs, Land, Hollis & Rothschild, LLP, has been named **chair-elect** of the **American Bar Association's Section of Real Property, Trust & Estate Law**. The section, with more than 25,000 members, is the leading national forum for lawyers practicing in the estate planning and real estate fields, offering technical analysis of legal issues to the government, developing practice guidelines, holding educational sessions for lawyers and giving legislation input to states. Rothschild, who is in line to become section chair in 2010, will be only the second chair from Georgia in the section's 85-year history.

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Andrew Sheldon received the **Lifetime Achievement Award** from the **American Society of Trial Consultants**. The award was made in recognition of Sheldon's "contribution to the advancement of the art and science of trial consulting," as well as for his work in the retrials of eight Klansmen for racially motivated murders in the 1960s. The eight cases are known collectively as The Civil Rights Murder Trials.

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DeKalb State Court Judge **Barbara J. Mobley** was named to serve a two-year term on the **Chief Justice's Commission on Professionalism**. She was selected as the representative of the Council of State Court Judges. Mobley, a former state legislator, has been on the DeKalb State Court bench since 2005.

> **Dodd & Burnham, PC**, announced that **Roger J. Dodd** was selected as a **2009 Georgia Super Lawyer**. In selecting attorneys for Super Lawyers, *Law & Politics* employs a rigorous, multiphase process. Peer nominations and evaluations are combined with third party research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual, state-by-state basis.

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Andrew R. Fiddes was commissioned as an **officer** in the **U.S. Coast Guard** after completing a period of rigorous military training and education at the U.S. Coast Guard Academy in New London, Conn., this summer. He was assigned as a reservist to Marine Safety Unit Savannah. Fiddes also owns and operates **The Fiddes Law Firm, LLC**, in Atlanta, which specializes in criminal defense and workers' compensation cases.

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Rayford H. Taylor, partner in the firm of **Stiles, Taylor & Grace P.A.**, was recently appointed **president** of the **College of Workers' Compensation Lawyers** for the years 2009-11. The college is a national honorary fellowship of top workers' compensation attorneys. He was inducted into the college in its inaugural class and has served for the past two years as chair of the Nominating Committee. Taylor's practice specializes in the areas of workers' compensation defense, insurance and regulatory law.

On the Move

In Atlanta

> **Jeffrey D. Segal** announced the opening of **The Segal Law Firm, P.C**. The firm practices in the areas of estate planning, probate and corporate transactions. The office is located at 6400 Powers Ferry

Road NW, Suite 490, Atlanta, GA 30339; 770-980-4407; Fax 678-391-9920.

Willie J. Lovett Jr. was appointed to serve as **director** of the **Office of the Child Attorney**. In his new role, Lovett will oversee the Office of the Child Attorney and ensure Fulton County's compliance with the *Kenny A. v. Perdue* consent decree. He will ensure all statutory mandates and the policies of the Child Attorney Board are properly followed and implemented. The Fulton County Office of the Child Attorney is located at 395 Pryor St. SW, Suite 4098, Atlanta, GA 30312; 404-224-4407.

Attorneys **Robert D. Boyd, John L. Collar Jr., Richard M. Nolen** and **Jonathan J. Tuggle** have formed **Boyd Collar Nolen & Tuggle**, a law firm specializing in domestic relations and family law. The office is located at 400 Galleria Parkway, Suite 1920, Atlanta, GA 30339; 770-953-4300; Fax 770-953-4700; bcntlaw.com.

McKenna Long & Aldridge LLP announced the addition of **Earle Taylor, Ken Pollock** and **John MacMaster** to the firm's corporate department. The group's practice focuses on public finance transactions at the state and local levels. The office is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.mckennalong.com.

Habersham Funding, LLC, announced the addition of **Adam S. Hicks** as **general counsel**. Hicks was previously with National Financial Services Group and has extensive experience in law, insurance and financial planning. The firm is located at 3495 Piedmont Road NE, Building 11, Suite 910, Atlanta, GA 30305; 404-233-8275; Fax 404-233-9394; www.habershamfunding.com.

Ragsdale Beals Seigler Patterson & Gray, LLP, announced the addition of **John W. Winborne III** as a **partner** in the Atlanta office and the addition of **Ronald D. Reemsnyder** as a **partner** and **Joyce Y. Kim** as an **associate** in the Cumming office. The firm deals in arbitration and mediation, bankruptcy, construction law, corporate law, insurance coverage law, litigation, real and personal property tax appeals, real estate law and wills and estates. The Atlanta office is located at 2400 International Tower, Peachtree Center, 229 Peachtree St. NE, Atlanta, GA 30303; 404-588-0500; Fax 404-523-6714.

Paula J. Frederick Named General Counsel of State Bar of Georgia

Paula J. Frederick has accepted the position of General Counsel for the 40,000-member State Bar of Georgia, succeeding William P. Smith III, who is stepping down after 25 years of service.

"Ms. Frederick is an exceptional lawyer whose 21 years of experience in the Office of the General Counsel have prepared her well for the significant responsibilities she will assume," State Bar of Georgia President Bryan M. Cavan said. "We are confident that she will provide our Board of Governors, its Executive Committee and the State Bar of Georgia with sound advice and exemplary service."

Frederick previously served as Deputy General Counsel of the State Bar, where her primary duties were interpreting the ethics rules for lawyers and prosecuting lawyer discipline cases. She joined the State Bar staff in 1988 after working for six years as a lawyer with the Atlanta Legal Aid Society, where she handled civil legal matters for the poor. She is a native of Riverside, Calif., earned her undergraduate degree from Duke University and graduated from Vanderbilt University Law School in 1982.

She was the first African American president of the Atlanta Bar Association and is a past president of the Georgia Association of Black Women Attorneys. She received the Charles Watkins award for distinguished and sustained service to the Atlanta Bar Association in 2004 and serves on the board of the Atlanta Bar Foundation. She was inducted into the Gate City Bar Association Hall of Fame in 2004 and is a member of the advisory board for the Georgia Association for Women Lawyers. She serves in the American Bar Association (ABA) House of Delegates and on its Standing Committee on Ethics and Professional Responsibility. She previously served on the ABA's Board of Governors and is past chair of the Diversity Center, Standing Committee on Professional Discipline and Multicultural Women Attorneys Network.

Frederick is a board member of Vox Teen Communications and a past member of the boards of the Atlanta Volunteer Lawyers Foundation and the Georgia Legal Services Foundation. She previously served on the City of Atlanta Board of Ethics and on the Mayor's Review Panel for the City and Municipal Courts. She is AV-rated by Martindale-Hubbell.

The firm's Cumming office is located at 6470 Georgia Highway 400, Building C, Suite 100, Cumming, GA 30040; 770-292-9862; Fax 770-292-9861; www.rbspg.com.

In Savannah

Catherine M. Palumbo joined **McCorkle & Johnson, LLP**, as an **associate**. A member of the Construction and Real Estate Litigation group, Palumbo's practice focuses primarily on commercial litigation, including construction and real estate. The firm is located at 319 Tattnall St., Savannah, GA 31401; 912-232-6000; Fax 912-232-4080; www.mccorklejohnson.com.

In Charleston, S.C.

Christopher M. Ramsey joined **Robertson & Hollingsworth** as an **associate**. Ramsey's practice areas include complex tort, commercial litigation, construction litigation, architecture and engineering litigation. The firm is located at 177 Meeting St., Suite 300, Charleston, SC 29401; 843-723-6470; Fax 843-853-9045; www.roblaw.net.

In Cleveland, Ohio

Hannah F. Singerman joined **Weltman, Weinberg & Reis Co., LPA**, as an **associate**. Singerman works in the firm's Complex Collections department. The office is located at 323 W. Lakeside Ave., Suite 200, Cleveland, OH 44113; 216-685-1000; Fax 216-363-4121; www.weltman.com.

In Jacksonville, Fla.

Courtney Brevelle Thompson joined **Lender Processing Services, Inc. (LPS)**, as **vice president and employment counsel**. LPS is the industry's No. 1 provider of mortgage processing services, settlement services and default solutions, and the nation's leading provider of integrated data, servicing and technology solutions for mortgage lenders. LPS is located at 601 Riverside Ave., Jacksonville, FL 32204; 904-854-5100; Fax 904-854-4124; www.lpsvcs.com.

Best Lawyers in America® 2010

Best Lawyers compiles lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. In the United States, *Best Lawyers* publishes an annual referral guide, *The Best Lawyers in America*, which includes 39,766 attorneys in 80 specialties, covering all 50 states and the District of Columbia. The current, 16th edition of *The Best Lawyers in America* (2010), is based on more than 2.8 million detailed evaluations of lawyers by other lawyers.*

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
- Linda A. Klein
- Edmund J. Novotny
- Charles L. Ruffin

Fisher & Phillips LLP
- Robert W. Ashmore
- D. Albert Brannen
- Burton F. Dodd
- Donald B. Harden
- C.L. "Tex" McIver
- Ann Margaret Pointer
- Roger K. Quillen
- John E. Thompson
- Kim Kiel Thompson
- James M. Walters

Holland & Knight LLP
- Alfred B. Adams III
- Thomas B. Branch III
- Harold T. Daniel
- Laurie Webb Daniel
- Gregory J. Digel
- Robert S. Highsmith Jr.
- Keith M. Wiener

Littler Mendelson P.C.
- Gavin Appleby
- L. Traywick Duffie
- Lee Schreter

McKenna Long & Aldridge LLP
- David L. Balser
- John Stephen Berry
- Wayne N. Bradley
- Bruce P. Brown
- L. Craig Dowdy
- J. Randolph Evans
- Jeffrey K. Haidet
- David M. Ivey
- Mark S. Kaufman
- Michael Levengood
- James D. Levine
- Clay C. Long
- Gary W. Marsh
- James C. Rawls
- William F. Stevens

Parker, Hudson, Rainer & Dobbs LLP
- Bobbi Acord Noland
- Armando L. Basarrate II
- Ronald T. Coleman Jr.
- C. Edward Dobbs
- Rufus T. Dorsey IV
- Charles E. Elrod Jr.
- G. Wayne Hillis Jr.
- William J. Holley II
- Paul L. Hudson Jr.
- Kenneth H. Kraft
- John H. Parker Jr.
- Mitchell M. Purvis
- J. Marbury Rainer
- Jonathan L. Rue
- David G. Russell
- Caroline S. Talley

Rumberger, Kirk & Caldwell, P.A.
- Richard A. Greenberg

Womble Carlyle Sandridge & Rice, PLLC
- Steven S. Dunlevie
- William M. Ragland Jr.
- Michael J. Sullivan
- James F. Vaughan
- Richard H. Vincent

**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 October* Georgia Bar Journal.

State Bar Honors Savannah Officers, Firefighters, EMTs in Sept. 11 Ceremony

Photo by Sarah I. Coole

(Left to right) Terry Enock, Chatham County Sheriff's Office, Wayne Noha, Southside Fire Chief, and Capt. Wilkins, commander of the Downtown Precinct of the Savannah-Chatham County Metropolitan Police, at the Sept. 11 ceremony during the Board of Governors meeting of the State Bar in Savannah's Forsyth Park.

