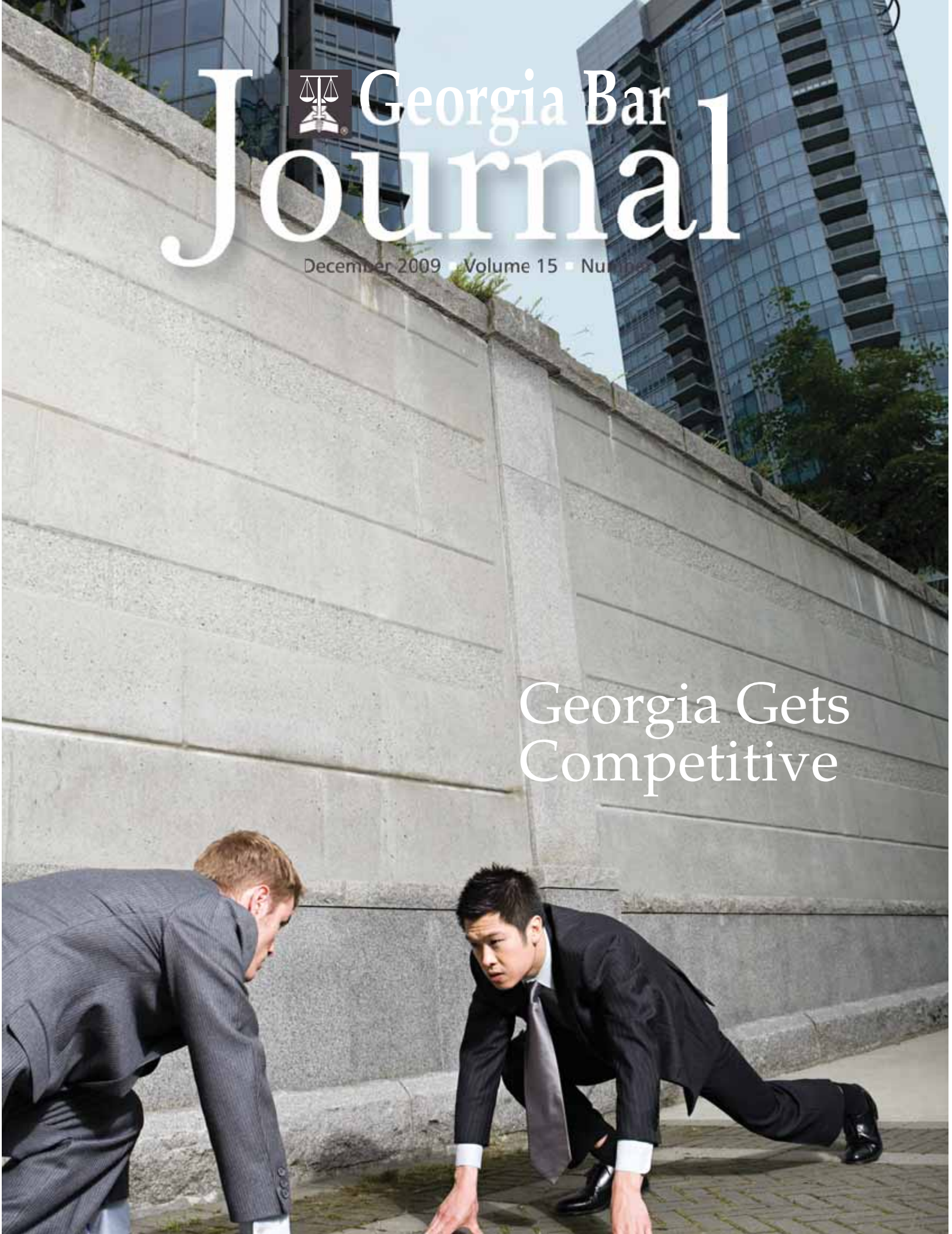
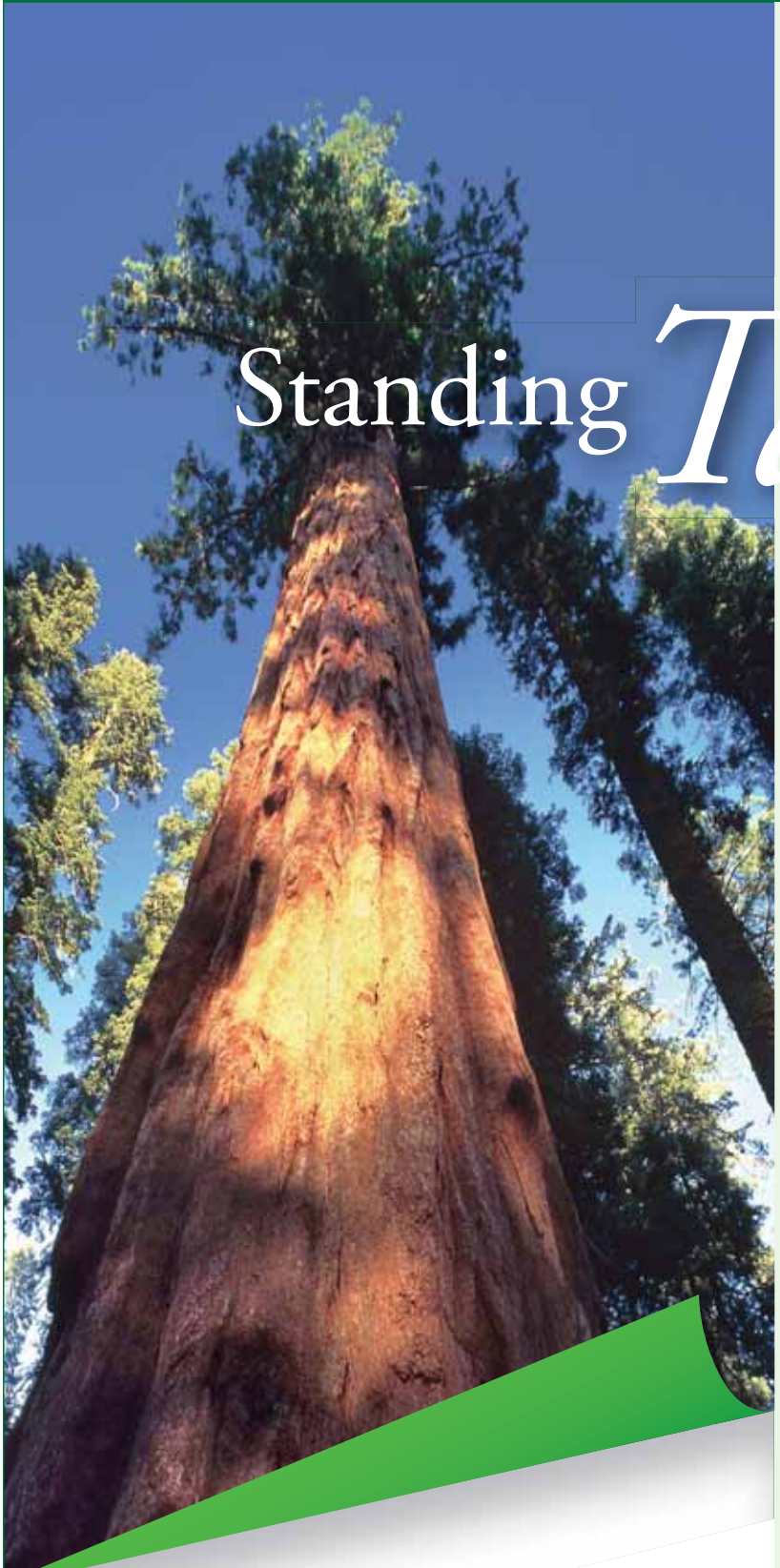
Georgia Bar Journal

December 2009 ▪ Volume 15 ▪ Number

Georgia Gets Competitive





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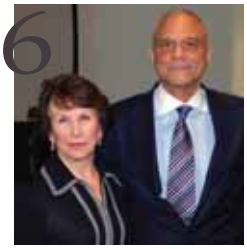
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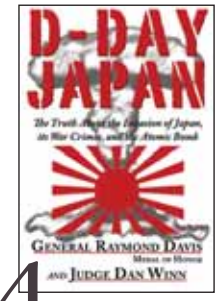

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need help?

Lawyer Assistance Program Confidential Hotline

800-327-9631

Lawyers Recovery Meetings: The Lawyer Assistance Program holds meetings every Tuesday night from 7 p.m. to 9 p.m. at Families First Main Office (1105 West Peachtree Street, Atlanta, GA 30357-0948). For further information about the Lawyers Recovery Meeting please contact Steve Brown at 404-853-2850.

The Lawyer Assistance Program (LAP) provides free, confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems, and mental or emotional impairment. Through the LAP's 24-hour, 7-day-a-week confidential hotline number, Bar members are offered up to three clinical assessment and support sessions, per issue, with a counselor during a 12-month period. All professionals are certified and licensed mental health providers and are able to respond to a wide range of issues. Clinical assessment and support sessions include the following:

- Thorough in-person interview with the attorney, family member(s) or other qualified person;
- Complete assessment of problems areas;
- Collection of supporting information from family members, friends and the LAP Committee, when necessary; and
- Verbal and written recommendations regarding counseling/treatment to the person receiving treatment.

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Manuscript Submissions

The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (18th ed. 2005). Please address unsolicited articles to: Donald P. Boyle Jr., State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board's decision regarding publication.

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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Clarification for *Enforcing Commercial Real Estate Loan Guaranties*

The authors of *Enforcing Commercial Real Estate Loan Guaranties*, published in the October 2009 issue of the *Journal*, have requested the following clarification to endnote 28 and the related text of the article:

Under O.C.G.A. § 44-14-161(c) (2002), "[t]he court shall direct that a notice of the [confirmation] hearing shall be given to the debtor at least five days prior thereto . . . ." That written notice, generally in the form of a Rule Nisi, is not required to be issued within the same 30-day period required for reporting the foreclosure sale, which is referenced in O.C.G.A. § 44-14-161(a). A Rule Nisi can be obtained at the same time that the report of foreclosure sale is filed, but there is no statutory requirement to do so. GBJ

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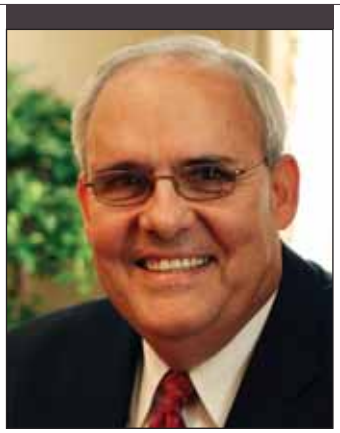

by Bryan M. Cavan

Your Legislator Needs to Hear from You

In the October edition of the *Georgia Bar Journal*, I discussed the extremely difficult budget situation permeating our state government and the dire consequences resulting from continued funding cuts to our judicial branch. As anticipated, the news this month is no better and, in fact, is unfortunately much worse. Through the first four months of the current fiscal year, state revenues had decreased by 15.1 percent—a decline of more than $831 million from last year for July through October alone.

> "Now more than ever, it is important that the three branches of our state government work together to find solutions that will keep the doors of our courtrooms open and the Rule of Law maintained."

Our courts across the state are continuing to struggle to meet their constitutionally mandated duties in the face of these significant funding cuts. Our judges understand the dilemma facing the governor and our legislators in this economic environment. However, we cannot allow criminal prosecutions to be halted, child support and child custody issues to be left undecided, nor business disputes left unresolved. Now more than ever, it is important that the three branches of our state government work together to find solutions that will keep the doors of our courtrooms open and the Rule of Law maintained.

In late October, Chief Justice Carol W. Hunstein hosted a meeting of judges, prosecutors, public defenders, private practice lawyers and others representing every level of our judicial system and the public safety community from every geographic area of the state. Participants reported on the impact of judicial budget cuts and the problems caused by staff reductions and furloughs, as well as less money for training, technology and basic supplies. Here is a sampling of what we heard at that meeting:

- Our courts began fiscal year 2010 more than $1 million in debt. Because of a 25 percent budget cut in June, the Supreme Court was unable to pay bills totaling $221,000, and our Superior Courts could not pay $827,000 worth of bills.
- District attorneys and public defenders have been required to terminate staff and impose furloughs on their attorneys. The immediate impact of furloughs is the delay in the prosecution of 500 criminal cases each of those days. Fulton County alone has a backlog of 160 murder trials.
- Some courts are placing people charged with crimes under house arrest because there is no room in the county jail. "Higher risk" accused criminals are being released on bond in increasing numbers.
- A lawsuit has been filed on behalf of dozens of indigent defendants who have been without legal coun-

sel for more than six months due to cuts in our public defenders' budgets.