In an eighth anniversary salute to the New York firefighters, police officers and emergency personnel who lost their lives in the line of duty on Sept. 11, 2001, the Board of Governors of the State Bar of Georgia recognized and thanked Savannah and Chatham County law enforcement, fire department and emergency agency members for their continued service during a ceremony held in Savannah's Forsyth Park.

"As we pay tribute today to the heroes of 9/11, we also want to honor those who—like their counterparts in New York City—put our safety ahead of their own each and every day because it is their job," said State Bar of Georgia President Bryan M. Cavan. "Thank you for all you and others like you do for this community, the state of Georgia and the United States of America."

Cavan presented framed copies of a resolution adopted by the Board of Governors "honoring the dedicated service of firefighters, law enforcement officers and emergency personnel in remembrance of Sept. 11, 2001", to Capt. Mike Wilkins, commander of the Downtown Precinct of the Savannah-Chatham Metropolitan Police, Southside Fire Chief Wayne Noha, immediate past president of Chatham County Firefighters, and Maj. Terry Enock of the Chatham County Sheriff's Office.

The ceremony was part of the State Bar's fall meeting of the Board of Governors in Savannah.

Nahmias a Deserving Choice for Supreme Court Seat

The State Bar of Georgia congratulates U.S. Attorney David Nahmias on his appointment by Gov. Sonny Perdue to the vacancy on the Supreme Court of Georgia, succeeding former Chief Justice Leah Ward Sears.

"Nahmias has earned a superb reputation as a pursuer of justice during his 14 years as a federal prosecutor, including the past five years as U.S. Attorney from the Northern District of Georgia. His prior experience in the appellate courts as a clerk for U.S. Court of Appeals Judge Laurence H. Silberman and U.S. Supreme Court Justice Antonin Scalia will serve him well in his new position," said State Bar of Georgia President Bryan M. Cavan.

"The State Bar enjoys an outstanding working relationship with the current members of the Supreme Court of Georgia, led by new Chief Justice Carol W. Hunstein, in our joint efforts to raise public awareness of the importance of a strong judicial branch of government and a fair and independent court system in our state. We look forward to working with Justice Nahmias in this endeavor."

It's Not a Real Case, it's Pro Bono!

by Paula Frederick

"Drop whatever you are doing," your senior partner demands. "The CEO of BigClient just phoned. He's going to be downtown this afternoon, and he wants to talk to us about the next steps in the *Landers* lawsuit. I haven't kept up with the details, so you need to bring me up to speed—and fast!"

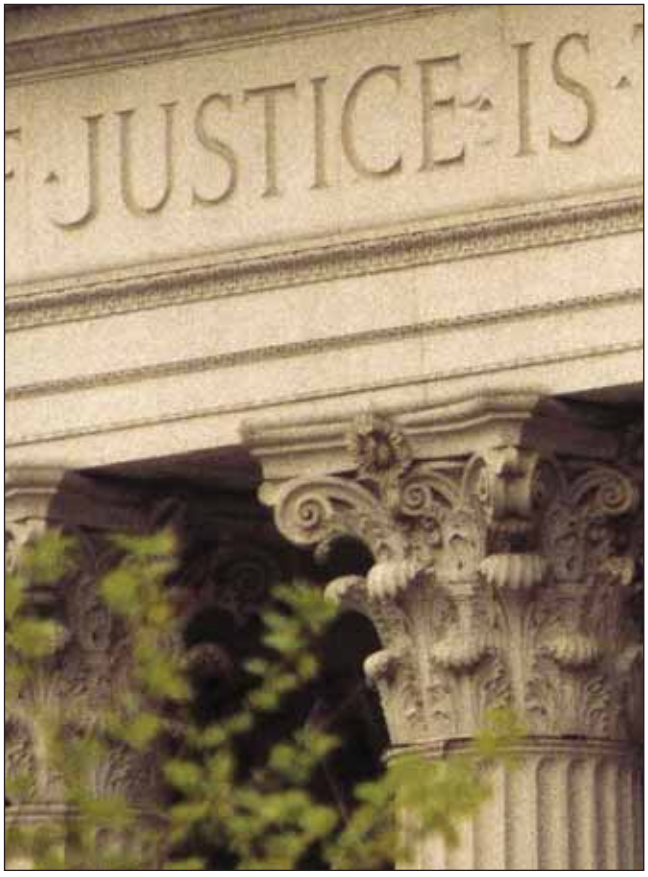
"Umm. . . I have a hearing at 2 p.m.," you advise the partner.

"Hearing? You're a brand new lawyer! I'm sure you have co-counsel—let them proceed without you."

"I'm the *only* lawyer," you announce proudly. "It's my pro bono case in housing court."

"Ah, pro bono," your partner says with a shake of her head. "That's going to have to wait. The *Landers* case is what pays the bills. Let's go," she urges as she herds you down the hall towards her office. "I need your help with some *real* work."

"This *is* real work!" you shout—but only in your head.



Rule 6.1 of the Georgia Rules of Professional Conduct encourages Georgia lawyers to render at least 50 hours of pro bono services each year. The rule recognizes the critical need for lawyers to provide free legal services to persons of limited means.

But what is a lawyer to do when her pro bono work begins to interfere with work for paying clients? Even the most well-intentioned lawyer might be tempted to relegate the pro bono case to the bottom of her "to-do" pile.

Big mistake! The Rules of Professional Conduct apply without regard to a client's wealth or poverty, and the Rule 1.3 prohibition against abandonment of a legal matter certainly applies to your 2 p.m. hearing. You must appear or make other arrangements for the client's matter to be handled professionally.

A lawyer handling his first pro bono matter may also make the mistake of believing that a matter is easy just because there is a small amount of money at stake. Pro bono cases can be complex, and may take you places you have never been—to the local courthouse, for example.

Rule 1.1 of the Georgia Rules of Professional Conduct requires a lawyer to provide competent representation to a client. The Rule describes "competence" as a combination of "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Georgia lawyers are lucky to have an assortment of bar associations and pro bono entities that recruit, train and supervise volunteer lawyers for pro bono cases. They may also provide malpractice coverage for the cases they refer. Take advantage of the support these entities offer and volunteer today!

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

Discipline Summaries

(June 15, 2009 - Sept. 15, 2009)

by Connie P. Henry

Disbarment

Leonanous A. Moore
Atlanta, Ga.
Admitted to Bar in 2003

On Sept. 8, 2009, the Supreme Court of Georgia disbarred Attorney Leonanous A. Moore (State Bar No. 520054). The Court considered six disciplinary actions against Respondent Moore. Moore was served by publication and did not file a timely answer or notice of rejection of discipline. The following facts are admitted by default:

Moore was the closing attorney in a real estate transaction in June 2006. At closing, the HUD-1 settlement statement listed a sales price $9,000 higher than the price on the sales contract. The settlement statement also listed "cash to seller" of $16,329.84. The seller received $8,079.84 through a wire transfer and Moore wrote a check to the seller for the balance, but gave the check to the buyer's loan officer. The check has two endorsements, the first from the seller, which the seller's wife contends is a forgery, and the second from a third person who purportedly loaned money to the buyer to cover the buyer's down payment.

In addition Moore received $75,000 in May 2007 to hold in escrow pending the sale of real property and did not release the funds upon the buyer's default. In November 2006, Moore received $10,000 to hold in escrow pending the sale of real property and, upon the buyer's default, did not pay the funds to the seller as the parties had agreed, and has not paid the judgment the seller won by suing Moore for the funds. Moore served as a title agent for a title company from October 2006 until September 2007 and did not record the deeds in several of the real estate transactions which he closed. Moore's service as a title agent was terminated by the company following his payment of title insurance premiums with checks drawn on his trust account in which there was insufficient funds to cover the checks. Moore did not communicate with the title company nor return the files after his termination. In 2007 and 2008, the State Bar received information of insufficient funds in two of Moore's trust accounts but Moore failed to respond to requests for more information regarding the accounts.

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 June 15, 2009, seven lawyers have been suspended for violating this Rule and one has been reinstated. GBJ

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

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Quick Tips for Managing Overflowing Inboxes

by Natalie R. Kelly

E-mail, and inbox management in general, is a daily struggle for most computer users. With a barrage of information coming from work and Internet e-mail accounts, social networking pages, interoffice mail accounts and other services, most lawyers find themselves constantly engaged in information management battles. Today, it's likely that most people have three or four inboxes to check in the same amount of time each day.

So how do you keep up? Here are some quick tips that will hopefully make your inboxes more manageable:

- Keep it simple. Don't overflow your inbox with unattended messages because you need to do something as a result of the message. Nor should you keep an extremely intricate list of folders looking like the Great Wall of China to help you organize your messages. Be more concise. No need to have yet another sub-folder for the individual committee members of a group to which you belong. A good rule of thumb is that if you don't expect more than five pieces of mail or information from a particular sender, then there's probably no real need for a sub-folder dedicated solely to that particular sender or particular item.

- Deal with e-mail immediately. Try to keep your inbox as clean as possible by dealing with items as they arrive. Don't get drawn into the habit of

opening mail and not filing it away properly. If an e-mail requires follow up or there is something that you need to do as a result of an e-mail, do one of two things: either perform the task, or add it to your to do list or calendar as an item that needs to be done in the future.

- Use filing programs to help you get mail to appropriate folders, especially after they have been dealt with already or need to be stored for future use. Speedfiler by Claritude (a Microsoft Outlook add-in tool) and similar applications are good ways to stay on top of messages. They generally operate by sending messages to folders either automatically or by making suggestions for appropriate places to file away e-mails in your existing folders.
- Set up times for checking e-mail as you do with voicemail messages. Try to get into a routine, i.e. check voicemail, check e-mail, check online items and then move to calendar and work items. Repeating routines throughout the day can help minimize the natural distraction of mail, and even help with time management as other natural interruptions to your day occur. From a purely psychological standpoint, it's good to get away from the inbox for a while and come back refreshed and ready to deal with the volume that might be waiting there for you.
- Let your telephone or other PDA help you when you are working remotely. You can use your handheld to manage e-mail while working remotely. Most smart phones today make it relatively easy to receive your e-mail and set up messaging so you can deal with items without being in the office physically. This means you won't have to come back into the office to hundreds of e-mails.
- Learn advanced features of your e-mail product, especially the searching and sorting functions. By quickly finding information that comes into the inbox or that has been filed away in e-mail folders, you are able to keep your inbox traffic down with the proper management of tasks and appointments.
- Let your calendar and to do list rule. Transfer "to do list" messages to your practice manager or other task management system. If you are not totally digital and still operate from a main office calendar or the next yellow legal pad, you should do your best to deal with "to dos" in their own space, and that is not the inbox!
- First things first. Work with the urgent and important rules. After you open your e-mail, and especially if you're behind in keeping your inbox clean, scan the messages for items that are urgent or important. Deal with these items and then move to other less important items.
- Use online aggregators and personal homepage setups like iGoogle and My Yahoo! to gather inboxes for your RSS news feeds, Twitter accounts (even though I prefer tools like Tweetdeck for Twitter), Facebook, LinkedIn and links to other inboxes. These launching pad type sites also help as you block out a certain time of day to visit and to deal with the messages that you are receiving from your various inboxes.
- Use e-mail etiquette to announce key items like your firm confidentiality statement and upcoming firm events or your plans to be out of the office. Also, don't use a signature that won't be helpful to your mail recipients. Give recipients an easy way to contact you, if you expect to be contacted. This tip helps keep unnecessary "what's the best way to contact you" e-mails to a minimum.
- Extend your marketing efforts by sharing your outreach in your e-mail signature blocks. This marketing tip also helps with managing the inbox, as again, you are inviting only necessary messages. Your firm does not handle personal injury cases and your e-mail recipients know that because your practice areas are listed in your e-mail signature.
- Out of office messages can also help keep your inbox messages down. Opposing counsel can send that flurry of e-mail to your paralegal's inbox while you're away.
- For security, keep a list of passwords in a location that can be accessed in case of an emergency, or if something were to happen to you. While you might not be able to handle e-mail as a result of an emergency, this tip will help you set up some procedures to have someone keep up with your inbox items while you are unavailable.
- Set up timers so that they start when you open mail when charging for receipt and review of e-mail. This relatively easy way to track your work via e-mail can also help motivate you to keep that inbox clean!