- Hearing dates for domestic cases—including divorce, child support, visitation and custody—are being delayed by 60 to 120 days in some circuits.
- Business filings are being handled only after the criminal calendar in many courts, and one judge said, "We may not get to them at all."
- Court-generated revenues that go to fund state and local governments have declined by about $51 million due to the slowdown in handling cases.
- Budget cuts at the local level are also taking their toll on the justice system. Gwinnett County District Attorney Danny Porter recently said a 9 percent cut ordered by the county commission may force his office to stop prosecuting cases for five weeks next year.

Also in attendance were two key leaders in the Georgia General Assembly, Sen. Preston Smith (R-Rome), chairman of the Senate Judiciary Committee, and Rep. Rich Golick (R-Smyrna), chairman of the House Judiciary Non-Civil Committee—both of whom are influential and integral in the budget-writing process as members of their respective Appropriations Committees.

Sen. Smith and Rep. Golick listened carefully and patiently to the reports of the dire circumstances facing our court system and then, when it was their turn to speak, delivered the bad news: Georgia lawmakers are now anticipating additional substantial revenue shortfalls through the remainder of this year. While, as lawyers, they recognize the problems caused by an underfunded judiciary, as legislative budget writers, they simply have fewer dollars to appropriate than they had two years ago. And if further budget cuts are required, the judicial branch will be expected to participate.

Sen. Smith was particularly frank in his assessment of the situation, declaring neither the judiciary's status as an independent branch of government, nor its relatively small budget compared to other state programs, nor the fact the courts have constitutionally mandated functions is sufficient to exempt it from additional funding reductions. The Legislature is also constitutionally required to have a balanced budget and is not authorized to "print money," he said.

While the legislators' response might not have been what we wanted to hear, it is an important reminder to us that legislators have constitutional responsibilities as well and they are facing extremely difficult and unprecedented budget decisions. Clearly, as we make the case for adequate funding to keep our courthouse doors open, we need to focus on the consequences that are occurring and will continue to occur in the lives of Georgia's citizens when the wheels of justice slow down or, in some cases, grind to a halt.

Last month, the State Bar released a new public awareness message on television that I hope you have already seen. With dramatic effect, the message conveys to our fellow Georgians real-life examples of what happens in our communities when trials and other critical court services are halted due to a lack of funding. Closing the courthouse doors is not an option.

I have joined our legislative advocacy team in meetings with Gov. Sonny Perdue, Lt. Gov. Casey Cagle, House Speaker Glenn Richardson and other leaders at the Capitol to keep them informed of the worsening impact that budget cuts are having on keeping law and order and delivering justice in our state. While the strain of the budget crisis is apparent, they have been very receptive of the information. We will maintain the dialogue.

As the opening of the 2010 legislative session on Jan. 11 draws nearer, we need to enlist your active participation in the effort to maintain judicial funding at an adequate level. I urge that you join the State Bar's Legislative Action Network so that you will be kept abreast of developments at the Capitol and be provided with tools for instant contact with your legislators.

In addition, please take every opportunity you have at your disposal to help spread the message to the public of the importance of sufficiently funded courts, whether through a civic club presentation, letter to the editor or op-ed column in your local newspaper or one-on-one conversations with your friends and neighbors. Up-to-date statistical and anecdotal information is available on the State Bar website at www.gabar.org.

Finally, make sure both your state Senator and Representative have heard directly from you before they return to the Capitol next month—not in a confrontational or threatening manner, which most likely will have a negative effect. We cannot and must not engage in comparisons of our courts' funding problems to those of other vital state services like education, health care and transportation, all of which are in budget crises of their own

The case for keeping our courthouse doors open stands on its own merits. This is a public safety issue in our communities and an economic issue for our state, and the various services of the courts directly impact our citizens.

As I noted above, now more than ever, it is important that the three branches of our state government work together to find solutions that will keep the doors of our courtrooms open and the Rule of Law maintained. Let your lawmakers know that Georgia's lawyers and judges stand ready to work with them to find solutions. GBJ

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

by Cliff Brashier

Henry Troutman's Legacy:

Helping People in Need

Following his death on Oct. 22, Henry B. Troutman Jr. of Atlanta was remembered for more than just his three decades of distinguished service in the practice of law. For example, his longtime partner, former Georgia Gov. Carl Sanders, was quoted by the *Atlanta Journal-Constitution* as saying, "I think he enjoyed law, but he didn't feel like it was his destiny. He used it to create a program that could help lawyers and other professionals. He was a good man."

Indeed, the Lawyers Assistance Program (LAP)—originated by Troutman under the auspices of the State Bar of Georgia—has helped countless attorneys through the years in their struggles with alcohol or drug addictions, as well as battles with depression and other mental health issues. As a certified addiction counselor, Troutman devoted his own time and efforts to the program, personally handling interventions and counseling sessions.

The LAP has been adopted by several other state bars across the nation. The State Bar recognized Troutman's work in 1998 by presenting him with the Lifetime Achievement Award for community service. While designed to assist lawyers, the program's overriding purpose is to help the public.

Whenever a lawyer is experiencing any sort of personal problem, it will eventually impair his or her ability to represent clients—often leading to complaints and, in some cases, disciplinary procedures against the Bar member. One mission of the LAP is to prevent clients from being harmed in such situations, thus serving the interests of both the public and the legal profession.

> "One mission of the LAP is to prevent clients from being harmed in such situations, thus serving the interests of both the public and the legal profession."

The impact of the national economic crisis of the past year and a half on the legal profession is well documented. Thousands of lawyers across the nation, including several hundred here in Georgia, have lost their jobs. They, along with newly admitted Bar members, are finding the employment market tighter than ever. As a result, the LAP has seen an uptick in demand for services.

"It's really stressful out there," says Steve Brown, clinical director of the LAP, who is employed by Families First Employee Assistance Program, a

Georgia-based counseling agency that has been providing these services for 125 years. "We have seen an increase in the demand and requests for clinical services for stress and depression, as well as the financial counseling services and even legal counseling offered under the program."

Along with the Law Practice Management Program, the LAP has played a significant role in the State Bar's efforts to assist unemployed attorneys with their job searches, career development, networking and generally navigating the current legal employment landscape, including the monthly "lunch and learn" programs at the Bar Center that started in April of this year.

"This has been a very worthy effort on the part of the Bar," Brown said. "Tom Stubbs, who was our Executive Committee liaison at the time, was instrumental in bringing that together and linking these services."

The Bar's Lawyer Assistance Committee, chaired by Robert T. Thompson Jr., oversees the program. The committee helps with the ongoing development and implementation of LAP policies and procedures and the resolution of specific issues and concerns. Committee members also act as key contacts in their specific geographic location or areas of interest. "Our committee members deserve recognition for the extraordinary effort they are putting out, reaching out to assist their fellow lawyers," Brown said.

The LAP maintains a 24-hour, seven-day hotline (800-327-9631), which is always answered by a live operator. During regular business hours, callers are likely to reach Brown or his assistant. A statewide network of 190 counselors, including 90 in metropolitan Atlanta, is on call to handle referrals any time, day or night. A call to the hotline opens the door to a "one-stop shop" of services for the entire legal profession—Bar members and their families, support staff and law students—including the following:

- Up to three clinical assessment and support sessions per issue
- A half-hour of legal counseling
- Continuing care service for up to two years after initial contact
- Referral to a wide range of public and private resources and community programs
- Peer contact and support
- Confidentiality under State Bar rules
- Weekly recovery meetings

State Bar members also have unlimited use of the Families First Work/Life program, a time-saving resource that helps them stay productive on the job. Work/Life helps find the best options in caring for children, elderly family members and pets. The program also gives knowledgeable professional help for financial concerns. Callers receive advice, referrals and materials customized to take into account their individual concerns, financial and geographic needs.

The LAP also stands ready to assist and counsel Bar members during times of crisis. In October 2008, an act of violence caused an explosion at a Dalton law firm, resulting in multiple injuries and major damage to the building.

"We were in touch immediately and had counselors up there through our Chattanooga affiliate, responding to their needs," Brown said. "I personally followed up, and we provided direct individual services to those who needed it. We continued to follow up for months afterward, with all services provided under the Bar program."

Brown said that while the LAP's scope of services has broadened over the years, its success has been an outgrowth of the vision of and work started by Henry Troutman Jr. "Henry was a pioneer in this field and set the precedent for the quality of care, personal involvement and follow-up—making sure people get the help they need."

The program also relies on volunteer lawyers, judges and law students who are committed to providing peer assistance to their colleagues. If you have personal experience or training with recovery from substance use disorders or mental health issues or simply desire to help your colleagues and give something back to the profession, then you are invited to become a volunteer with the LAP. Send an e-mail to steve.brown@familiesfirst.org to express your interest.

I want to close by emphasizing that a vital component of the program is its strict confidentiality. The telephone hotline does not ring at State Bar headquarters. No one on our staff or in Bar leadership knows who is receiving assistance from the LAP. As Henry Troutman urged attorneys thousands of times, please do not hesitate to use this service if you need it or one of your colleagues needs it. 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

Making Time for What's Important

As the year draws to a close, it is hard not to notice how quickly the time has gone by. Just yesterday, it was summer, followed by Halloween, and now everywhere you look there are holiday decorations. Did you accomplish everything you wanted to accomplish in 2009? At times it feels as though it is the fate of every lawyer to be consumed with time. Often, it is the yardstick by which we measure our success and, too often, our worth as lawyers. It is hard to be in the presence of lawyers and not engage in conversations about billing hours, busy calendars, conflicting schedules and the challenge of balancing it all.

"It is hard to be in the presence of lawyers and not engage in conversations about billing hours, busy calendars, conflicting schedules and the challenge of balancing it all."

I am participating in an Executive Leadership Program for state leaders and recently had the opportunity to discuss time management with my mentor. As we discussed how I spent my "free" time, I found myself offering reason after reason (excuses) for my failed resolution to spend more time exercising. My mentor thoughtfully reminded me that "we make time for the things that are important to us." While this statement may seem elementary, in that moment the concept was revolutionary. I often think about spending my time efficiently, and I pride myself on my organization skills. I had not, however, given serious consideration to the activities that consume my time and how the activities I've chosen to engage in reflect on me. Since that conversation, I've thought about that principle a lot—that is, I now affirmatively think about each activity that is taking my time, and I acknowledge that the activity is one that I've chosen to prioritize over others. In doing so, I find myself being more selfish with time, but in a good way. I'm fully engaged in that which I've chosen to participate, and I don't spend inefficient hours (or even minutes!) worrying about that which I've scheduled for later and/or have chosen not to schedule at all. Simply put, I think critically about exactly what I do with my time, and I take responsibility for the decisions that I've made.

Even though it may sound lofty, that is not really the intent. I have no plans to write a self-help book or start a blog about my newfound time-management skills. I share my discovery with you, as lawyers and as peers who may be feeling the pressure of the impending close of 2009. While I reflected about using my time efficiently and strategically, it became clear to me that how I choose to spend my time reflects my priorities. And, as I looked at my priorities, as reflected by the time they take, I realized that I was not giving enough time that I should to those that I thought were my priorities—those things that I *want* to be my priorities. So, as I prepare to think about this year's New Year's resolutions, I am thinking not about what I want to do differently. I'm focused on my priorities and ensuring that I give them the time that they deserve.

The following are my list of priorities for 2010.

Family

However you define family, whether by biology or otherwise, these are the folks who love us, truly know us, ground us and who give our world perspective. While the holiday season promises time with family, too often we limit ourselves to these predetermined days. There will always be an opportunity to complete one more assignment or bill one more hour, but time with family is both precious and fleeting. During the upcoming holidays and throughout 2010, I will prioritize family.

Service to Others

This value has shaped not only my professional path, but it is also important personally. Although many profess a hope to leave their environment and community better than they found it, I intend to prioritize this value in 2010.

At-Risk Youth

My work involves a commitment to seeing youth develop into productive members of society. This commitment is born from both an obligation to hold youth accountable for the harms they may cause in communities, but also from a belief in the opportunity that each of us has to change the direction of a young life. I believe in a child's ability to grow and develop. I understand that children are subject to their environment and caretakers. I know with nurturing and guidance young people can achieve great things and help to create strong communities. This is a priority for me, and I will make time to help youth achieve in 2010.

Growth and Community Commitment

Although I am only halfway through my term as YLD president, it has already been an experience of incredible personal growth and professional development. I belong to many communities, and, whether as a parent, a government lawyer, a child advocate or as YLD president, I am committed to investing my time to these communities that give so much to me. I feel I do not have the luxury of just being present, I am obligated to engage, to give back and to say "thank you." As such, the YLD and its mission remains one of my top priorities. I look forward to the coming year, and I am committed to engaging in new opportunities for growth and development. The quest for a new challenge is never ending. Among the many communities of which I am honored to be a part, I will continue to make time for all they bring in 2010. 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.