These tips are in no way exhaustive, especially in terms of the products and services you can use to keep your inboxes manageable. However, sometimes it's the one small change that makes dealing with a growing problem like e-mail overload a bit easier.

Feel free to share your e-mail and inbox management tips with the Law Practice Management Program. Send them to nataliek@gabar.org or call 404-527-8770/800-334-6865 ext. 770. GBJ

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.

Newly Formed Sections Accepting Members

by Derrick W. Stanley

Sections are formed when Bar members feel there is an unmet need in the current sections for their area of practice and they are then willing to dedicate the time and energy necessary to start a new section. Over the past year, two areas of practice had individuals committed to their creation and now the State Bar of Georgia has an Animal Law Section and an Employee Benefits Section.

After many months of hard work and diligence in meeting the requirements to present to the Executive Committee and the Board of Governors, Claudine Wilkins, Wilkins & Associates, P.C.; Paulette Adams-Bradham, Adams-Bradham P.C.; and Michael Monnolly, Alston & Bird LLP, successfully met the requirement to have new sections created.

The process requires the interested party to obtain 50 signatures of individuals who also agree there is a need for a new section. After the signatures are obtained, model bylaws must be completed and current section chairs, where a possible conflict may be perceived, must be contacted. The packet is then sent to the Bar for review by the Executive Committee. Those who have submitted the supporting documents have the option of attending the meeting in person or via conference call. The Executive Committee will then either request additional documentation or forward the request to have the section formed to the Board of Governors. The section sponsors are then required to attend the Board of Governors meeting and be prepared to answer questions if necessary. Once the Board approves the section, it is considered formed. This process is in place to ensure that sections will be viable after their formation.

"The process was well-formed," said Adams-Bradham, "by providing the additional information that was requested, it proved to the Executive Committee, and eventually the Board of Governors, the importance and value of the section." Monnolly stated, "the process is simple; however, it does take more time than you might initially think to complete the tasks from beginning to end. I am grateful that we took the team approach to divide the work."

Adams-Bradham and Monnolly have taken the team approach on all aspects of the Employee Benefits Section. They have held regular meetings and phone conferences on plans to increase the membership of the section. Their most current venture is hosting an open meeting at the Four Seasons Hotel in Atlanta. "On Oct. 22, we are having our first open meeting. We thought an 'Afternoon Tea' would allow potential members to leave work a little early and join us at the Savannah Hall for a networking session," Adam-Bradham said. Monnolly added, "This will also provide us an opportunity to establish committees to plan upcoming events and CLE functions and form a strong foundation for the section. Anyone is invited to attend and sign up for the section. All participants are asked to do is RSVP to michael.monnolly@alston.com."

Wilkins saw a need for an Animal Law Section and single-handedly completed the process required for section formation. "I'm so excited about the formation of the Animal Law Section. It has been well worth my time and I look forward to the section's growth."

Membership is now open to both sections. You can join by downloading the section application from www.gabar.org/sections/how_to_join_a_section/.

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

The 2010 Ben F. Johnson Jr. Public Service Award

Nominate an exceptional Georgia lawyer now.

The Ben F. Johnson Jr. Public Service Award is presented annually by Georgia State University's College of Law to a Georgia attorney whose overall accomplishments reflect the high tradition of selfless public service that our founding dean, Ben F. Johnson Jr., exemplified during his career and life.

The list of past recipients is very distinguished indeed, including Steve Gottlieb for 2009. Who will be the next outstanding lawyer to join the ranks? **Nominate a deserving Georgia attorney by Thursday, December 31, 2009.**

Please send your nomination in the form of a letter to the attention of: Anne S. Emanuel, Professor & Chair of the Selection Committee, Georgia State University College of Law, P. O. Box 4037 Atlanta, GA 30302-4037, by e-mail: aemanuel@gsu.edu or by fax: 404-413-9228.

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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 tool bar and how to do basic searches. In this issue, we will take an in-depth look at the "Advanced Fields" area on the "Case Law Search" page.

When you log on to Casemaker, you will be taken to the Georgia library. Choose the "Case Law" tab (see fig. 1) and go to the "Advanced Fields" area below the "Full Document Search" box (see fig. 2.) Notice the "Clear Search" link with a yellow logo on the right side of the page (see fig. 2.) Click this link each time you conduct any search. Casemaker is designed to hold your last search; failure to clear out the old search terms is one of the common hindrances to conducting a successful search.

The "Advanced Fields" boxes contain eight choices; "Cite," "Case Name," "Docket Number," "Court," "Attorney," "Opinion Author," "Panel" and "Date Decided." If you are trying to find a specific case and know just one or two pieces of information, you can use these fields to narrow your search. The citation field is not case sensitive, in fact you may enter "226 ga app 220." (see fig. 3), and Casemaker reformats to proper citation formatting automatically (see fig. 4.)

The "Case Name" field is also not case sensitive, and one can enter just one name if it is not too common; Jones, for instance, would obviously not work because it would bring up too many to search effectively. The "v" between the case names is not necessary but do remember to leave a space between names. A search for the name "Ruiz" will pull up seven results (see fig. 5) but when a second party, "Pardue", is included the result is just three cases (see fig. 6.) Many users put case names into the "Full Document" search box failing to realize that header information, such as case name and citation, will not be included when searching in this field. Full document searching looks only for the words in the body of the text of the opinion. You may find your case this way, but it is not the most efficient search method. Try this out with several names and see how it works.

Each of the other categories in "Advanced Fields" works similarly to the "Case Name" and "Cite" fields. The addition of quotation marks can be useful to reach an exact case. Entering too much information can be a problem. If you know a case citation, it is best to begin your search with only the "Cite" field. From my experience, too much information can bring more cases or no cases. If you only know one of the parties by name and you are certain of the attorney or the court, then entering both of these pieces of information will be helpful in narrowing your search to cases you need. As with any tool, the more time you spend using it, the better you will become at your craft, in this case research.

Casemaker is a great free tool for attorneys researching cases. In order to make the most of this benefit, take advantage of our free training. Future seminars will be listed on the State Bar of Georgia homepage. Please feel free to call me at anytime with Casemaker questions. I can usually help you find your answer quickly, and it is always a pleasure to get to know our Bar members more personally. GBJ

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

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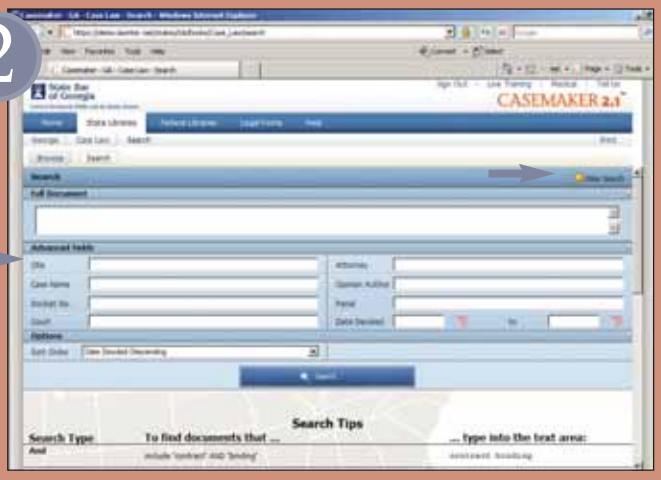

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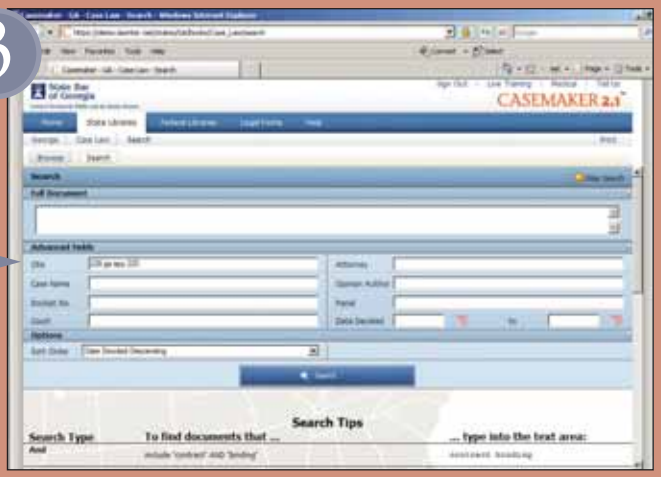

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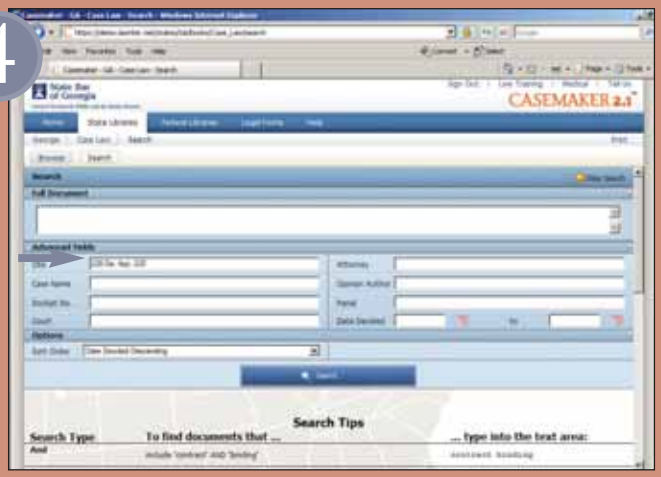