Georgia Gets Competitive

by Erika Birg, Michael Elkon and Erin McPhail Wetty

Imagine yourself sitting in your office one afternoon and a new, prospective client named Spectre Consulting calls. Spectre is relocating its headquarters to Georgia from Las Vegas, which means relocating the entire executive team, as well as all of the company's researchers and sales representatives. Because Spectre zealously guards its confidential information and its business relationships, it asks you to prepare employment agreements for its employees moving to Georgia. Spectre wants the agreements to be enforceable in Georgia and to include non-compete, non-solicitation and non-disclosure covenants.

The task seems simple enough at first. Although you have heard that Georgia is hostile to these sorts of restrictive covenants, certainly employment agreements of this nature cannot be that difficult. To survey the field, you first look for a statute on point. You find O.C.G.A. § 13-8-2.1 covering restrictive covenants, but you determine quickly that the Supreme Court of Georgia struck the statute down shortly after it was passed.[1]

So, you then decide to review applicable case law by using computer research. The results you find are daunting. Your search for the term "non-compet!" yields 250 results; "non-solicit! /p customer" yields 36; and "'confidential information' /p disclos!" yields 86. Your search further reveals that Georgia does not reform or blue-pencil agreements, so any flaw in a provision will render that provision unenforceable. To draft proper covenants for this demanding client, you will need to wade through a thicket of cases to glean the applicable rules. You realize that Georgia's current legal regime governing restrictive covenants can best be described as death by a thousand paper cuts.

The Georgia Legislature Acts

Your dilemma illustrates a primary rationale for the Georgia Legislature's passing of HB 173 to govern enforcement and interpretation of restrictive covenants in the commercial arena.[2] Currently, there are no clear rules governing restrictive covenants; this leaves employees,

employers and most practitioners in the dark as to what is permissible. The new statute sets forth ground rules for restrictive covenants. It addresses the classes of employees who can sign restrictive covenants, the types of agreements that are covered and, most significantly, the standards for evaluating such covenants. It empowers courts to modify covenants, so that employers can enforce provisions that protect their legitimate interests, but no more.

Gov. Sonny Perdue signed HB 173 after the House and Senate had passed it by large margins. By its own terms, however, the law will not go into effect until Georgia's voters ratify a proposed constitutional amendment in November 2010. The Legislature conditioned HB 173's effectiveness upon the constitutional amendment because of the Supreme Court of Georgia's previous rejection of O.C.G.A. § 13-8-2.1. Shortly after that statute became law, the Supreme Court ruled that the Legislature had exceeded its constitutional authority by "authoriz[ing] contracts and agreements which may have the effect of or which are intended to have the effect of defeating or lessening competition or encouraging monopoly."[3]

Because HB 173 contains language authorizing modification or partial enforcement of restrictive covenants, rather than subject HB 173 to constitutional uncertainty, the Legislature chose to condition its effectiveness upon clarifying the Legislature's authority in this arena. Accordingly, the Legislature will consider a resolution in the 2010 session that would put a constitutional amendment on the November 2010 ballot. The resolution and amendment, which are still under consideration, would, in effect, authorize the Legislature to enact legislation in this arena and authorize courts to enforce a covered agreement only to the extent that it is reasonable. If the amendment passes the Legislature and is ratified by the voters, then HB 173 will become effective.

The statute does not apply retroactively, so the existing law on restrictive covenants will remain relevant for agreements entered into prior to that date. Because HB 173 is intended to and does change the law to overcome certain judicially developed anomalies, however, many employers may wish to plan prospectively for the new law.

How Does HB 173 Change the Law?

Below are seven particular instances in which the current common law creates difficulties for unwary businesses and how the new statute will lead to a different result.

Problem 1: Should We Treat All Employees the Same?

Georgia courts apply strict scrutiny to restrictive covenants in employment agreements, which means that the court will not uphold the covenant unless it is unassailable in every way.[4] It also means that a trial court may not consider the level of an employee within an organization in deciding whether a particular covenant is reasonable—all employees must be treated alike. For example, if a CEO leaves her company and heads straight to a competitor, armed with all of the confidential and proprietary business information that makes the company tick, then Georgia courts will apply the same analysis and scrutiny to her non-competition agreement as they would to a non-competition agreement for a sales associate straight out of college with no experience in the field.[5]

Such an approach often yields inequitable outcomes, as was aptly illustrated in a recent case from the Court of Appeals, *BellSouth Corp. v. Forsee*.[6] The former employee was BellSouth's vice chairman of operations; he served as the chairman of the board of directors for Cingular Wireless; and there was no doubt that given his role, he was "intimately familiar with highly confidential and trade secret information" belonging to the company.[7] In connection with his employment, the executive signed a non-competition agreement forbidding him from providing services in competition with BellSouth or its affiliated entities to any "entity which provides products or services identical or similar to those provided by BellSouth" within the territory where the employee had provided services for an 18-month period after termination.[8] After announcing his resignation from BellSouth, the executive accepted a position as chairman of the board of directors and chief executive officer of Sprint Corporation, a primary competitor of BellSouth.[9]

The Court of Appeals held that BellSouth could not prevent the executive from working for Sprint because the non-compete provision was unenforceable. In particular, the Court held that, as the agreement was drafted, the geographic reach of the non-compete provision could not be known until the last date of the executive's employment.[10] As a result, the agreement violated Georgia law. The Court's decision seems inequitable because the Court applied rules designed to protect employees who have significantly less bargaining power than the employer. That same policy rationale does not translate well to a case in which a top executive negotiates a lucrative employment contract to lead a major corporation.

To avoid situations similar to those that occurred with BellSouth's senior executive, the new legislation allows employers to identify specific competitors as prohibited employers during the period of the non-compete.[11] Under the statute, BellSouth could have listed Sprint as a prohibited employer, and a court should have enforced this reasonable restriction. This provision also gives employers added flexibility for employees who move offices but are consistently competing against a few, known companies.

More significant, the statute allows courts to adjust overly broad covenants to make them reasonable and enforceable.[12] Thus, the courts will be able to account for the factual differences in each situation. For example, judges can take into account whether they are dealing with a senior executive or a mid-level programmer when determining what restriction is appropriate in a particular situation. Georgia can dispense with its one-size-fits-all approach to non-compete analysis.

Problem 2: Must an Employer be a Fortune Teller?

As noted above, under Georgia law, the exact geographic scope of a non-compete provision has to be determinable at the time that the agreement is signed.[13] An employer cannot use a provision along the lines of "employee Smith will not compete within a ten-mile radius of any office at which he is based during his employment," because Smith and the employer do not know the office(s) at which Smith ultimately will work during the course of his employment. Georgia law also requires that an employer define with precision the scope of activity covered by a non-compete. An employer cannot prevent an employee from working for a competitor "in any capacity."[14] Instead, the employer has to define what tasks the employee is going to perform and then prohibit the employee from performing those same tasks for a new employer after employment.

The rub is that the employer not only has to have a precise job description prepared, but that description has to be 100 percent accurate. Quite simply, there are no silver medals for coming close; witness *Beacon Security Technology, Inc. v. Beasley*.[15] In *Beacon*, the employee entered into a non-compete provision that forbade him from selling, leasing or servicing the following types of security systems in a seven-county area for a two-year period after termination: "burglar & fire alarms, Closed Circuit TV, Intercoms, Telephone & TV Hook ups, Central Vacs and Medical Alert, or other security systems . . . ."[16] When the employee resigned and immediately started competing in the restricted area, his former employer sued.[17] The Court of Appeals held that the non-compete was unenforceable under Georgia law. Its reasoning was that, although the employer had shown that the employee had worked in the seven-county area and that he had sold, leased or serviced the various types of security systems offered by the employer, *the employer had not shown that the employee had sold, leased and serviced each type of security system in each of the seven counties.*[18]

New Atlanta Ear, Nose & Throat Associates, P.C. v. Pratt[19] is another example. In *New Atlanta*, five physicians entered into non-com-

pete provisions with a medical practice that prevented them from practicing medicine for an 18-month period after termination within an eight-mile radius of the practice's offices in certain cities.[20] The Court of Appeals held the provision unenforceable because the practice's offices could move within the towns, and therefore, the geographic scope of the non-compete could shift, if ever so slightly.[21] For instance, the practice's Marietta office twice moved a half-mile over the course of the physicians' employment.[22] Because the medical practice used the term "Marietta [office]" as opposed to, for example, "123 Main Street, Marietta, Georgia," it lost the benefit of its bargain with its physicians.

Beacon and *New Atlanta* demonstrate that an employer sometimes has to be a fortune teller to enforce a non-compete provision in Georgia. An employer has to outline the exact geographic boundaries to be encompassed before the employee ever starts. Moreover, it is not enough to define the counties in which an employee will work and the tasks that an employee will perform; the employer also has to ensure that the employee will perform each act in each specified county during his employment. This is not a concern for employees who perform one task in one area, such as an accountant whose clients are all in Bibb County. It is a concern for an employee who will be performing multiple tasks in a larger area, such as an accountant who will be performing accounting, tax and audit services for clients in Bibb, Monroe, Houston and Jones counties. With every change in an employee's activities or assigned area of responsibility, the employer must update its agreements. For example, if the home office moves a half-mile down the street, then those employees may have to sign new non-compete agreements, increasing the business's administrative burdens.

The new statute addresses the *Beacon* and *New Atlanta* problems by providing that a post-employment restriction is enforceable if it gives "fair notice of the maximum reasonable scope of the restraint . . . even if the description is generalized or could possibly be stated more narrowly to exclude extraneous matters."[23] The statute also creates a safe harbor for "any good faith estimate of the activities, products, and services, or geographic areas, that may be applicable at the time of termination."[24] This language changes the approach that an employer may take when preparing a non-compete provision. The use of "fair notice" and "good faith" put the onus on the employer to do its best in estimating the employee's duties in the coming months and years, but the employer will not be penalized if it did not predict the future perfectly.

The new statute also defines the legitimate business interests that an employer can use to support the enforcement of a restrictive covenant to include trade secrets and other confidential information, "[s]ubstantial relationships with specific prospective or existing customers," goodwill and "[e]xtraordinary or specialized training."[25] Thus, courts will be able to pay more attention to whether a restriction goes too far in protecting an employer's actual interests and less to the question of whether the geographic scope of a non-compete shifted slightly.

Problem 3: The Pitfalls of Restricting Employees During Their Term of Employment

Most Georgia employers and attorneys have a general understanding that the courts of this state will apply strict scrutiny to restrictive covenants that cover an employee's activities after the end of the employment relationship. They do not, however, pay similar attention to common in-term covenants. Such covenants include basic provisions that set forth that an employee may not work for a competitor or perform competitive acts during the course of employment.

This past summer, in *Atlanta Bread Co. v. Lupton-Smith*,[26] the Supreme Court of Georgia held that in-term covenants are subject to the same strict scrutiny as post-term covenants.[27] The Court's decision effectively invalidated a host of existing agreements that contain such provisions, as most employers and attorneys do not think to add precise limits on geography and scope of activity when drafting paragraphs that forbid in-term competition. The presence of an unenforceable in-term covenant also will invalidate any other non-compete or non-solicitation covenants contained in the same agreement.[28] Thus, an unwary employer could pay great attention to drafting non-compete and non-solicitation covenants that comply with the various requirements under Georgia law, only to have all of its careful work undone by a simple "you will not compete during the term of employment" paragraph. This rule appears to be unique to Georgia and presents a special danger to practitioners who are not familiar with Georgia common law on restrictive covenants.

HB 173 removes this element of surprise by explicitly eliminating the trap embodied by *Atlanta Bread Co.* HB 173 provides that a restriction on competition that operates during the term of a contract "shall not be considered unreasonable because it lacks any specific limitation upon scope of activity, duration, or geographic area as long as it promotes or protects the purpose or subject matter of the agreement or relationship or deters any potential conflict of interest."[29] Accordingly, under HB 173, employers can ensure by contract that their employees are not serving two masters.

Problem 4: What Do You Mean by Contact?

Given the challenges in drafting and enforcing a restrictive covenant based on a geographic

area, many lawyers advise clients to choose instead a client-based restriction to prevent the former employees from soliciting customers. Georgia law currently requires that employers limit their customer non-solicitation provisions to customers with whom the signing employee had actual contact or a relationship (unless the provision is limited in territory).[30] The problem arises in the courts' judicially created definition of "contact," which often does not sufficiently protect an employer's customer relationships.