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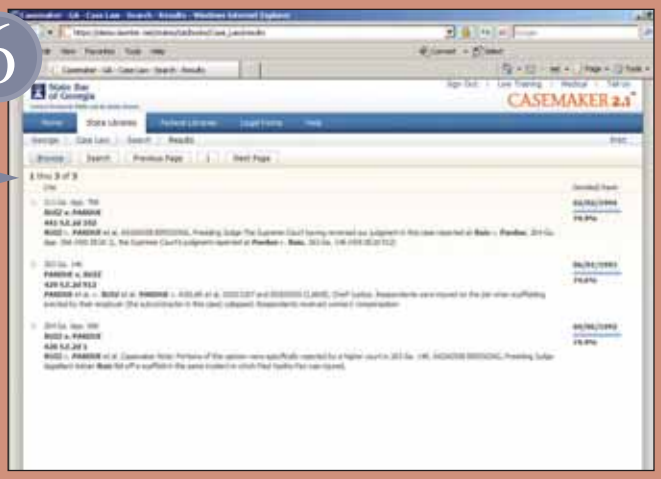


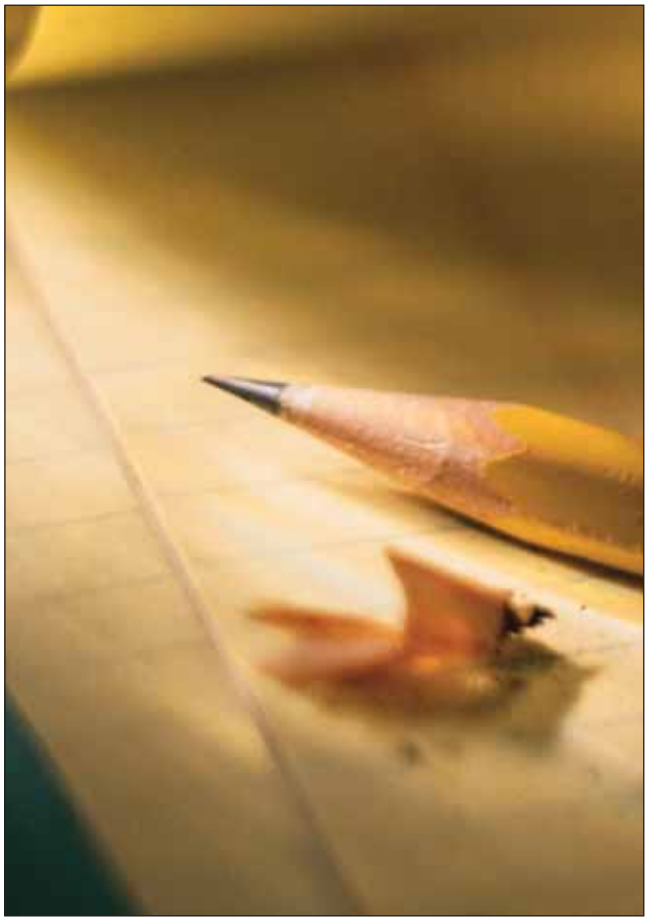
We offer Casemaker training classes four times a month. Upcoming training classes can always be found on the State Bar of Georgia's website, www.gabar.org, under the News and Events section. Onsite Casemaker training can also be requested by local and specialty bar associations.

Effective Transitions

by Karen J. Sneddon and David Hricik

Especially for the beginner, it seems impossible to meet the demands of effective legal writing. It must convey complex concepts or events—and sometimes, both —in a straightforward manner that is readily accessible to a reader who often is rushed and can only give the matter less attention than it would receive in a perfect world. To make this process easier, effective legal writers use several devices that ease comprehension, such as clear sentence structure, shorter sentence length and deliberate word choice.

Another key device is the use of transitions. This installment of "Writing Matters" will broaden your transition repertoire and provide useful examples of more sophisticated transitional phrases. While good legal writers often strip sentences to their bare essentials, the addition of transitions can both ease comprehension and increase the power of persuasive writing. We'll make two points: you should vary your use of even the common transitions to liven up your writing, and you should consider using more sophisticated transitional phrases because they can increase the persuasiveness and effectiveness of your writing.



But first: what are transitions? Well, you just read one. Transitions are words or phrases that convey the

connection between ideas and concepts expressed in different sentences or paragraphs, highlighting and sometimes creating the connections between sentences, paragraphs and topics. Because they make these connections clearer, transitions ease communication and enhance persuasiveness.

Not limited to single words, transitions may be in the form of a two-to-three word phrase or be an entire introductory clause, such as "turning to the first element." Good legal writers generally do not overlook the benefits of transitions. Instead, the problem is one of overreliance on the same stock phrases. We can all fall into a transitional rut, leaning too heavily on the transitions "however" or "first, second, third." While selective repetition can emphasize points, pervasive use of the same transitions can negate the benefit of transitions. Even using "as a result" instead of "consequently" will provide variety.

At the end of the column is a list of selected transitional words and phrases that can help you move the reader from one point to the next. If you find yourself using one repeatedly, see if another will operate as a synonym to provide variety and yet also guide the reader.

But transitions can do far more than merely guide a reader. They can provide subtle, yet powerful, persuasive influence. Contrast these three paragraphs, which convey almost essentially the same information:

> When interpreting a federal statute, the text of the statute is most important. Under federal law, legislative history is less important than text. Courts should avoid relying on legislative history when the text is clear.

> When interpreting a federal statute, the text of the statute is most important. Therefore, legislative history is less important than text. So, courts should avoid relying on legislative history when the text is clear.

> When interpreting a federal statute, the text of the statute is most important. Because text is controlling, legislative history is less important than text. To maintain the text's importance, courts should avoid relying on legislative history when the text is clear.

While this is a simple example, you can see that transitions not only can be used to tie together ideas, but to also tie them together in a way that persuades and provides additional enlightening information. Note, however, that doing so comes at a cost: additional words. Good writers must always balance length with other goals. GBJ

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 No. 1 legal writing program in the country by *U.S. News & World Report.*

Selection of Transitional Words & Phrases

Above all	Comparatively	Furthermore	Later	Soon
Accordingly	Concerning that/this	Hence	Likewise	Specifically
Additionally	Consequently	Here	Meanwhile	Still
Again	Considering that/this	However	Moreover	Subsequently
Afterward	Conversely	In addition	Nearby	Suddenly
Also	Correspondingly	In conclusion	Nevertheless	Then
Alternatively	Coupled with	In contrast	Next	Therefore
Although	Eventually	In essence	Nonetheless	Though
And	Excepting	In its most basic form	Notwithstanding	Thus
Appropriately	Excluding	In particular	Now	To be sure
As a consequence	Equally	In the present case	Once	To illustrate
As a result	Even though	In spite of that/this	On one hand	To that/this end
As an alternative	First (second, third)	In sum	On the contrary	To summarize
As well as	Finally	In summary	On the other hand	Too
At first	Fittingly	In the final analysis	Plus	Unfortunately
At last	For example	In the same manner	Put another way	Until now
At the same time	For instance	In the same way	Regarding that/this	Up till now
At that/this point	For that/this purpose	In view of that/this	Similarly	What's more
Because	For that/this reason	Indeed	Since	With that/this in mind
Besides	Fortunately	Instead	So	With the result that
But	Further	Lastly	So far	Yet

Georgia Law Students Oriented on Professionalism

by Avarita L. Hanson

Law school orientations were held at all of Georgia's ABA-accredited law schools earlier this fall with over 1,000 participating students. While memories of the first days of law school may fade with time, for the 17th year aspiring attorneys have had a common experience during orientation including hearing from outstanding jurists and practitioners on professionalism ideals. Orientations include the opportunity for students to engage in spirited conversation with volunteer lawyers around carefully crafted hypothetical situations. Topics often include potential law school honor code violations and real world issues of professionalism.

The Law School Orientation Program is spearheaded each year by the State Bar of Georgia's Committee on Professionalism in partnership with the Chief Justice's Commission on Professionalism and the law schools. Dick Donovan, Professionalism Committee chair states that "the 2009 orientations were very valuable and worthwhile to the first-year students because of the time and effort members of the State Bar put into the breakout sessions and into the program. It's the dedication of these Bar members—judges, sole practitioners and members of larger firms—that make our programs so successful. Without them, the students would not get the chance to learn from those whose experience is so important in learning professionalism."

Photos by Terie Latala

U.S. Magistrate Judge Alan Baverman administers the Professional Honor Code Pledge to first-year law students at Georgia State University College of Law.

U.S. Magistrate Judge Alan Baverman used familiar scenes from the classic movie "The Wizard of Oz" to demonstrate timeless messages of professionalism to 225 incoming students at Georgia State University College of Law on Aug. 11. Baverman, a former criminal defense attorney, pointed out that professionalism is in some respects subjective, and true ethical behavior has to be hardwired in people and the way they think. He also advised students to seek out the right people and

firms to guide them along and work only with those who have the best reputation and to read materials other than law; manage their time to better represent clients; anticipate the unexpected; be able to tell clients what you can and won't do; write clearly and with brevity; be prepared at all times; avoid quick and hasty decisions; have courage to stand against people who make unreasonable demands on you; have a heart and be tough and fair; and "get a life" with interests and friends outside of the law to get a better perspective. The most important lesson he relayed was: "As a lawyer and as a human being you have the ability to make choices; you always have the choice between doing right and wrong."

The Mercer Law School orientation on professionalism, held on Aug. 14, began with a review by Professor Patrick Longan and attorney group leaders. Next, Jonathan Weintraub introduced Mercer alumna Judge Martha Christian of the Macon Judicial Circuit Superior Court as the day's keynote speaker. Christian urged students to strive to be professional. "The legal system is a self-regulated system and it is important for lawyers and judges to show proper respect." She gave several examples of professionalism in practice from the need for attorneys to thank jurors for their service to the need to represent the guilty, as part of the need for professionalism. She also quoted Chief Justice Charles Weltner who said, "the client can never be the conscience of the lawyer. A lawyer is the servant of the client, but the client is never master." Christian elaborated that every choice a student makes develops their professional identity. Further "law can shape and mold who we are as a culture, however we have to be careful that our culture does not define our law… Some facets of who you are in this profession are not interchangeable. If you change with every client, you won't be a lawyer for long." Professionalism is about being able to respect and recognize changes that must be made because of our culture, as well as being able to stand by long standing traditions and the laws that support those traditions.

(Head of table, left to right) Group leaders Judge Tilman E. Self III of Macon and Edward D. Tolley of Athens discuss ethics & professionalism hypotheticals with new law students at the University of Georgia.