For example, an employer lost a case when the Court of Appeals applied the bright-line rule that a customer non-solicitation covenant is invalid if it does not contain a geographic limitation and it includes any customers with whom the employee did not have actual and direct contact.[31] A prohibition against "contacting any customers about whom [the former employee] at any point had confidential or proprietary information" was deemed overbroad because the former employee had not necessarily had actual and direct contact with each customer about whom she had learned such confidential information.[32] The Court reached this holding even though the former employee received on-the-job training from the employer's president, worked with lists of the employer's customers, and was introduced to many of the company's customers and suppliers.[33] The opinion does not reveal that either side alleged that there were customers about whom the employee learned confidential information, but with whom she did not have actual contact; the mere fact that such customers could exist was enough to invalidate the provision. In the end, the former employee was allowed to compete against her former employer immediately after resigning, despite her prior promise not to do so.[34]

The new statute cures this problem by defining "material contact." The definition of "material contact" now expressly includes knowledge of confidential information as a valid basis for a customer non-solicitation provision.[35] The statute also expands the definition of "material contact" to include customers: (1) whose dealings with the employer were supervised by the signing employee; or (2) who received products or services, upon whose sale the signing employee received compensation.[36] As a result, employers can better protect the business relationships to which they expose their employees.

Problem 5: What if There is a Mistake?

Under current case law, Georgia courts have adopted a peculiar and unforgiving rule: if one part of a non-competition or a customer non-solicitation of employees covenant is unenforceable, then not only does that covenant become unenforceable in its entirety, but *all other* non-competition and customer non-solicitation covenants in that agreement become unenforceable, *even if* they would have been independently reasonable.[37]

This creates special risks for employers in drafting non-compete provisions. On the one hand, a non-compete often makes sense in light of an employee's duties, training and exposure to relationships. On the other hand, non-compete provisions are hard to enforce because they require a leap of faith by employers that the employee's job is going to play out as predicted. If events do not occur as planned, then not only is the non-compete provision going to be unenforceable, but the customer non-solicitation provision will go with it. Thus, employers take major risks by even attempting to include non-compete provisions in their agreements with Georgia employees. The statute removes this unusual disincentive by permitting courts to enforce otherwise problematic restrictions to the extent that the agreement is reasonable.[38]

Problem 6: Confidential Information Has an Expiration Date

For many classes of employees, non-disclosure of confidential information provisions are the most important means for an employer to protect its business. For instance, technical employees such as computer programmers or laboratory researchers are important to employers because of their knowledge of ongoing projects. High-level executives may bring value to the company because of their ability to prepare and execute long-term business plans. Under existing law, non-compete provisions do not work for these employees because they can do their work anywhere in the world and because there is often no geographic limit to their jobs. Non-solicitation of customers provisions do not work because these employees' roles frequently do not involve management of specific customer relationships. Thus, an employer can best protect itself with a non-disclosure provision that states that the employee will not use or disclose the employer's confidential information, as that term is defined in the employment agreement.

There is one quirk of Georgia law that creates difficulty in using non-disclosure covenants. Under current law, a non-disclosure covenant has to contain a time limit (except as to trade secrets).[39] Georgia is one of only two states with such a requirement.[40] Most other states permit non-disclosure provisions that prevent the use or disclosure of confidential information for as long as the information remains confidential.

This requirement creates two issues. First, the fact that the requirement is so uncommon is problematic for out-of-state employers and attorneys. Second, and more important, the requirement leaves employers unable to protect their confidential information even when they retain a legitimate interest in doing so. Consider, for instance, a high-level

executive for a major corporation who prepared and implemented a detailed, highly confidential, five-year business plan. The plan lays out the direction of the company, new markets and products to be developed and potential targets for strategic acquisitions. The corporation might not be able to protect the executive's knowledge of the company's plan as a trade secret,[41] so a non-disclosure agreement provision would be critical. If, however, the executive has a two-to-three year time limit in her non-disclosure provision (as is customary in Georgia), then the organization cannot protect its confidential business plan for the life of the plan. The company's only alternative would be to include a five-year time limit in its non-disclosure provision and then hope that Georgia courts would uphold it in the absence of case law sustaining anything longer than a two-year time limit.

The new statute addresses this dilemma by stating that "[n]othing in this article shall be construed to limit the period of time for which a party may agree to maintain information as confidential . . . for so long as the information or material remains confidential . . . ."[42] In other words, Georgia employers, like employers in 48 other states, will be able to protect their confidential information "for so long as that information remains confidential." The relevant question will be whether the information is truly confidential, not whether the agreement contains an oft-arbitrary time limit.

Problem 7: Is it Really All or Nothing?

Although Georgia courts review employment agreements under an all-or-nothing approach, courts may "blue-pencil" restrictive covenants contained in sale-of-business agreements.[43] In other words, courts are authorized to mark through certain provisions in a sale-of-business agreement, but they may not otherwise reform the provisions. As the Supreme Court has stated, "The 'blue pencil' marks, but it does not write."[44]

In the end, Georgia law ends up reaching some harsh results when applied to agreements involving the sale of businesses for large sums. For instance, in *Harmrick v. Kelley*, the Court of Appeals deemed a non-compete provision executed in connection with the sale of a business unenforceable because it sought to prevent competitive acts "in a seventy-five (75) mile radius of the Metro Atlanta, Georgia area."[45] The Court concluded that "Metro Atlanta" was impermissibly vague.[46] Rather than use any one of a number of specific definitions for "Metro Atlanta," such as the Standard Metropolitan Statistical Area designated by the U.S. Census Bureau or the counties included in the Atlanta Regional Commission (both of which were referenced in the opinion), the Court found that it could not save the provision because it could not add terms; it could only strike them.[47]

The new statute permits courts to enforce restrictive covenants in commercial and employment agreements to the extent that they are reasonable, thus preventing odd results from Georgia's present, limited version of blue-penciling.[48] Moreover, the new statute specifically instructs courts to give effect to the intent of the parties when enforcing a restrictive covenant.[49] This is an especially useful mandate for instances such as the one discussed above, where the intent of the parties was clear when they used the term "Metro Atlanta." Thus, the court can give effect to the parties' intent, as is the cardinal rule of contractual interpretation.[50]

Conclusion

Georgia's new restrictive covenant statute updates how non-compete, non-solicitation and non-disclosure covenants will be interpreted. At present, restrictive covenant cases rise and fall on common law rules that, upon closer examination, are often unusual and arbitrary. Non-compete clauses fail because the center-point of the restricted territory could hypothetically move 2,600 feet. Non-solicitation clauses fail because an employer did not want its former employee soliciting customers about whom she learned sensitive information. Multiple clauses fail because an employer required an employee not to compete during the term of employment. Non-disclosure covenants fail because they do not contain time limits, even when the information that they seek to protect may be confidential for years.

The new regime shifts the focus of non-compete litigation from legal issues to factual ones. In this respect, litigating restrictive covenant matters has the possibility of becoming more expensive, but courts and the parties will be more likely to reach a just result based on the circumstances. More important, attorneys who are not specialists in this area will be able to learn and apply the rules that govern a dispute, as they are laid out in the statute. So, when Spectre calls, you will be able to draft the requested employment agreements without having to take a machete to the underbrush shaped by a forest of hundreds of cases and without worrying that you missed a rule in one of them. GBJ

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Endnotes

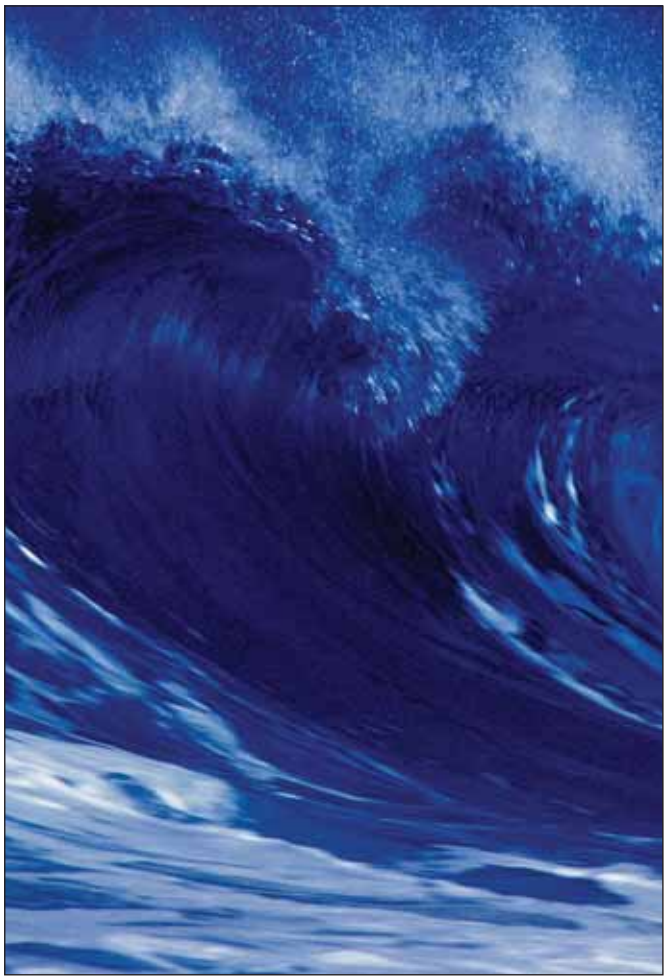
1. Jackson & Coker, Inc. v. Hart, 261 Ga. 371, 405 S.E.2d 253 (1991).
2. Codified at O.C.G.A. §§ 13-8-2, 13-8-2.1, 13-8-50 to -59 (Supp. 2009).
3. *Jackson & Coker*, 261 Ga. at 372, 405 S.E.2d at 254. Specifically, the Supreme Court took issue with O.C.G.A. § 13-8-2.1(g)(1) (Supp. 1990). That section provided that "[e]very court of competent jurisdiction shall enforce through any appropriate remedy every contract in partial restraint of trade that is not against the policy of the law or otherwise unlawful." The Court rejected this effort as one to "breathe life into contracts otherwise plainly void," 261 Ga. at 372, 405 S.E.2d at 255, and therefore barred by GA. CONST. art. III, § 6, ¶ V(c) (1983), which states, "The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void." HB 173 keeps the language in § 13-8-2.1(g)(1) that the Supreme Court found unconstitutional in *Jackson & Coker*.
4. White v. Fletcher Mayo Assocs., Inc., 251 Ga. 203, 204, 303 S.E.2d 746, 748 (1983).
5. *But see* Malice v. Coloplast Corp., 278 Ga. App. 395, 400, 629 S.E.2d 95, 99-100 (2006) (referencing bargaining power of high-level executive when upholding arbitration decision enforcing nationwide non-compete provision).
6. 265 Ga. App. 589, 595 S.E.2d 99 (2004).
7. *Id.* at 589, 595 S.E.2d at 101.
8. *Id.* at 594, 595 S.E.2d at 104.
9. *Id.* at 589, 595 S.E.2d at 101.
10. *Id.* at 596, 595 S.E.2d at 105.
11. O.C.G.A. § 13-8-56(2)(B) (Supp. 2009).
12. *Id.* §§ 13-8-53(d), 13-8-54.
13. AGA, LLC v. Rubin, 243 Ga. App. 772, 774, 533 S.E.2d 804, 806 (2000).
14. Stultz v. Safety & Compliance Mgmt., Inc., 285 Ga. App. 799, 802, 648 S.E.2d 129, 132 (2007).
15. 286 Ga. App. 11, 648 S.E.2d 440 (2007).
16. *Id.* at 11-12, 648 S.E.2d at 441.
17. *Id.* at 12, 648 S.E.2d at 441.
18. *Id.* at 13, 648 S.E.2d at 441.
19. 253 Ga. App. 681, 560 S.E.2d 268 (2002).
20. *Id.* at 682-83, 560 S.E.2d at 270.
21. *Id.* at 686, 560 S.E.2d at 272.
22. *Id.* at 686, 560 S.E.2d at 272.
23. O.C.G.A. § 13-8-53(c)(1) (Supp. 2009).
24. *Id.*
25. *Id.* § 13-8-51(9). This definition is virtually identical to the definition of legitimate business interests found in Florida's restrictive covenant statute. FLA. STAT. § 542.335(1)(b) (2009).
26. 285 Ga. 587, 679 S.E.2d 722 (2009).
27. A strange effect of *Atlanta Bread Co.* is that a contractual recitation of the common law duty of loyalty, which requires that an agent not solicit customers or perform other similar acts, *see, e.g.*, E. D. Lacey Mills, Inc. v. Keith, 183 Ga. App. 357, 362-63, 359 S.E.2d 148, 155 (1987), would itself be unenforceable as an impermissible restraint on trade.
28. Atlanta Bread Co. v. Lupton-Smith, 292 Ga. App. 14, 19-20, 663 S.E.2d 743, 748 (2008), *aff'd*, 285 Ga. 587, 679 S.E.2d 722 (2009).
29. O.C.G.A. § 13-8-56(4) (Supp. 2009).
30. Dougherty, McKinnon & Luby, P.C. v. Greenwald, Denzik & Davis, P.C., 213 Ga. App. 891, 894, 447 S.E.2d 94, 96 (1994).
31. Trujillo v. Great S. Equip. Sales, LLC, 289 Ga. App. 474, 477-78, 657 S.E.2d 581, 583-84 (2008).
32. *Id.* at 477-78, 657 S.E.2d at 584.
33. *Id.* at 475, 657 S.E.2d at 582.
34. *Id.* at 478-79, 657 S.E.2d at 584-85.
35. O.C.G.A. § 13-8-51(10)(C) (Supp. 2009).
36. *Id.* § 13-8-51(10)(B), (D).
37. Advance Tech. Consultants, Inc. v. Roadtrac, 250 Ga. App. 317, 320, 551 S.E.2d 735, 737 (2001).
38. O.C.G.A. § 13-8-53(d) (Supp. 2009).
39. Pregler v. C&Z, Inc., 259 Ga. App. 149, 152, 575 S.E.2d 915, 917 (2003).
40. Wisconsin is the other state with such a requirement. *See* Gary Van Zeeland Talent, Inc. v. Sandas, 267 N.W.2d 242, 250 (Wis. 1978).
41. *Compare* Stone v. Williams Gen. Corp., 266 Ga. App. 608, 611-12, 597 S.E.2d 456, 459-60 (2004) (holding that a trial court properly instructed a jury by stating that a trade secret must be in tangible form), *rev'd on other grounds*, 279 Ga. 428, 614 S.E.2d 758 (2005), *with* Essex Group, Inc. v. Southwire Co., 269 Ga. 553, 556-57, 501 S.E.2d 501, 504 (1998) (holding that former employee's knowledge of a logistics system constituted a trade secret and therefore upholding an injunction against the former employee preventing him from working on such a system for competitor).
42. O.C.G.A. § 13-8-53(e) (Supp. 2009).
43. Hudgins v. Amerimax Fabricated Prods., Inc., 250 Ga. App. 283, 285, 551 S.E.2d 393, 395-96 (2001).
44. *Hamrick v. Kelley*, 260 Ga. 307, 308, 392 S.E.2d 518, 519 (1990).
45. *Id.* at 307, 392 S.E.2d at 518.
46. *Id.* at 308, 392 S.E.2d at 519.
47. *Id.* at 308, 392 S.E.2d at 519.
48. O.C.G.A. § 13-8-53(d) (Supp. 2009).
49. *Id.* § 13-8-54(b).
50. Rushing v. Gold Kist, Inc., 256 Ga. App. 115, 117, 567 S.E.2d 384, 387 (2002).

The New Special Master Rule—Uniform Superior Court Rule 46:

Life Jackets for the Courts in the Perfect Storm

by Cary Ichter

Georgia courts, like those in so many other jurisdictions, are facing a perfect storm: resources are dwindling, budgets are drying up, dockets are burgeoning and litigation is becoming increasingly complex and demanding. As most participants in the Georgia judicial system are painfully aware, the courts, judges, judicial assistants, court administrators and everyone else who works with the court system are going to have to learn to do more with less.



Georgia's court budget was cut by $12 million in the 2009 fiscal year (more than 8 percent) and by $7 million (less than 8 percent) in the 2010 fiscal year.[1] Pay has been frozen; benefits have been cut; hiring has been stopped; furloughs have been commenced; and the move towards an electronic case management system with electronic filing and the centralized processing of cases has been put on hold.

To multiply and magnify the difficulties that the courts face with fewer resources and more demands,

the courts must now also deal with the seemingly inscrutable mysteries of electronic discovery. In short, the courts are navigating through a perfect storm—or at least a nasty downpour.

The New Uniform Superior Court Rule 46

Recognizing the strain that this confluence of events will place on the effective workings of the courts, the Supreme Court of Georgia recently approved Uniform Superior Court Rule 46 (U.S.C.R. 46), clarifying when, why and how trial courts can appoint special masters to assist in the supervision of the litigation process.[2] The new rule, which parrots to a significant extent the language of Rule 53 of the Federal Rules of Civil Procedure, implicitly recognizes that "[p]articularly in state court litigation, . . . there are both opportunities and needs for the litigation benefits masters can provide."[3]

U.S.C.R. 46 details a litany of situations in which the courts are empowered to appoint a special master, upon motion of any party or upon the court's own motion. The regime established by U.S.C.R. 46 allows the courts to refer matters to masters for pre-trial, trial and post-trial activities, assisting in everything from investigating and reporting on matters identified by the court[4] to supervising implementation of court orders[5] and overseeing depositions taken outside of the court's jurisdiction.[6]

Under U.S.C.R. 46, the order appointing a special master must describe (1) the master's duties and limits on his or her authority; (2) the circumstances, if any, under which the master may communicate with the parties on an ex parte basis;[7] (3) the materials that the master is to maintain and file with the court reflecting the master's activities; (4) time limits and procedures for reviewing the master's orders, findings and recommendations; and (5) the basis, terms and procedure for fixing the master's compensation.[8]

"The regime established by U.S.C.R. 46 allows the courts to refer matters to masters for pre-trial, trial and post-trial activities, assisting in everything from investigating and reporting on matters identified by the court to supervising implementation of court orders and overseeing depositions taken outside of the court's jurisdiction."

Through the use of special masters, the courts can delegate resource-consuming aspects of case oversight and management. In so doing, the courts can and do promote the efficient, effective, thoughtful and prompt resolution of issues and cases. The enhancement of the speed and quality of justice realized by the use of special masters is not restricted to the particular case to which the master is appointed. By freeing the courts from the daily supervision of cases that are metastasizing motions machines, judges are better able to give due consideration to other, less controversial and less resource-consuming matters on their dockets.

The use and effectiveness of special masters in the federal courts are well-documented.[9] Masters serve vital pre-trial and post-trial functions in navigating complex litigation, allowing the parties to present and articulate their positions more fully and allowing the courts to make reasoned adjudications. Put simply, "[s]pecial masters serve *critically important* functions in our civil justice system."[10] A number of cases illustrate the effectiveness of masters.

In *United States v. Conservation Chemical Co.*,[11] for example, the district court appointed a master with expertise in land use and environmental law to recommend remedial measures after the court determined liability.[12] By appointing the master, the court avoided a long, costly round of hearings to fashion a remedy. The master's specialized knowledge of the issues underlying the case allowed for a more appropriate remedy in a shorter amount of time.

Likewise, in *Berne Corp. v. Government of the Virgin Islands*,[13] following nearly a decade of intricate litigation, the district court appointed a special master to monitor governmental compliance with a settlement agreement that reformed the territorial real property tax assessment system.[14] The use of the master allowed the court to ensure compliance without having to act as an enforcement gatekeeper or to entertain further enforcement litigation. Both *Conservation Chemical* and *Berne* illustrate but a slice of the benefits that masters bring to complex litigation, acting as proxies for the court to help the parties navigate lawsuits and reach fair outcomes.

Currently in Georgia, special masters assist the courts in handling everything from complex commercial cases to mass tort cases, and there are many situations in which the appointment of a special master is legislatively mandated. For example, Title 22 of the Georgia Code provides for the appointment of special masters to oversee and adjudicate condemnation actions.[15] The Legislature

approved the use of special masters in such cases, "intend[ing] to provide a simpler and more effective method of condemnation[.]"[16] The Court of Appeals of Georgia described the statute as representing an "attempt[] at the outset to achieve a more perfect conciliation between the parties by providing for the use of experienced, competent attorneys as special masters."[17] Similarly, O.C.G.A. § 23-3-43 provides for the appointment of a special master in actions for removing a cloud upon title.[18]

Until the passage of U.S.C.R. 46, however, trial courts were flying blind when it came to appointing masters to assist them in dealing with large, resource-consuming matters. The new rule confirms the existence of the courts' powers to make such appointments and provides the courts with a clearly defined process and framework for using special masters.

The Use of Special Masters in E-Discovery

One area where the use of special masters is particularly appropriate is in the exploding area of electronic discovery, which has become a standard feature of complex commercial litigation. Now that the courts have just rounded the corner into the computer age, already the ubiquity of electronic data is breathtaking. Today, over 99 percent of all information is created and stored electronically. Nearly 10 billion e-mails are sent every year, but fewer than one-third of all e-mails are ever printed. Electronic documents come in a wide variety of file formats. Hard drives in stand-alone personal computers account for less than 55 percent of the total data stored each year.[19] In short, the volume of Electronically Stored Information (ESI) is massive beyond imagination, and it is often difficult to locate and access and expensive to produce. The nature of ESI necessitates a new approach to discovery. Rather than being shredded, documents are destroyed in seconds with mere keystrokes. Instead of letters transmitted to a single recipient, correspondence is instantaneously transmitted worldwide to unlimited addressees by the push of a button.

As technology develops at a breakneck pace, the courts can scarcely keep abreast of each new development while struggling to manage their burgeoning dockets. Judge Shira Scheindlin of the U.S. District Court for the Southern District of New York explained, "Generalist judges are not and *cannot be* experts on electronic hardware and software that enable people to create, store, retrieve, and search ESI."[20] Experienced special masters Mark Fellows and Richard Haydock have concluded that "[w]ith the emergence of ever more complex civil litigation and ever more congested dockets, the need for discovery masters has simply become accepted[.]"[21]

To be sure, disputes over matters such as the programming routines of computer software, the ownership of a unique internet address, the mapping of a network that exists on a global scale or the spoliation of electronic data present unfamiliar terrain and difficult questions even to the wisest jurist. Technological questions increasingly plague discovery, where documents are often paperless and communication is entirely digital.

Although the Georgia Civil Practice Act, unlike the Federal Rules of Civil Procedure, has not yet been amended to address the special challenges of e-discovery, the absence of rules does not translate into an absence of issues; indeed, in Georgia there may be more issues, and those issues may be more complicated and more confounding, because of the absence of legislative guidance.

Federal courts use special masters to handle e-discovery issues with some regularity. In *Hohider v. United Parcel Service, Inc.*,[22] for example, the court appointed a special master to deal with allegations that the defendant had destroyed ESI. The court gave the special master specific instructions to investigate allegations of the defendant's non-compliance with ESI preservation requirements. The special master researched the allegations and relevant legal theories in depth and prepared a comprehensive report to the court.[23] The court used its referral order to target the special master's attention to the specific areas that concerned the court and to ensure that each was handled appropriately, in accordance with the requirements of the Federal Rules of Civil Procedure.

Research by Judge Scheindlin and Jonathan Redgrave found that special masters generally play four roles in e-discovery: (1) facilitating the electronic discovery process; (2) monitoring discovery compliance related to ESI; (3) adjudicating legal disputes related to ESI; and (4) adjudicating technical disputes and assisting with compliance on technical matters.[24] Some masters overseeing e-discovery may be selected for their expertise in relevant case law and the development of e-discovery trends, while others are selected because of technical expertise to help companies face daunting record retention tasks.[25] Regardless of specialty, these masters work to fill in the gaps where traditional court functions fall short.

With a limited amount of time to handle a deluge of cases, Georgia courts can scarcely afford the time that e-discovery disputes are sure to demand. Instead of effectuating fair dispositions of cases on the merits, courts will struggle to deal with bickering over access to software algorithms. Instead of resolving pressing motions and moving toward the merits of disputes, courts will entertain rounds of objections regarding the mere *right* to discover ESI. With the new U.S.C.R. 46, it need not be so.

The Georgia special master rule specifically provides that the court may appoint a master "to provide guidance, advice and information to the court on complex or specialized subjects, including, but not

limited to *technology issues related to the discovery process*[.]"[26] Where the Georgia Civil Practice Act lags behind the Federal Rules of Civil Procedure, the Uniform Superior Court Rules do not, and the inclusion of this provision of U.S.C.R. 46 provides an invaluable resource to Georgia courts going forward.

Special masters have the ability to give e-discovery disputes the time, attention and expertise that they require, particularly in the absence of a statutory regime. Special masters, as they do in numerous other phases of litigation, can focus on creating fair and customized solutions to e-discovery issues that take into account the challenges of technological innovation as well as the unique needs of the parties in the case. Special masters have the ability to dedicate considerable time to problem-solving and e-discovery dispute resolution, taking into account the development of state and federal case law, without the burdens of an unwieldy docket of cases clamoring for attention.

Empirical data show that both judges and attorneys are generally pleased with the results of special master proceedings. A study conducted by the Federal Judicial Center concluded that "[a]ll of the judges appointing . . . masters or experts, almost all of the special masters or experts they appointed, and almost all of the attorneys thought that, on the whole, the benefits of the appointments outweighed any drawbacks."[27] One judge even lamented that he "wished he had appointed a discovery master earlier."[28]

This pattern of successes will undoubtedly continue in the e-discovery realm, where clients, attorneys and judges can expect special masters to approach ESI disputes with care and expertise, giving each appropriate focus. Anything less risks upsetting the expectation that the process will proceed fairly and without purposeful disruption.