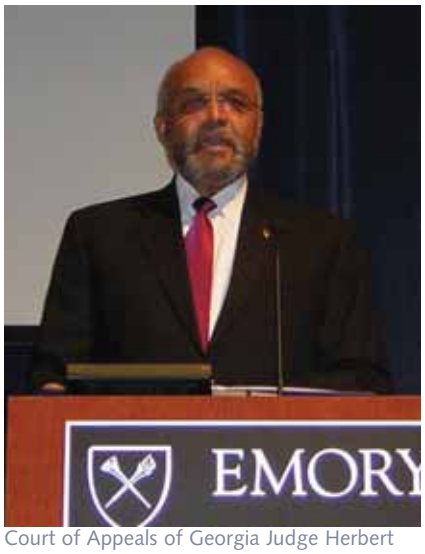
At the University of Georgia's law school orientation on Aug. 14, speaker Judge Steve C. Jones of the Superior Court for the Western Judicial Circuit in Athens was introduced by Professor Paul Kurtz, his former teacher. Jones lauded the leadership of lawyers in America as he welcomed the 241 incoming students. "It is an honor to be a lawyer and to be part of a profession that has played a major role in America. Thirty-five signers of the U.S. Constitution were lawyers; 11 governors were UGA Law School graduates and 24 of 43 prior presidents of the United States were lawyers, with our current and 44th president, Barack Obama, also being a lawyer."

"With this honor comes responsibility. The foundation for everything you learn for the next three years and for the rest of your legal life will be built on professionalism. Professionalism is the set of attitudes and behaviors believed to be appropriate to a particular occupation, which include but are not limited to, accountability, excellence, duty, honor, integrity and respect for others." Students should assume the highest values of the legal profession at the onset of their legal education and, as Jones advised to these perhaps competitive law students, "it is not an excuse that your competitors made you forget to be respectful to your classmate, humble in victory and honorable in times you do not prevail."

"Society depends on the legal profession to be lighthouses" and that their "light can also save others through your community service and pro bono activities," Jones concluded. His four-way test of professionalism in the things we say and do is to ask, "Is it the truth? Is it fair to all concerned? Will it build good will and better friendships? Will it be beneficial to all concerned?"

Following Jones' address, UGA students then took the honor code oath.

On Saturday, Aug. 15, John T. Marshall of Bryan Cave Powell Goldstein told stories of the time-honored principles of professionalism to Atlanta's John Marshall Law School's 235 incoming students. Having started law practice in 1962, Marshall easily added humor and homespun anecdotes to tales of professional encounters and experiences where he learned first-hand about professionalism.



Court of Appeals of Georgia Judge Herbert Phipps addresses students at Emory University School of Law on Aug. 21.

He told of situations that students will remember for years to come, as well as some dos and don'ts of professionalism. He also told the students that theirs is "a magnificent career which will challenge the very best you have in you and that can have its high and low moments." He cautioned students to not be overly technical, as "there are obstacles in the way and you will find that the letter of the substantive law is not enough" to be professional. Also, "money will get in the way but don't sacrifice your integrity because you will have difficulty getting it back." His top rule to live and practice by is "conduct your career so nobody will ever say that somebody is more honest than you."

Court of Appeals of Georgia Judge Herbert Phipps shared his legal career aspirations and experiences practicing in Southwest Georgia in the 1960s with 251 incoming students at Emory Law School's orientation on Aug. 21.

Phipps grew up on his great-grandfather's farm in Baker County, Ga., in the early 1940s when the county was a poster child for racial injustice in America. It was the backdrop for what became a U.S. Supreme Court case, *Screws v. United States,* which involved the arrest on a forged warrant and ultimate lynching of Robert Hall by the county sheriff. Sheriff Screws was tried and convicted and, after a successful appeal and consequent new trial, was not only acquitted, he was elected to the Georgia State Senate.

Phipps found that in his early days, Georgia's black residents had nowhere to turn for relief against the daily injustices of segregation and life in rural Georgia; they could not count on law enforcers and the courts. The conditions of the segregated South and mistreatment of his family and neighbors led him in his early teens to attend court to watch trials. Often, he and the defendant were the only black persons in the court because then the only black lawyer practicing in southwest Georgia was C. B. King, for whom the U. S District Court in Albany, was later named. Phipps observed an "all white judicial system" and he "never saw a white lawyer or judge do anything to stop or remedy" any unjust action toward a black citizen. Thus, he reasoned, "a legal education could be used to uphold justice or inflict injustice." Phipps said, "Injustice is what drove me to the legal profession and the type of lawyer I chose to become."

He returned to Albany to practice law with King after completing law school at Case Western Reserve and Morehouse College and found only slight changes in the conditions faced by his neighbors during his years away. "My practice required me to be at the top of my game ethically and professionally to avoid disbarment or even prosecution." Phipps believes that "professionalism boils down to two words: integrity and competence." It includes your personal appearance and demeanor which are "always under scrutiny," and he advises aspiring lawyers to "look sharp and be sharp." In sum, he says, "You are Exhibit A; you are the message." Before administering the honor code oath to the Emory students, Phipps ended with the lesson of his life: "The days of injustice that cry out for courageous lawyers are still with us."

To make this tradition of orienting incoming students on professionalism a success, the assistance and cooperation of dedicated administrators and staff at the law schools is required. Many thanks to Dean Roy Sobelson and Dr. Cheryl George at Georgia State University College of Law; Mercer's Dean Daisy Floyd, Professor Patrick Longan, Mary Donovan and Debra Boney; Dean Rebecca White, Professor Paul Kurtz and Professor Jill Birch of the University of Georgia School of Law; Atlanta's John Marshall Law School Dean Richardson Lynn, Dean Sheryl Harrison; and Emory University Law School Dean Jim Elliott, Dean Jan Pratt and Dean Kathryn Brokaw. We also extend our gratitude to the many volunteer judges, lawyers and professors who came from near and far to serve as group leaders and keynote speakers and added their voices to the important message that professionalism is required from the first day of law school and throughout an attorney's career. Finally, this program's success is greatly attributed to the dedication and hands-on involvement of Professionalism Committee Chair Dick Donovan, who has been involved with the law school orientation program since its inception and to Commission staff, Avarita L. Hanson, executive director; Terie Latala, assistant director; and Nneka Harris-Daniel, administrative assistant. This special common rite of passage—the law school orientation program —continues to be relevant, meaningful and memorable for all involved. GBJ

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

2009 Law School Orientations on Professionalism Volunteers

Emory University
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Jeremy P. Burnette
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Charles A. Marvin
Kerry E. McGrath
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Martin A. Shelton
Roy M. Sobelson
Kathryn V. Stanley
Hyen-Yeng Sung
B. Ellen Taylor
Michael J. Tempel
Willard N. Timm Jr.
Wayne D. Toth
Teri B. Walker
Kathleen A. Wasch
Roderick B. Wilkerson

John Marshall Law School
Roy P. Ames
Kimberly F. Bandoh
Frederick V. Bauerlein
Marilyn S. Bright
John C. Bush
David S. Crawford
Willie G. Davis, Jr.
David S. DeLugas
Donald R. Donovan
Judge James E. Drane
Hassan H. Elkhalil
Elizabeth L. Fite
Emilie R. Freeman
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Anthony A. Hallmark
Lorraine Hoffmann-Polk
Nicole S. Holcomb
Adam S. Jaffee
Jerbrina L. Johnson
Howard J. Kent
R. Adams Malone
John T. Marshall
James T. Martin
Shirleen F. Matlock
Whitney D. Mauk
Monica R. Maxwell
G. Melton Mobley
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Irvan A. Pearlberg
Timothy J. Santelli
Janet C. Scott
Ronald S. Smith
Hurl R. Taylor Jr.
William A. Tiku
Derick C. Villanueva
Judge Melvin K. Westmoreland
David R. Willingham
Rosalind M. Zollicoffer

Mercer University
C. Joyce Baumgarner
Larry D. Brox
Stephanie D. Burton
John P. Cole
Sherry H. Culves
Danielle D. D'Eor-Hynes
James M. Donley
Dennis L. Duncan
William M. Ermine
Terry T. Everett
Ira L. Foster
Cristen M. Freeman
John B. Garland
Patricia A. Hall
Scott M. Herrmann
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Mary M. Katz
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Patrick E. Longan
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J. Anderson Rama Jr.
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Jennifer A. Campbell
Kendall W. Carter
Cecil L. Clifton Jr.
Valerie E. Cochran
Judge Melodie S. Conner
Donald R. Donovan
Jehan Y. El-Jourbagy
David H. Glass
Judge Stephen S. Goss
Steven D. Henry
Marcy A. Jolles
Jonathan R. Levine
Morton P. Levine
Aaron W. Lipson
Leslie K. Lipson
Amy E. Loggins
John A. Nix
Trey E. Phillips
J. Alexander Reed
Brenda J. Renick
Tracy L. Rhodes
Brian M. Rickman
Judge Tillman E. Self III
Katherine A. Sheehan
Gregory C. Sowell
Sharon D. Stokes
Donald C. Suessmith Jr.
Ryan J. Swingle
Edward D. Tolley
Ashley M. Tyndal
R. David Ware
Sharon W. Ware
C. Knox Withers
Natalie S. Woodward

Thank You

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.

Warren Akin
Cartersville, Ga.
University of Georgia School of Law (1935)
Admitted 1935
Died August 2009

Barnee C. Baxter
Augusta, Ga.
University of Georgia School of Law (1965)
Admitted 1964
Died March 2009

John H. Bedford III
Marietta, Ga.
Emory University School of Law (1965)
Admitted 1965
Died March 2009

Sharon Sherae Brown
Decatur, Ga.
Wake Forest University School of Law (1993)
Admitted 1993
Died August 2009

E. H. Culpepper III
Athens, Ga.
University of Georgia School of Law (1964)
Admitted 1964
Died July 2009

Hugh W. Gilbert
Decatur, Ga.
Emory University School of Law
Admitted 1957
Died July 2009

Mark Jay Grossman
New Brunswick, N.J.
Potomac School of Law (1979)
Admitted 1979
Died June 2009

Jahangeer Habibi
Marietta, Ga.
Georgia State University College of Law (1989)
Admitted 1989
Died April 2009

Wilton D. Harrington
Eastman, Ga.
University of Georgia School of Law (1952)
Admitted 1951
Died July 2009

David B. Higdon
Macon, Ga.
Mercer University Walter F. George School of Law (1971)
Admitted 1971
Died June 2009

Edwin C. Hudson III
Cumming, Ga.
Woodrow Wilson College of Law (1978)
Admitted 1978
Died September 2009

Charles F. Johnson
Santa Rosa Beach, Fla.
University of Georgia School of Law (1949)
Admitted 1949
Died May 2009

Richard Melvin Jones Jr.
Decatur, Ga.
Georgia State University College of Law (1991)
Admitted 1991
Died August 2009

Robert Lee Kirby
Alpharetta, Ga.
Mercer University Walter F. George School of Law (1988)
Admitted 1988
Died August 2009

Walter J. Lane Jr.
Macon, Ga.
Mercer University Walter F. George School of Law (1972)
Admitted 1972
Died August 2009

James D. Maddox
Rome, Ga.
University of Michigan Law School (1947)
Admitted 1947
Died August 2009

Mark J. Maloof
Atlanta, Ga.
University of Notre Dame Law School (1983)
Admitted 1983
Died July 2009

J. D. Moon
Melbourne, Fla.
University of Tulsa College of Law (1952)
Admitted 1975
Died May 2009

John L. Moore Jr.
Marion, Mass.
Harvard Law School (1956)
Admitted 1957
Died May 2009

Richard L. Moore
Marietta, Ga.
University of Georgia School of Law (1972)
Admitted 1972
Died July 2009

Oliver Dyson Peters Jr.
Decatur, Ga.
Emory University School of Law (1971)
Admitted 1971
Died June 2009

Kirk J. Post
Atlanta, Ga.
John Marshall Law School (1993)
Admitted 1994
Died August 2009

John William Ragsdale Jr.
Atlanta, Ga.
University of Virginia School of Law (1962)
Admitted (1975)
Died September 2009

Anita Lynn Schick
Kennesaw, Ga.
University of Chicago Law School (1999)
Admitted 2005
Died August 2009

Susan S. J. Steger
Macon, Ga.
Mercer University Walter F. George School of Law (1970)
Admitted 1970
Died May 2009

James Lee Tasse
Westlake, Ohio
Emory University School of Law (1980)
Admitted 1980
Died August 2009

Marda Lynn Wolfson
Smyrna, Ga.
John Marshall Law School (1998)
Admitted 2000
Died June 2009

Ruth Woolf
Atlanta, Ga.
Atlanta Law School (1948)
Admitted 1949
Died June 2009

Wilton D. Harrington died in July 2009. He was born in June 1926 in Moore County, N.C., to Elizabeth Mae McLeod and Evolyn McGilvary Harrington.