Various critical analyses support the notion that special masters remain an underused resource in ESI discovery. Lynn Jokela and David F. Herr argue for the use of special masters in resolving technical disputes, stating, "A special master who possesses the right qualifications is in a better position to resolve the dispute as compared to a judge with little or no technical expertise."[29] Another author has written that such special masters can "provide substantial assistance to the court where electronic data discovery raises difficult questions related to the quantity or format of information[.]"[30] This is especially important as the costs of discovery continue to rise and parties dispute responsibility for various costs of maintaining and producing ESI. Disputes as to who should bear costs in ESI discovery are particularly well-suited for a special master.[31]

Objections and Responses

Those critical of the use of a special master typically raise the issue of cost first. There is no doubt that the use of a special master introduces a layer of cost to any litigation in which a special master is appointed. An examination of cost without the consideration of value, however, offers a distorted picture. The Federal Judicial Center's study found that, while some respondents believed that the appointment of special masters in their cases raised the cost of the litigation, many of the respondents believed that the appointment of a special master shortened the litigation by resolving issues more expeditiously and through agreements, assisting in the settlement of cases and reducing the likelihood of appeal.[32]

Another objection to appointment of special masters is that appeals of the master's decisions to the trial court will slow down the process. Research has not borne out this objection either. The Federal Judicial Center study referenced above found that all surveyed judges and almost all surveyed attorneys involved in litigation in which masters had been appointed agreed that

the masters "effectively met the purposes and goals of the appointment," and most surveyed judges "described the level of effectiveness as 'extremely' or 'very' effective."[33]

In short, the experience of those who have used special masters, in the types of cases for which U.S.C.R. 46 was written, has been that special masters expedite the litigation process, assist the parties in eliminating and narrowing issues, reduce the likelihood of trial and appeal, and, often, reduce the cost of litigation and the delay that appear otherwise to be inherent in the system.

Conclusion

The increased use of special masters in many jurisdictions points to their utility to the judicial process, and the introduction of U.S.C.R. 46 highlights the recognition of an emerging need for the more regular use of special masters in the courts of Georgia. In a world where courts are increasingly strained by their workload and litigation simultaneously becomes increasingly complex, special masters provide an outlet. Nowhere is this more true than in discovery.

The Georgia courts stand at a crossroads. The courts have, through the introduction of U.S.C.R. 46, recognized and embraced the usefulness of special masters, even specifically highlighting their use in technical electronic discovery disputes. At the same time, Georgia lacks a comprehensive set of rules to govern e-discovery, breeding uncertainty among lawyers and judges. The courts, drowning in flooded dockets, stripped of resources with which to stay afloat, faced with future waves of new technologies and the complexities that attend them, can stay afloat with the use of special masters—life jackets in the perfect storm. GBJ

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Endnotes

1. National Center for State Courts, Budget Resource Center, http://www.ncsconline.org/wc/budget/activities/georgia.asp (last visited Oct. 6, 2009).
2. *See* GA. UNIF. SUPER. CT. R. 46.
3. Lynn Jokela & David F. Herr, *Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool*, 31 WM. MITCHELL L. REV. 1299, 1300 (2005).
4. GA. UNIF. SUPER. CT. R. 46(a)(1)(E).
5. *Id.* R. 46(a)(1)(D).
6. *Id.* R. 46(a)(1)(G).
7. The issue of ex parte communication involves not only communication between the parties and the special master but also between the special master and the court. The referral order should address when ex parte communication is permissible.
8. GA. UNIF. SUPER. CT. R. 46(b)(2).
9. *See* THOMAS E. WILLGING ET AL., FED. JUD. CTR., SPECIAL MASTERS' INCIDENCE AND ACTIVITY 1 (2000), http://www.fjc.gov/public/pdf.nsf/lookup/SpecMast.pdf/$file/SpecMast.pdf.
10. Mark A. Fellows & Roger S. Haydock, *Federal Court Special Masters: A Vital Resource in the Era of Complex Litigation*, 31 WM. MITCHELL L. REV. 1270, 1270 (2005) (emphasis added).
11. 106 F.R.D. 210 (W.D. Mo.), *aff'd in part, rev'd in part sub nom. In re* Armco, Inc., 770 F.2d 103 (8th Cir. 1985). Following the district court's decision, certain parties in this case sought a writ of mandamus from the court of appeals to compel the district court to revoke the special master's authority. *See* 770 F.2d 103. Although the court of appeals found that the district court should not have vested the special master with power to conduct the trial of the action, it endorsed the special master's "broad authority to supervise and conduct pretrial matters, including discovery activity, the production and arrangement of exhibits and stipulations of fact, the power to hear motions for summary judgment or dismissal and to make recommendations with respect thereto." *Id.* at 105.
12. *See* 106 F.R.D. at 224.
13. 570 F.3d 130 (3d Cir. 2009).
14. *See id.* at 134.
15. *See* O.C.G.A. § 22-2-103 (Supp. 2009).
16. *Id.* § 22-2-101 (1982).
17. Wiggins v. City of Macon, 120 Ga. App. 197, 199, 169 S.E.2d 667, 669 (1969).
18. Other statutes that permit or mandate the appointment of special masters include O.C.G.A. § 28-5-100(a) (2007) (permits appointment of a special master by the Claims Advisory Board to make recommendations as to compensation claims), *id.* § 36-67A-5 (2006) (providing for appointment of special masters in certain rezoning cases) and *id.* § 45-19-37 (2002) (appointment by governor of a special master in disputes involving allegations of unlawful practices).
19. Virginia Llewellyn, Applied Discovery, *Developing an Effective Electronic Discovery Response Plan* (Mar. 18, 2002), http://www.nchelp.org/elibrary/Presentations/2002/2002LegalMidYearMeeting/llewellyn-bw.ppt#256,1, ELECTRONIC DISCOVERY.
20. Shira A. Scheindlin & Jonathan M. Redgrave, *Special Masters and E-Discovery: The Intersection of Two Recent Revisions to The Federal Rules of Civil Procedure*, 30 CARDOZO L. REV. 347, 387-88 (2008) (emphasis added).
21. Fellows & Haydock, *supra* note 10, at 1277.
22. 257 F.R.D. 80 (W.D. Pa. 2009).
23. *Id.* at 81.
24. Scheindlin & Redgrave, *supra* note 20, at 374.
25. *See id.*
26. GA. UNIF. SUPER. CT. R. 46(a)(1)(C) (emphasis added).
27. *See* WILLGING ET AL., *supra* note 9, at 61.
28. *Id.* at 59.
29. Jokela & Herr, *supra* note 3, at 1314.
30. Richard H. Agins, *An Argument for Expanding the Application of Rule 53(b) to Facilitate Reference of the Special Master in Electronic Data Discovery*, 23 PACE L. REV. 689, 694 (2003).
32. *Id.* at 723.
32. *See* WILLGING ET AL., *supra* note 9, at 58.
33. *Id.*

APPENDIX
Uniform Superiour Court Rule 46. Special Masters

(a) Appointment, Removal and Substitution.

(1) Unless a statute provides otherwise, upon the motion of any party or upon the court's own motion, the court of record may appoint a master:

(A) to perform duties consented to by the parties;

(B) to address pretrial and post-trial matters that the court cannot efficiently, effectively or promptly address;

(C) to provide guidance, advice and information to the court on complex or specialized subjects, including, but not limited to technology issues related to the discovery process; or

(D) to monitor implementation of and compliance with orders of the court or, in appropriate cases, monitoring implementation of settlement agreements;

(E) to investigate and report to the court on matters identified by the court;

(F) to conduct an accounting as instructed by the court and to report upon the results of the same;

(G) upon a showing of good cause, to attend and supervise depositions conducted outside of the jurisdiction; and

(H) to hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

(i) some exceptional condition, or

(ii) the need to perform an accounting, to resolve a difficult computation of damages or if the matter involves issues for which a special substantive competence would be beneficial.

(2) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under applicable standards, unless the parties consent with the court's approval to appointment of a particular person after disclosure of all potential grounds for disqualification.

(3) In appointing a master, the court should consider the fairness of imposing the likely expenses on the parties and should protect against unreasonable expense and delay, taking into account the burdens and the benefits such an appointment would produce. The appointment of a special master shall not deprive any party access to the courts or the civil justice system.

(4) A special master may be removed or substituted by order of the court, upon motion of a party or sua sponte.

(b) Order Appointing Master.

(1) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master.

(2) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority;

(B) the circumstances--if any--in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation pursuant to subparagraph (h) hereof.

(3) Entry of Order of Appointment. The court may enter the order appointing a master only after the master has filed an affidavit: (i) disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification; and (ii) certifying that the master shall discharge the master's duties as required by law and pursuant to the court's instructions without favor to, or prejudice against any party.

(4) Amendment. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(c) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties. Unless otherwise indicated in the court's order of appointment, the master shall have the power to take evidence, to hear motions and to pass on questions of law and fact within the scope of the referral order. The master may by order impose upon a party any non-contempt sanction provided by O.C.G.A. §§ 9-11-37 and 9-11-45, and may recommend to the court a contempt sanction against a party and any sanction against a non-party.

(d) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(e) Master's Orders. A master who makes an order must promptly serve a copy on each party.

(f) Master's Reports. Unless otherwise indicated in the appointment order, a master must report to the court:

(i) all motions submitted by the parties;

(ii) all rulings made on all issues presented and all conclusions of law and findings of fact;

(iii) all evidence offered by the parties and all rulings as to the admissibility of such evidence; and

(iv) such other matters as the master may deem appropriate.

(g) Action on Master's Order, Report, or Recommendations.

(1) Action. In acting on a master's order, report, or recommendations, the court must afford the parties an opportunity to be heard and to object to any portion thereof. The court may receive evidence, and may adopt or affirm, modify, reject or reverse in whole or in part, or resubmit all or some issues to the master with instructions.

(2) Time To Object or Move. A party may file a motion to reject or to modify the master's order, report, or recommendations within twenty (20) days from the date on which the master's order, report, or recommendations are served, unless the court sets a different time. The master's order, report, or recommendations shall be deemed received three days after mailing by United States mail or on the same day if transmitted electronically or by hand-delivery. In the absence of a motion to reject or modify an order, report or recommendation within the time provided, the order, report or recommendation shall have the force and effect of an order of the court.

(3) Fact Findings. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties stipulate with the court's consent that:

(A) the master's findings will be reviewed for clear error, or;

(B) the findings of a master appointed under subsections (a)(1)(A) or (E) will be final.

(4) Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters. Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(h) Compensation.

(1) Fixing Compensation. The court shall fix the master's compensation on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) Payment. The compensation fixed must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Allocation. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

State Bar Seeks Continued Legislative Success in 2010

by Mark Middleton

As a busy 2009 comes to an end, the State Bar's legislative efforts have begun for the 2010 Georgia General Assembly. The year began with a productive 2009 legislative session that brought passage of bills relating to LLC code revisions, bar exam fees, uniform electronic transfer, as well as state funding of several key budget items.

After the 2009 regular session, the State Bar's legislative efforts continued as Bar members and the professional staff supported Section activities and advanced carry-over legislation. "We are working hard so we can enjoy another productive year at the General Assembly," affirmed State Bar lobbyist Rusty Sewell.

The State Bar is also actively engaged in the debate over the state budget. Last year, the judicial budget was cut by 13.3 percent, and continuing deteriorating revenues have caused the governor to call for even further cuts. State Bar leadership is actively engaged with the legislative advocacy team to educate policymakers on the critical need to adequately support the third branch of government. "We need lawyers to make the case to their fellow citizens, business leaders and their elected officials that the judicial branch needs to be funded in order for the basic functions of public safety and dispute resolution to function," said State Bar President Bryan Cavan.

2010 State Bar Legislative Agenda

The 2010 State Bar agenda consists of bills filed last year that have not passed as well as new bills and funding initiatives developed by the State Bar Sections since the 2009 session.

Photo by Johanna Price

Carry-Over Bills

The following State Bar bills will be taken up again in the 2010 session.

Trust Code Revision (SB 208): SB 208 is a major effort to modernize the trust code. The bill, sponsored by Sen. Bill Hamrick (R-Carrollton), passed the Senate

last year and is currently in the House Judiciary Committee. That committee has conducted two major reviews of the bill at sessions this fall. Fiduciary Section leaders Nick Djuric, Bill Linkous and many others, along with reporter Mary Radford, have given sacrificially of their time in this effort.

Evidence Code Revision (HB 24): HB 24 is the result of a major effort by the State Bar's Evidence Code Study Committee that proposed a move toward the federal rules of evidence. In the summer of 2008, a joint legislative committee heard testimony and produced a draft bill that became HB 24. That legislative committee determined that the bill would not revise recently adopted state policy (i.e. tort reform) and would simply retain the current law on any particular provision if broad consensus could not be reached on the move to the federal language. In 2009, the bill stalled after points of opposition were raised on two major issues (bent of mind and treatment of co-conspirators in respect to the furtherance of a conspiracy). The State Bar is continuing its attempt to work through the hurdles by the beginning of the session in January.

Revisions to the Georgia Public Defender Standards Council (SB 42): SB 42, which passed the Senate in 2009, was initially opposed by the State Bar because it removed policy-making authority from the Council. Subsequently, the State Bar has worked with the author and House leaders on a compromise that would address the concerns of all interested parties.

New Agenda Items

This year, the various State Bar Sections are again preparing legislative proposals on issues of importance to the State Bar. The State Bar's Advisory Committee on Legislation (ACL) considered two proposals at its August meeting and forwarded recommendations for approval to the State Bar Board of Governors (BOG), which approved them in September.

The following proposals were approved by the BOG at its September meeting:

- **Support for Legal Services Corporation:** The State Bar endorsed a federal resolution supporting the Legal Services Corporation.
- **Funding for Victims of Domestic Violence:** The Women and Minorities in the Profession Committee presented their funding request of $2.5 million for the 2011 fiscal year for victims of domestic violence.

Other issues undoubtedly will be added to the State Bar's legislative agenda at the Midyear Meeting in January. "The Legislature is impressed with the expertise that our Sections and ACL members bring to the deliberation of these important issues," said ACL Chairman Dwight Davis. "Whether it's the depth of the Fiduciary Section's knowledge on trust code revisions or the passion of our budget advocates, the participation of lawyers in their Sections is a strength for the State Bar legislative program."

Summary

Just as 2009 was a busy year for the State Bar, 2010 promises more of the same. As the State Bar continues its efforts in the 2010 General Assembly, do not hesitate to contact your legislative representatives and Section chairs regarding issues of importance to you. GBJ

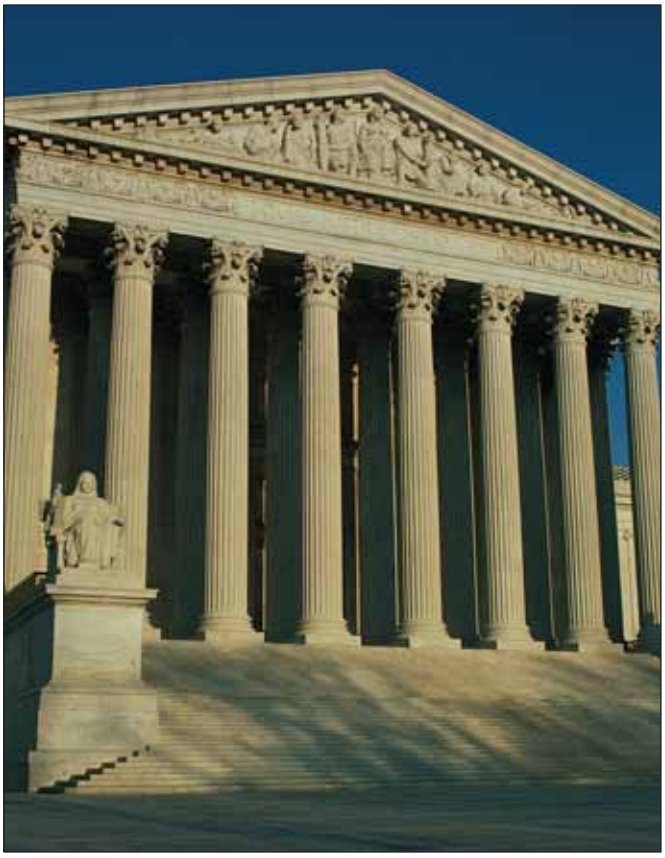
Rusty Sewell, Tom Boller, Hunter Towns, Charlie Tanksley and **Mark Middleton** are the State Bar's professional legislative representatives. They can be reached at 404-872-1007, via fax at 404-872-7113 or e-mail at mark@gacapitolpartners.com. The legislative agenda and information on the State Bar's legislative program can be found online at www.gabar.org/programs/legislative_program/.

Cultural Competence in the Courtroom:

A Judge's Insight

by Hon. Gail S. Tusan and Sharon Obialo

In the wake of the confirmation of Justice Sonia Sotomayor as the first Hispanic and only the third female to serve on the U.S. Supreme Court since its founding in 1789, many questions have arisen as to how important cultural sensitivity is in adjudicating justly and fairly. For example, what can a "wise Latina" bring to the bench in terms of cultural background, life experience and global understanding? Are American courts adequately serving their diverse communities? Is justice truly achieved when cultural differences are ignored or misunderstood during legal proceedings?



A Global Courtroom

Certain fundamental practices followed in courtrooms throughout America may prove problematic for individuals who did not grow up in this country. For example, our longstanding practice of requiring a witness to raise his or her hand while swearing to tell the truth prior to testifying is a Judeo-Christian tradition, which inadvertently may be at odds with certain cultural norms adhered to by foreign-born persons. While it is not unusual for a lawyer to point a finger or shake a fist during an argument or lock eyes with a witness during examination, many cultures find it rude to point at others. In East Asia and certain Muslim countries, lack of eye contact toward an authority figure signifies respect and deference. Thus, a prosecutor's argument that a defendant's failure to make eye contact with law enforcement signifies guilt might in truth indicate something very different if the defendant is foreign-born.

The diverse landscape of American culture necessitates an expanded framework of understanding within the legal community. Lawyers, judges and court personnel alike must ensure that we have our global antenna up. We must be tuned in to the increasing cultural nuances underlying today's court filings. Consider the following excerpt from a custody hearing. The Algerian father[1] is reacting to the American mother's request that the court permit her to withhold the children's passports from him because she fears that the father will take the kids back to his native country, without her knowledge:

> Mr. Sayed: "OK, but please, your honor, please. Make sure you consider the passport. I'm not a kidnapper, ma'am."
>
> The Court: "I understand."
>
> Mr. Sayed: "I'm not a kidnapper."
>
> The Court: "Sir, I heard you. I did not say you were. Did I suggest you were a kidnapper?"
>
> Mr. Sayed: "No, no. Because of my language, people always treat me like a terrorist."
>
> The Court: "Have I treated you like a terrorist?"
>
> Mr. Sayed: "No, you treat me nothing but the best. I appreciate that. I really do."
>
> The Court: "In our court, we do our best to treat everyone equally and with respect."

The foregoing colloquy highlights the court's need for sensitivity when interacting with individuals who perceive themselves to be members of targeted religious or ethnic groups. In particular, a judge must not inadvertently reward a parent's goal of culturally alienating a child from the other parent. Most important, the court itself must work hard to ensure that there is no appearance of personal hostility or cultural bias emanating from the bench.

Framing the Discussion on Culture

To begin a discussion on cultural competence, it is important to establish definitional clarity. Culture is "a dynamic value system of learned elements, with assumptions, conventions, beliefs and rules permitting members of a group to relate to each other and to the world, to communicate and to develop their creative potential."[2] Language, food, customs, religion, clothing and other outward expressions make up a group's culture, in addition to unspoken values and beliefs. There are four key components involved in cultural competence: (1) awareness of one's own cultural worldview; (2) attitude towards cultural differences; (3) knowledge of different cultural practices and worldviews; and (4) cross-cultural communication.

Take, for instance, a divorce and child custody case involving an Indian couple who appeared in the

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Fulton County Superior Court Family Division. The facts exemplify how a judge's lack of knowledge of certain cultural practices could result in an erroneous conclusion. In this case, the husband testified that his wife was hysterical, claiming that she worshiped blocks of blood and practiced voodoo. Casting commonplace Hindu practices in a seemingly negative light was the husband's tactic to persuade the court that his wife was emotionally unstable and unfit to parent the child. It would, however, be a grave error to rely on him as the authority on the significance of the alleged religious practices of his wife. We must be aware of our own cultural assumptions and stereotypes, and avoid letting these beliefs influence our judgment about others. Additionally, we must educate ourselves about others' cultural differences and practices when they surface in cases in order to maximize our preparedness for assessing testimony and facilitating communication. Indeed, this situation shows how cultural competence can be pertinent in rendering fair decisions in the court.

With the changing faces of cities, communities and courtrooms all over the country, we must recognize and strive towards a greater depth of perspective. The Atlanta metropolitan region,[3] for example, has witnessed remarkable changes in its social demographics over the last several years, which directly illustrate this necessary shift in perspective. According to the 2000 census, approximately 11.7 percent of the Atlanta population is foreign-born, with the largest communities hailing (in descending order) from Mexico, India, Vietnam, Korea, China, Jamaica, Colombia, Nigeria, Guatemala and El Salvador.[4] As a result of this growing diversity, courthouses throughout Georgia may find that they are not as user-friendly as they need to be. Specifically, there is a lack of community education about court processes; language barriers exist for many court users; and divergent religious customs on occasion conflict with court protocol.

Lack of Community Education About Court Processes

Many foreign-born litigants, particularly non-English speakers, have limited access to information about our court system. In many foreign countries, the rule of law and the court systems are more closely associated with corruption than with fairness and justice. Thus, diverse litigants might regard seeking legal relief as futile, particularly if they believe that persons without financial means will not have influence with the judge.[5] Further, if such individuals do decide to seek legal redress, residual feelings of distrust of the court system can lead parties to falter in providing information in advance, frustrating the goals of discovery and due process.

The goal should be to cultivate greater confidence in our legal system. Targeting certain underserved groups through community outreach by judges and court personnel in order to provide direct communication about court rules, procedures and available resources is the most effective approach to educating and preparing these persons for navigating Georgia's halls of justice. There are several organizations in Georgia that serve as links to our legal system, including Catholic Charities of the Archdiocese of Atlanta; Raksha, which serves a primarily South Asian clientele; and the Latin American Association.

Language Barriers

Perhaps some of the greatest handicaps for foreign and minority litigants are the language barriers that they often face, in attempting to communicate with court personnel and during a court proceeding. We must practice patience, offer a discerning ear and keep an open mind while interacting with those who have limited English proficiency.

Bilingual Documents/Signs

There are also concrete measures that a court can implement to facilitate greater access for non-English speakers. In many states, Georgia in particular, the international diversity of our communities necessitates the expansion of bilingual personnel and resources in the court. Bilingual directional signs are underutilized in many of our courthouses even though such tools are critical navigational aids for non-English speakers. Moreover, bilingual written materials and forms are not helpful if the persons for whom they are intended

cannot find them. Making one's way through a courthouse is difficult enough for the average English-speaking person. The added hurdle of language difficulties makes the process of entering the courthouse burdensome and frightening for those who are non-English speakers. Thus, it is important to consider how much more daunting communicating is for someone whose cultural background or nationality is foreign to the court personnel encountered in the search for justice.

To address this issue of community education, the Superior Court of Fulton County has implemented the Court Ambassador Academy. This program trains citizens (of all ethnic backgrounds and ages) interested in volunteering in the court to act as ambassadors and liaisons to their own communities and throughout the courthouse. These volunteers speak a variety of different languages and have been successful in raising awareness about the county judicial system and its processes.

Certified Court Interpreters

Additionally, the value of having qualified interpreters in the courtroom cannot be overstated. For court interpreters, bilingualism is not sufficient. Many litigants attempt to use family and friends as interpreters for financial reasons, but an interpreter must be certified, or, in certain instances, court-registered. Certified interpreters must undergo training and pass examinations that equip them with the skills to "transfer all of the meaning heard from the source language into a target language [without] . . . editing, summarizing, adding meaning, or omitting," in just a few seconds.[6]

It is a common misconception that the court is only required to provide interpreters in criminal cases, yet according to the Supreme Court of Georgia's Uniform Rule for Interpreter Programs, all non-English speakers must be provided with various resources to secure an appropriate interpreter. If the litigant presents a valid pauper's affidavit, the court is required to provide an interpreter at no cost as long as there is a bona fide need.[7] To be sure, a judicial decision based on an evidentiary hearing involving a non-English speaker that is conducted without a certified or court-registered interpreter is not only subject to legal challenges, it also compromises our deeply rooted principle of providing equal access and fairness to all who appear before us.

Conflicts Between Religious Practices and Court Protocol

Although the American legal system was established based on Judeo-Christian values, customs and traditions, with the increasing diversity of religions practiced in this country, we must acknowledge that our Constitution protects an individual's religious freedom. Therefore, a rigid adherence to certain historical practices makes a collision of cultures inevitable. At present, various individuals whose traditions espouse divergent practices are increasingly challenged on an explicit level.