Harrington attended Eastman High School where he was a member of the football, basketball and baseball teams. He was also a member of the Wildcat Club, the 4-H Club and the Hi-Y. He was an honor graduate as well as a senior superlative. After high school, he became a partner in Harrington Navel Stores and Tree Farm Operation. He later joined the Merchant Marines and fought in World War II. Harrington graduated from Middle Georgia College in June 1949 with an Associate's Degree in Commerce. He attended the University of Georgia School of Law where he received an LL.B. in 1952. He remained a devout Bulldog fan.

As an attorney, he joined Will Ed Smith in the well-known law firm of Smith & Harrington in Eastman, Ga., where he was later joined by his son, John. He served as president of the Oconee Circuit Bar Association. He also served on the Board of Governors of the State Bar of Georgia from 1966-79 representing the Oconee Circuit. In 1977-78, he was president of the State Bar.

Harrington was an elder emeritus of Eastman First Presbyterian Church and past president of the Eastman Rotary Club. He was on the Board of Visitors of the University of Georgia School of Law. Harrington was the recipient of the 1988 Vocational Achievement Award given by the Chamber of Commerce. He was also a licensed pilot and an avid hunter and fisherman.

The **Hon. Charles F. Johnson** died in May 2009. He was born in September 1922 in Burke County, Ga. He was the son of the late Robert A. and Sallie Mae Johnson.

He attended law school at the University of Georgia and was admitted to the State Bar of Georgia in 1949. That same year, he began practicing law with Sol Altman. He served as judge of the State Court of Thomas County from 1958-84. He semi-retired in 1990 when he and his wife moved to Santa Rosa Beach, Fla., to be affiliated with Christian International Family Church where they were elders.

He had been a member of Thomasville Kiwanis Club and New Covenant Church and its counseling program.

Although Johnson was a father to only one son and one stepson, he was a mentor and "father" to many. He was fondly known as "Mr. Charlie" or "Judge Charlie." He was known to be a generous man, always ready and willing to lend a helping hand to those in need. Many received the benefit of his wisdom and sound advice, which he generously offered to those who were his peers or those who just needed a "father's" advice.

In his early years, Johnson was also an avid bowler and later became a devoted walker. As a child, he recited the names of current baseball players and their batting averages to go to sleep.

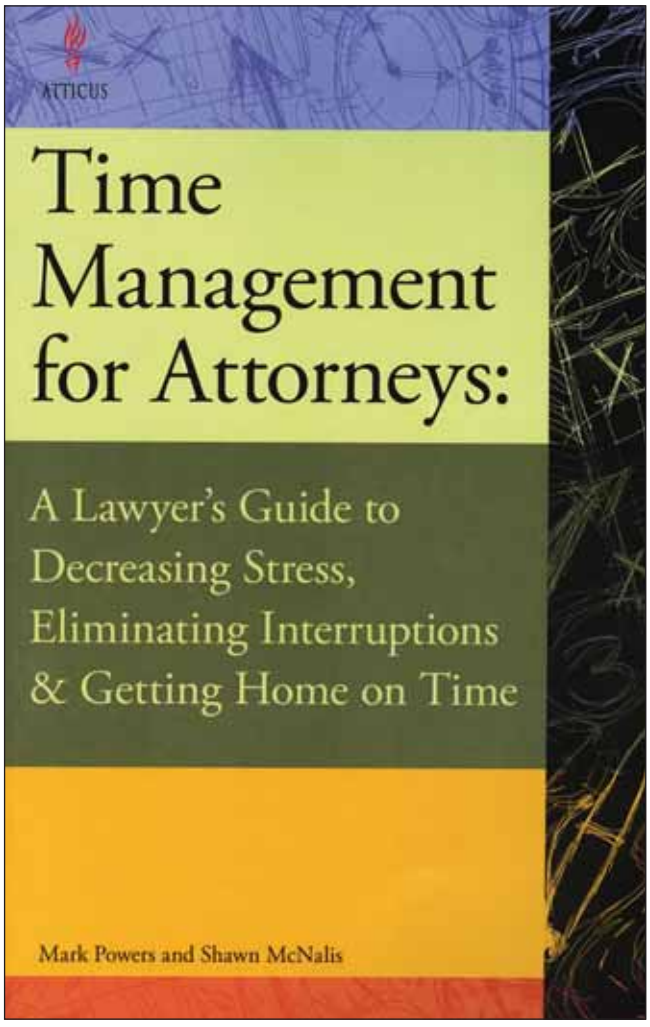
Capable of conducting himself as a stately judge, Johnson was also fond of the simple things: candy, his wife's cornbread and bran muffins, an honest conversation with a friend and a good laugh, to name just a few.

Learn How to Manage Your Time and Develop Your Business

Time Management for Attorneys: A Lawyer's Guide to Decreasing Stress, Eliminating Interruptions & Getting Home on Time

by Mark Powers and Shawn McNalis
Atticus, 137 pages

reviewed by Lynn Gavin



There is a plethora of books dealing with time management and stress management in the marketplace today. In contrast to those typical time and stress-management books, *Time Management for Attorneys: A Lawyer's Guide to Decreasing Stress, Eliminating Interruptions & Getting Home on Time*, is unique because it (1) is written specifically for attorneys, (2) provides interactive exercises designed to address how you want to live both inside and outside the office; and (3) contains a current and realistic view of the practice of law.

The authors, Mark Powers and Shawn McNalis, are associated with Atticus, a legal consulting business founded in 1989 to teach attorneys how to obtain business. In describing why they wrote the book, the authors say:

> Although our clients enthusiastically embraced our ideas on client development, they would repeatedly complain that they did not have time to implement the strategies and techniques provided in our seminars and coaching sessions. . . . [W]e discovered that many attorneys have no time for client development because they don't know how to *make* the time. . . . Not only did they not have any education in how to manage their time in the practice of law, they believed the task to be next to impossible. . . . We realize that no one can ever control 100 percent of their time, but a good 75 to 80 percent of your time

> can be more predictable if you implement the time management tools and strategies provided in this book. . . . A law practice and a personal life don't have to be mutually exclusive.

At first glance, this book appears to be a relatively short read at 137 pages. Taking that approach, however, would defeat the entire purpose of this book. The authors have included in each chapter of the book specific written exercises that are designed to help the reader learn to manage his or her time more effectively. In addition, sample forms designed to increase both personal and office efficiency are included throughout the book. Both the exercises and the forms are provided not only in the book, but also on a separate CD-ROM accompanying the book so that the reader may conveniently access them via computer.

The book's introduction sets forth the premise that attorneys seem to have two basic approaches to time management: reactive and proactive. Reactive is believing that you cannot control your life and feeling at the mercy of circumstances. In contrast, proactive is believing that you are the designer of your circumstances rather than a victim of your circumstances. The reader is provided with two checklists, containing typical behaviors of each approach, and is asked to identify those that apply to his or her practice.

The reactive checklist includes the following:

- Operating with a survival mentality;
- Not marketing your practice with any consistency;
- Constantly handling client crises;
- Generating income but not producing a real profit;
- Delegating very little;
- Feeling burned-out; and
- Considering getting out of your area of law altogether.

The proactive checklist includes the following:

- Working toward a long-term vision of your practice;
- Always marketing referral sources to cultivate future business;
- Creating a "crises-free" zone in your firm by systemizing and exercising preventive measures;
- Producing profit and building a strong financial foundation;
- Building your reputation by working with desirable clients;
- Delegating to others for maximum efficiency and profitability; and
- Experiencing satisfaction with your practice and feeling that it supports your personal life.

Following the introduction, there are nine chapters, each of which addresses a different proactive strategy in detail. Those nine proactive strategies are: (1) creating a personal vision statement, (2) creating a professional vision statement, (3) setting strategic goals, (4) selecting clients wisely, (5) scheduling like tasks together, (6) systemizing your office, (7) managing interruptions, (8) practicing delegation and (9) taking a vacation. Within each of those nine chapters, the authors provide written exercises for the reader to complete. The exercises are designed to help the reader create a plan for getting the time needed to improve his or her legal practice and life. They are simple and straightforward, but do require the reader to give some serious thought to these topics. Most important, each of the chapters provides detailed examples of exactly how to put those nine specific strategies into practice in professional and personal life. Also included are examples of how other attorneys have done so. The authors do a good job of walking you through their specific techniques to help you meet your goals.

Below are key excerpts from each of the nine chapters to give you a flavor of the book.

Chapter 1 – Proactive Strategy One: Create a Personal Vision Statement

It is up to you to write the script, assemble the plot and decide on the main characters. Once you have done that, your job is to "live into it." If this seems laborious, realize that you are now living your life without a plan. You could compare that to going on a vacation without a plan, which you probably would not even consider.

Chapter 2 – Proactive Strategy Two: Create a Professional Vision Statement

What matters most in your practice? Delivering high quality work, working with clients you like, being profitable, having a systemized practice, achieving proper life/work balance, employing a great legal team/staff, creating a professional legacy?

Chapter 3 – Proactive Strategy Three: Set Strategic Goals

Lawyers report that breaking their larger goals into smaller steps is psychologically reassuring. All of a sudden, a large vision is reduced to achievable tasks. You are setting yourself up for small wins. A life well lived is composed of many small wins in service to the larger goal.

Chapter 4 – Proactive Strategy Four: Select Clients Wisely

The quality of your practice is determined largely by the quality of your clients. Carefully selecting your clients not only helps protect you against malpractice accusations, it also has the added benefit of saving you precious time, improving office morale, minimizing collection problems and restoring peace in an otherwise crisis-driven practice.

Chapter 5 – Proactive Strategy Five: Schedule Like Tasks Together

When your brain is allowed to focus on similar tasks, you can accomplish results four times faster

than when you are continually switching the types of tasks or are constantly interrupted.

Chapter 6 – Proactive Strategy Six: Systemize Your Office

Do what you can to eliminate crises that arise internally. Issues such as poor office protocol, a lack of written office procedures and piles of files increase the chance of something falling through the cracks and creating a problem.

Chapter 7 – Proactive Strategy Seven: Manage Interruptions

Industrial engineers have determined that the average length of an interruption is seven minutes, and it takes about three minutes to get back into what you were doing when you were interrupted. This adds up to 10 minutes per interruption. It is not uncommon to hear attorneys say that they view Saturday and even Sundays as a real haven—not for rest and relaxation, but to concentrate and get work done. When they analyze this statement, they realize that it is primarily because there are no interruptions to deal with. What they have gained in time spent on production, however, is a huge loss in the personal column of life, interacting with family as well as taking care of themselves.

Chapter 8 – Proactive Strategy Eight: Practice Delegation

To make the same amount of money or more, yet work fewer hours and have a personal life, you must be able to delegate. The attorney who tries to do it all and minimizes the involvement of other staff members becomes quickly burned out and reduces his or her option to have time away from the practice.

Chapter 9 – Proactive Strategy Nine: Take a Vacation

Planning and taking a vacation is the best way to test whether your office is fully systemized, your team is trained and your practice is capable of running without you. There may never be a convenient time to take a vacation. The authors are convinced, however, that with enough advance planning, you can make it work. Time off may actually benefit your practice. When you leave your environment for a week or two and allow yourself to stop thinking about the technical aspects of your practice (which may not happen until the second week), new and more creative ideas will occur to you.

As a criticism, I wish the authors would have included a wider variety of practice areas and law firm sizes in the examples used throughout the book. By doing so, they could have increased the book's appeal to a wider group of attorneys. Although there is no such indication in the title, the book is more specifically directed toward a litigation practice and a small firm or solo practice. For those who practice in such settings, the illustrations used by the authors will hit home. In contrast, those attorneys who have a transactional practice or practice in a larger law firm will find it a bit harder to identify with the examples set forth by the authors. Despite this criticism, the book does contain universal principles applicable to all practicing attorneys.

In conclusion, this book offers a unique perspective for lawyers with respect to time management, stress management and balancing a professional/personal life. I highly recommend this book for those who are serious about such matters. So, my fellow attorney colleagues, I do hope you can find the time to read it!

Lynn Gavin is a member of the *Georgia Bar Journal* editorial board. She has extensive experience in public finance and government law matters. Gavin received her B.S. and M.S. degrees from Purdue University and her J.D. degree from Georgia State University.

Raising the Bar: Legendary Rainmakers Share Their Business Development Secrets

by Robin M. Hensley
Schroder Media, LLC, 130 pages

reviewed by John T. Marshall

Raising the Bar is a book of fireside chats, conducted by author Robin M. Hensley, with 10 "icons" of the State Bar of Georgia whom I, along with so many other lawyers, have known and respected for many years. The featured lawyers in the book and accompanying DVD are: Miles J. Alexander, Emmet J. Bondurant, Bobby Lee Cook, Clay C. Long, Frank Love Jr., Carl E. Sanders, Richard H. Sinkfield, Chilton D. Varner, Paul Webb Jr. and the late Judge Griffin B. Bell. The DVD inside the back cover of the book contains excerpts of her interviews with each of these lawyers.

The book is informative, as well as entertaining, because it gives us an inside look at the professional lives of these lawyers. Hensley has done an excellent job interviewing these lawyers and encouraging them to converse candidly about their careers. The book is a valuable collection of their reminiscences and professional philosophies. There are lessons here in client development and lawyer-client relationships that are timeless.

Moreover, this book will be especially valuable for young lawyers who will learn from the masters about achieving professional and business success in the practice of law. There's a certain ethic—a determination and a love of the law—that has kept these lawyers going over the decades. The profession calls out for young lawyers who feel that same kind of calling today.

Some prospective readers may say, "Some of these lawyers started practicing law a long time ago. Times have changed! The world is different now." And that is all true.

Today, there is little doubt that a successful lawyer must understand and implement sound business practices. Our Bar grows larger each year. Law practice is now more specialized and sophisticated than ever. In fact, some might argue law practice has become more of a business than a profession.

One of the major points in this book is that the wise lawyers interviewed here understand that as the world continues to change, the practice of law must change, too. But, at the same time, the careers of these lawyers demonstrate that the practice of law is still a profession, and not merely a business. The lawyers featured in the book take a fresh look at old problems, knowing that love of the law and its ideals, taking care of clients, and building a sound business are not contradictory. There is classic advice here for every reader; and for every young lawyer, there is historic knowledge to be gained in recognizing that, although the manner of practicing law may be modified in years to come, the ethics of the profession remain tried and true.

Changes in the economy, such as the one we are experiencing now, will inevitably change the demand for legal services. That requires flexibility and a willingness to learn new skills. "You have to take some cases that you wouldn't take ordinarily, both from a standpoint of money and skill requirements," my old friend, Frank Love Jr., retired partner, and former chair of the litigation department at Powell Goldstein, advised in the book. "If you're specializing in an area and the business just dries up, which happens sometimes, you have to learn new skills." That advice is especially important today.

Some lawyers from around the state may question the relevancy of this book to their law practices. After all, eight of the 10 lawyers interviewed here are now in large Atlanta law firms. This book, however, is not about large firms in Atlanta or elsewhere. It is about the individual careers of these outstanding men and women who are in the very front rank of the Bar. Many of them started out in law firms that were much smaller than their present law firms. While this book is about attracting clients and growing a law practice, the overriding message in this book is to be found in the things these lawyers did to practice law fully and successfully, and to serve their clients as well. Whatever their particular circumstances, all of these lawyers were devoted to the law and the highest ideals of our profession.

The lawyers interviewed here have heard—and answered—the call to practice law nobly. As I read *Raising the Bar*, I was reminded all over again that we are members of a noble profession. And, I was thrilled and challenged by that message as I read about the careers portrayed here. I think the reader will be, too.

Let me urge you: Don't miss this book! And, for added enjoyment, may I suggest that you keep a touch of Scotch (or its equivalent) at your elbow as you turn these pages? The book and the accompanying DVD are thoroughly enjoyable! GBJ

John T. Marshall is of counsel with Bryan Cave Powell Goldstein. A fellow of the American College of Trial Lawyers and the American Academy of Appellate Lawyers, he frequently appears in professional seminars throughout the year, speaking on litigation, alternative dispute resolution, ethics and related topics. His law practice is now limited to arbitration and mediation. A former president of the Atlanta Bar Association, Marshall currently is a member of the Supreme Court of Georgia's Board to Determine Fitness of Bar Applicants and the Board of Trustees of the Georgia Eye Bank, Inc. He chairs the Board of Visitors of the College of Law of Georgia State University.

October-December

OCT 1
ICLE
Expert Testimony
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 1
ICLE
Title Standards
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 1-2
The Seminar Group
6th Annual Labor and Employment Law Seminar
Atlanta, Ga.
12 CLE Hours

OCT 2
ICLE
RICO
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 2
ICLE
Keep It Simple
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 2
Lorman Education Services
Employment Law from A to Z Seminar
Albany, Ga.
6.7 CLE Hours

OCT 7
Georgia Office of Dispute Resolution
Southeast Organizational & Leadership Summit on Workplace Conflict Resolution
Atlanta, Ga.
5 CLE Hours

OCT 9
ICLE
Law Practice Management
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 9
ICLE
Advanced Health Care Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 14
Lorman Education Services
Employment Law from A to Z
Savannah, Ga.
6.7 CLE Hours

OCT 15
ICLE
Technology Law Institute
Atlanta, Ga.
See www.iclega.org for location
8 CLE Hours

OCT 15
ICLE
Zoning
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 15-17
ICLE
Workers' Compensation Institute
St. Simons Island, Ga.
See www.iclega.org for location
12 CLE Hours

OCT 16
ICLE
Milich on Georgia Evidence
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 16
ICLE
Drawing the Ethical Line
Athens, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 16
The Seminar Group
The Next Wave of Construction Dispute Resolutions
Atlanta, Ga.
6 CLE Hours

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OCT 19-23
Southern Federal Tax Institute
44th Annual Southeastern Federal Tax Institute
Atlanta, Ga.
24 CLE Hours

OCT 21
ICLE
Family Law
Augusta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 21
ICLE
Child Welfare Attorney Training
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 22
ICLE
Ethics & Professional Responsibility at the Movies
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 22-23
ICLE
Business Law Institute
Atlanta, Ga.
See www.iclega.org for location
8 CLE Hours

OCT 23
ICLE
Mortgage Meltdown Crisis
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 27
ICLE
Beginning Lawyers Program
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 28
Atlanta Bar Association
Make Your Case with a Better Memory
Atlanta, Ga.
See www.atlantabar.org for location
3 CLE hours

OCT 29
ICLE
Defense of a Georgia Personal Injury Claim
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 29
ICLE
Slip & Fall
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 29
Atlanta Bar Association
The Life of a Trial: Direct and Cross-Examination
Atlanta, Ga.
See www.atlantabar.org for location
1.5 CLE hours

OCT 30
ICLE
Securities Litigation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 30
ICLE
Entertainment Law Institute
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

OCT 30
ICLE
Auto Insurance Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

October-December

OCT 30
NBI, Inc.
2009 Elder Care Matters Symposium
Atlanta, Ga.
4 CLE Hours

NOV 3
Atlanta Bar Association
Estate Planning Forum with Natalie Choate
Atlanta, Ga.
See www.atlantabar.org for location
3.5 CLE hours

NOV 3
NBI, Inc.
Advanced Uses of Top Estate Planning Techniques
Atlanta, Ga.
6 CLE Hours

NOV 3-4
Georgia State University School of Law
Intellectual Property—Importance in Today's Economy
Atlanta, Ga.
12 CLE Hours

NOV 4
ICLE
Government Attorneys
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 4
NBI, Inc.
Title Workshop-From Examination to Commitment
Atlanta, Ga.
6 CLE Hours

NOV 4-5
ICLE
Trial Evidence
Atlanta, Ga.
See www.iclega.org for location
12 CLE Hours

NOV 5
ICLE
Buying & Selling Privately Held Businesses
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 5-7
ICLE
Medical Malpractice Institute
Amelia Island, Fla.
See www.iclega.org for location
12 CLE Hours

NOV 6
ICLE
Trial Advocacy
Statewide Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

NOV 6
ICLE
U.S. Supreme Court Update
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 6-7
Georgia Association of Criminal Defense Lawyers
Fall Seminar Defense Superheroes
Young Harris, Ga.
10 CLE Hours

NOV 8-15
ICLE
Advanced Urgent Legal Matters
Freedom of the Sea Cruise
See www.iclega.org for location
12 CLE Hours

NOV 10
ICLE
Mentor Orientation
Atlanta, Ga.
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3 CLE Hours

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NOV 11-15 ICLE
Entertainment & Sports Law and Intellectual Property Law Institutes
Dominican Republic
See www.iclega.org for location
12 CLE Hours

NOV 12 ICLE
Antitrust Law Basics
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 12 ICLE
Commercial Real Estate
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 12 ICLE
Trial Advocacy
Statewide Broadcast—Replay
See www.iclega.org for locations
6 CLE Hours

NOV 12-13 ICLE
Consumer and Business Bankruptcy
Braselton, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 13 ICLE
Drivers License Law
Statewide Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

NOV 13 ICLE
Media in Big Cases
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

NOV 17 ICLE
International Law Section Seminar
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 18 Atlanta Bar Association
16th Annual Middle Income Divorce Seminar
Atlanta, Ga.
See www.atlantabar.org for location
3 CLE hours

NOV 18 NBI, Inc.
Collection Law from Start to Finish
Atlanta, Ga.
6 CLE Hours

NOV 19 ICLE
Eminent Domain
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 19 ICLE
Integrity
Atlanta, Ga.
See www.iclega.org for location
3.5 CLE Hours

NOV 19 ICLE
Drivers License Law
Statewide Broadcast—Replay
See www.iclega.org for locations
6 CLE Hours

NOV 19 ICLE
Recent Developments
Statewide Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

NOV 19 Atlanta Bar Association
The Life of a Trial: Closings
Atlanta, Ga.
See www.atlantabar.org for location
1.5 CLE hours

October-December

NOV 20
ICLE
Business Organization Litigation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

NOV 20
ICLE
Summit on Marriage & Family
Atlanta, Ga.
See www.iclega.org for location
7 CLE Hours

NOV 24
Practicing Law Institute
Writing for Lawyers 2009
Atlanta, Ga.
3 CLE Hours

DEC 2
ICLE
Sports Law 1/2 Day
Atlanta, Ga.
See www.iclega.org for location
3 CLE Hours

DEC 2
ICLE
Family Immigration Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 3
ICLE
Recent Developments
Statewide Broadcast—Replay
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6 CLE Hours

DEC 3
ICLE
Dealing with the IRS
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 3
ICLE
Georgia *Law of Torts*
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 3
Lorman Education Services
Judgment Enforcement
Atlanta, Ga.
6 CLE Hours

DEC 3-4
ICLE
Corporate Counsel Institute
Atlanta, Ga.
See www.iclega.org for location
12 CLE Hours

DEC 4
ICLE
Professionalism, Ethics & Malpractice
Statewide Broadcast—Live
See www.iclega.org for locations
3 CLE Hours

DEC 4
ICLE
Matrimonial Law TP Workshop
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 4
NBI, Inc.
Advanced Issues in Divorce
Atlanta, Ga.
6.7 CLE Hours

DEC 8
Atlanta Bar Association
Law Office Technology: Power Up Your Practice
Atlanta, Ga.
See www.atlantabar.org for location
6 CLE hours

DEC 9
ICLE
Evidentiary Crisis
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 9
NBI, Inc.
Land Use Law—Current Issues and Subdivision
Atlanta, Ga.
6 CLE Hours

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DEC 10
ICLE
Labor & Employment Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 10
ICLE
Georgia Law Update
Augusta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 10-11
ICLE
Defense of Drinking Drivers Institute
Atlanta, Ga.
See www.iclega.org for location
13.5 CLE Hours

DEC 10
ICLE
Professionalism, Ethics & Malpractice
Statewide Broadcast—Replay
See www.iclega.org for location
3 CLE Hours

DEC 10
Atlanta Bar Association
CLE by the Hour
Atlanta, Ga.
See www.atlantabar.org for location
6 CLE hours

DEC 11
ICLE
Section 1983 Litigation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 11
ICLE
ADR Institute and Neutrals' Conference
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 11
ICLE
New Lawyers Skills Training
Statewide Broadcast—Live
See www.iclega.org for location
6 CLE Hours

DEC 11
ICLE
Professional & Ethical Dilemmas
Macon, Ga.
See www.iclega.org for location
3 CLE Hours

DEC 14
NBI, Inc.
Nuts and Bolts of Bankruptcy Law
Savannah, Ga.
6 CLE Hours

DEC 15
ICLE
Selected Video Replay
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 16
ICLE
Selected Video Replay
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 17
ICLE
New Lawyers Skills Training
Statewide Broadcast—Replay
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6 CLE Hours

DEC 17
ICLE
Collaborative Law Institute of Georgia
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 17
ICLE
Health Care Fraud
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 17
ICLE
Recent Developments
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

Notice of Public Hearing

Pursuant to Bar Rule 14-9.1, the Standing Committee on the Unlicensed Practice of Law has received a request for an advisory opinion as to whether certain activity constitutes the unlicensed practice of law. The particular situation presented is as follows:

> Assuming no traverse has been filed by any party in a garnishment action, is the completion, execution and filing of an answer in the garnishment action by a non-attorney employee of the garnishee considered the unlicensed practice of law?

In accordance with Bar Rule 14-9.1(f), notice is hereby given that a public hearing concerning this matter will be held at 10 a.m. on Nov. 13, 2009, at the State Bar of Georgia, Third Floor, 104 Marietta St. NW, Atlanta, GA. Prior to the hearing, individuals are invited to submit any written comments regarding the issue to UPL Advisory Opinions, State Bar of Georgia, Suite 100, 104 Marietta St. NW, Atlanta, GA 30303.

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- Lunch and Learns for Lawyers Seeking Employment
- Law Practice Management Program
- Lawyers Assistance Program
- Georgia Law Schools' Careers Centers
- Court Appointed Work by County
- Links to Many Other Online Resources

For more information, visit www.gabar.org/news/resources_for_unemployed_attorneys/

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	Atlanta, GA 30303-2743

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☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

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b. Paid and/or Requested Circulation	(1)	Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)	32,890	34,640
	(2)	Paid In-County Subscriptions Stated on Form 3541 (Include advertiser's proof and exchange copies)	0	0
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c.		Total Paid and/or Requested Circulation (Sum of 15b. (1), (2),(3),and (4)) ▶	32,890	34,640
d. Free Distribution by Mail (Samples, complimentary, and other free)	(1)	Outside-County as Stated on Form 3541	0	0
	(2)	In-County as Stated on Form 3541	0	0
	(3)	Other Classes Mailed Through the USPS	158	173
e.		Free Distribution Outside the Mail (Carriers or other means)	91	96
f.		Total Free Distribution (Sum of 15d. and 15e.) ▶	247	269
g.		Total Distribution (Sum of 15c. and 15f) ▶	33,137	34,909
h.		Copies not Distributed	303	260
i.		Total (Sum of 15g. and h.) ▶	33,440	35,169
j.		Percent Paid and/or Requested Circulation (15c. divided by 15g. times 100)	99.3	99.2

16. Publication of Statement of Ownership
☑ Publication required. Will be printed in the October 2009 issue of this publication. ☐ Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner: Sarah E. Coole, Director of Communications — Date: Sept. 25, 2009

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

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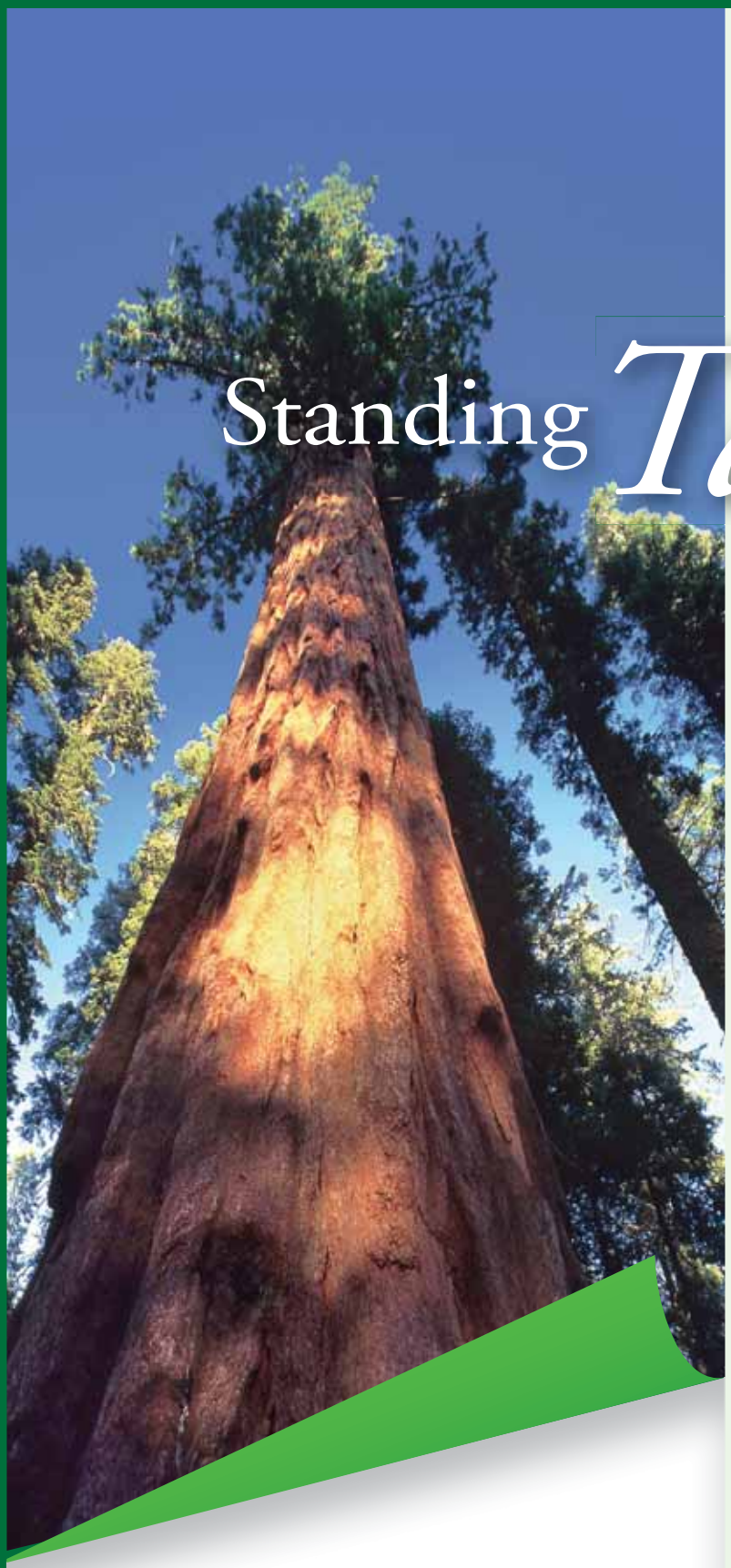

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