To illustrate, consider the tradition among Muslim women of wearing a headscarf or *hijab*. In December 2008, a woman in Douglasville was held in contempt and arrested for refusal to remove her headscarf in the court. In this instance, the tradition of prohibiting head coverings in the courtroom directly conflicted with this woman's religious obligations and beliefs, and the judicial decision to arrest her created a huge uproar from the Muslim community and advocates, such as the Anti-Defamation League, the Council on American-Islamic Relations and the American Civil Liberties Union. As a result of the press and attention surrounding this incident, in July 2009, the Judicial Council of Georgia made a determination to permit religious attire such as the *hijab* in courtrooms.[8]

The personal decision to appear in court wearing other religious clothing items such as the *burka* (an outer cloth worn in the Islamic tradition, which covers the entire body with the exception of the eyes), however, fuels debate among judges and lawyers as to whether a witness's choice of clothing might violate a party's right to confrontation or whether a trier of fact can assess the credibility of a witness if she is entirely cloaked. While it

Annual Fiction Writing Competition

Deadline January 22, 2010

The editorial board of the *Georgia Bar Journal* is pleased to announce that it will sponsor its Annual Fiction Writing Contest in accordance with the rules set forth below. The purposes of this competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact Sarah I. Coole, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; 404-527-8791.

Rules for Annual Fiction Writing Competition

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

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgment of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become the property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted electronically.
5. Articles will be judged without knowledge of the author's identity. The author's name and State Bar ID number should be placed on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on a date specified by the Board. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, Sarah I. Coole, Director of Communications, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. The author assumes all risks of delivery by mail. Or submit by e-mail to sarahc@gabar.org
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality.

remains to be determined how these legal issues will be resolved, at present each judge has a responsibility to determine how best to run his or her courtroom in a fair and unbiased manner. In doing so, the judge should proceed thoughtfully in light of the considerations raised in this article.

Serving as a Gatekeeper to Minimize Cultural Bias and Achieve Fairness

An important part of combating communication challenges is identifying cultural biases and stereotypes, which might be sources of perceived hostility. Often, these biases and assumptions exist at unconscious levels, but they still affect our everyday verbal and nonverbal communication in the workplace. Interestingly, 91 percent of minority attorneys believe that racial bias exists, whereas 54 percent of non-minority attorneys do not believe that such a problem exists.[9] Behavioral psychologists will attest to the power of cultural stereotypes on the human mind—stereotypes that are fueled and reinforced by long-held beliefs, messages from the media and selective information in our environments.

Awareness and acknowledgment of others' cultural differences as well as our own assumptions are the critical components in ensuring competence and impartiality while interacting with diverse litigants. Jack Glaser, a professor at the Goldman School of Public Policy, has created several strategies for maximizing objectivity.[10]

- Engage in an intentional thought process
- Use specific communication strategies
- Be conscious of diversity and the differences in people
- Increase accountability
- Allow ample time for judgments
- Confront stereotypes
- Renew the drive to be fair and accurate.

For judges, court officials and the legal community at large, following these steps will collectively contribute to making the experience of foreign-born and diverse litigants in the court equitable. And while becoming aware of and countering the latent biases is no easy task, the evolving nature of our global community demands that our courtrooms become more primed to cultural cues through education and communication.

My tenure as a judge presiding in the Family Division of the Superior Court of Fulton County has provided me with first-hand experience in adjudicating cases where a battle of culture has been at the forefront, and my perspective as an American judge has been enriched by exposure to and education about cultures different from my own. Regardless of the cultural background of the parties before me, however, my judicial responsibility remains absolute—to listen to and understand both sides of a case, apply the law and make a fair decision in the end. GBJ

Hon. Gail S. Tusan has served on the Superior Court of Fulton County since her appointment in 1995. Currently she is chair of the Access to Justice and Fairness in the Courts Committee, the Council of Superior Court Judges and the Judicial Section of the Atlanta Bar Association. Tusan also serves as a faculty member of the National Judicial College.

Sharon Obialo graduated from Duke University in 2008. Post-graduation she spent four months in Berlin, Germany, studying minority and human rights issues, as a fellow with the Humanity in Action Foundation. She currently serves as a judicial intern in the Fulton County Superior Court and will be attending law school in the fall of 2010.

Endnotes

1. Name and country of origin have been changed to protect the litigant's privacy.
2. CANADIAN COMMISSION FOR UNESCO, *A Working Definition of "Culture,"* in CULTURES 78-83 (1977).
3. The Atlanta region includes 10 counties: Cherokee, Cobb, Gwinnett, DeKalb, Fulton, Douglas, Fayette, Clayton, Henry and Rockdale counties. Statistics available at http://www.atlantaregional.com/html/196.aspx.
4. *2000 Census: Foreign Born by Place of Birth*, available at http://www.atlantaregional.com/html/196.aspx. Other large foreign-born populations include individuals from the United Kingdom, Canada and Germany.
5. Interview with Aparna Bhattacharyya, Director of Raksha, Inc. (Aug. 26, 2009).
6. Roxana Cardenas, *"You Don't Have to Hear, Just Interpret!": How Ethnocentrism in the California Courts Impedes Equal Access to the Courts for Spanish Speakers*, 38 CT. REV. 24-31 (2001).
7. GA. SUP. CT. R. APP. A, Uniform Rule for Interpreter Programs.
8. Jim Galloway, *Muslim Headscarves to be Allowed in Georgia Courtrooms*, ATLANTA J.-CONST., July 24, 2009.
9. Ga. Sup. Ct. Comm'n, *Report on Racial and Ethnic Bias in the Court System* (1995), *available at* http://www.ncsconline.org/Projects_Initiatives/REFI/GA1REB.htm#Culture.
10. Jack Glaser, *The Social Psychology of Intergroup Bias* (2007), *available at* http://calswec.berkeley.edu/CalSWEC/2007_FE_SocialPsychPrejudice.pdf

Conversation and a Scorecard:

The Impact of the Economy on Diversity in the Profession

by Marian C. Dockery

Two leaders in the profession shared their life stories with conference attendees at the 17th Annual State Bar of Georgia Diversity Luncheon on Sept. 30. Chief Justice Carol Hunstein and Thomas G. Sampson, founder and member of Thomas, Kennedy, Sampson & Patterson, Atlanta's oldest minority law firm, answered questions posed by Valerie Jackson, former first lady of Atlanta and host of NPR's "Between the Lines," much to the delight of the attorneys and luncheon guests.

Justice Hunstein responded to Jackson's questions about her life journey. She recalled with ease the painful experiences of her childhood: a diagnosis of polio, the death of her mother when she was only 11 and the almost immediate remarriage of her father and the addition of three siblings to the family. The Chief, which is how Jackson addressed her, recalled that she married very young and had a son. The road did not get easier for Justice Hunstein, who faced a diagnosis of cancer that eventually resulted in a leg amputation. But Justice Hunstein, a young, divorced single mother, was not to be deterred. She pursued a law degree despite her father's words of discouragement—"a woman's place is in the home." The rest of Justice Hunstein's story is recent history and her life reads like a movie script.

Sampson told the audience that he grew up in North Carolina where his father was an attorney and dean of North Carolina State. Five days a week, his dad worked at the college and on the weekends he practiced law. Although his father's profession would logically lead one to believe that Sampson would seek to follow in his footsteps, his motivation to pursue the law was in fact the injustices of the civil rights era. The murder of Emitt Till, the bombing of a Birmingham church where three young girls were killed and the many tragedies suffered by minorities during the 1960s shaped his goals and aspirations. Sampson decided to pursue a law degree because he thought he could be a catalyst for change. He became an extremely successful

Photos by Don Morgan

(Left to right) Chief Justice Carol Hunstein and Thomas G. Sampson at the State Bar of Georgia Diversity Program's 2009 Luncheon.

attorney and founding partner of one of the most notable minority law firms in Atlanta.

Jackson continued the conversation, commenting on her husband's, the late Maynard Jackson, unwavering commitment to diversity, his support of the two speakers and how under his leadership minority business partnerships with the city increased from less than one percent to a stunning 28 percent. This conversation was an important teaching moment for many of the attorneys in attendance.

Prior to the luncheon, three panels presented on the theme of the conference: "A Scorecard: How the Economy is Impacting Diversity in the Profession."

Bar Association Leaders Panel

State and national specialty bar association leaders engaged in a roundtable discussion moderated by Avarita Hanson, executive director of the Chief Justice's Commission on Professionalism. The panelists included Rodney Moore, partner, Adorno & Yoss, immediate past president, the National Bar Association (NBA); Sonjui Kumar, partner, Kumar Pathak, LLC, president of the North American South Asian Bar Association (NASABA); Jeremy Burnett, partner, Troutman Sanders LLP, president, Stonewall Bar Association; Linda Klein, managing partner, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, past president of the State Bar of Georgia; and Erik Rodriguez, associate, Seyfarth Shaw LLP, regional president of the Hispanic National Bar Association (HNBA). The panel agreed that the current economy has taught attorneys in private practice an important lesson: to build a book of business to avoid losing your job. Bigger books of business equal higher retention rates regardless of an attorney's race, national origin, gender or sexual orientation.

Klein shared how her participation in the Bar helped her develop a book of business because it made her more visible, created future opportunities and served as a great networking tool with other attorneys. She also explained how her involvement and willingness to volunteer as chair for the more unpopular committees helped her practice. Klein also recommended that firms educate themselves about diverse attorneys' experiences by reading such publications as *Visible Invisibility*, *Visibly Successful* and *Fair Measure,* all available on the ABA website.

The national bar associations have established different strategies to oversee how the economy has impacted the layoffs of minorities. Moore reported that the NBA Diversity Task Force is examining large law firms in Washington, D.C., Seattle and New York. The task force studied the diversity efforts of these firms, comparing the minority population with the majority population of their attorneys. The study showed that some firms are doing a good job by providing scholarships for minority law students, appointing diversity counsel to focus on the firm's diversity efforts and having good representation of

(Left to right) Avarita L. Hanson, Rodney Moore, Linda Klein, Sonjui Kumar, Jeremy Burnette and Erik Rodriguez, members of the Bar Association Leaders panel.

diversity in their firms. The NBA Diversity Task Force will host several roundtable discussions in the future. Moore then noted that the economic downturn has negatively impacted the representation of the African-American population of attorneys nationwide.

Kumar shared that within the 27 chapters of NASABA, national mentoring circles were instituted to provide support to Southeast Asian women who drop out of firms at a rate higher than anyone else, a trend seen before the recession.

Burnette stated that many gay lesbian bisexual and transgender (GLBT) attorneys are successfully forming their own firms, some of which are hiring and thriving in this poor economic climate. He has not heard that more gay attorneys are necessarily losing their positions. His observation is that firms are laying off attorneys, not because of their sexual orientation, but because business for a specialty has slowed down.

Rodriguez commented on the appointment of Sonia Sotomayor, the first Hispanic and third female justice to the U.S. Supreme Court. He reported that HNBA's president, Carlos Ortiz, participated in talks with the White House to push Sotomayor's appointment. Rodriguez emphasized the ongoing need to reach out to all bar associations on both the local and national level and by forming these alliances, minority attorneys can have a tremendous impact to ensure they remain in the pipeline and employed with law firms even during down economic times.

Corporate In-House Counsel Roundtable

Rick Goerss, chief privacy officer, Equifax, moderated the panel of in-house attorneys that consisted of Paul Weisbecker, manager of litigation, AT&T Wireless; Sonya Richburg, in-house counsel, Compass Group USA; Rick McMurtry, assistant general counsel, Turner Broadcasting System, Inc. (Turner); and John Lewis, senior managing counsel—litigation, the Coca-Cola Company. Each panelist emphasized corporations are changing the way they do business because of the current state of the economy. Weisbecker said, "We are doing more in-house and farming out less hourly work for law firms." Flat fees are replacing billable hours. Companies are also seeking more reasonable billable hours from smaller firms instead of using the larger firms to perform the same work. McMurtry gave an example where Turner hired a small women-owned law firm instead of a larger firm because their rates were more competitive. Lewis said recession, inflation and political unrest are always factors in a global economy and from this perspective there is no "one size fits all" answer to how one responds to an economic downturn and maintain a diverse workforce.

Compass Group North America is growing its business but not adding staff, reported Richburg. She added that their attorneys are doing more with less and managing their resources. All the panelists agreed that regardless of the economy, their companies continue to: contract out work to minority- and women-owned law firms; support pipeline programs and in-house affinity groups; and recruit diverse legal associates.

All the panelists reported that there are challenges in a slow economy and more work must remain in-house, a trend that should continue. They also agreed if something new is tried, such as working with small firms instead of large ones to perform outside work, companies will continue to use these models in the post-recession era.

Law Firm Partners Roundtable

Michael Tyler, partner, Kilpatrick Stockton LLP, was the moderator for the law firm panel. He was joined by Lovita Tandy, diversity partner, King & Spalding, LLP; Kenneth Southall, partner, Adorno & Yoss LLP; June Towery, partner, Nelson Mullins Riley & Scarborough, LLP; and Sam Choy, partner, Seyfarth Shaw LLP.

Tyler asked how the economic downturn and resulting firm layoffs impacted diversity in the panelists' law firms. Tandy reported that no efforts were made to maintain a certain percentage of minority attorneys. Instead, objective criteria were applied in determining who would be laid off at the

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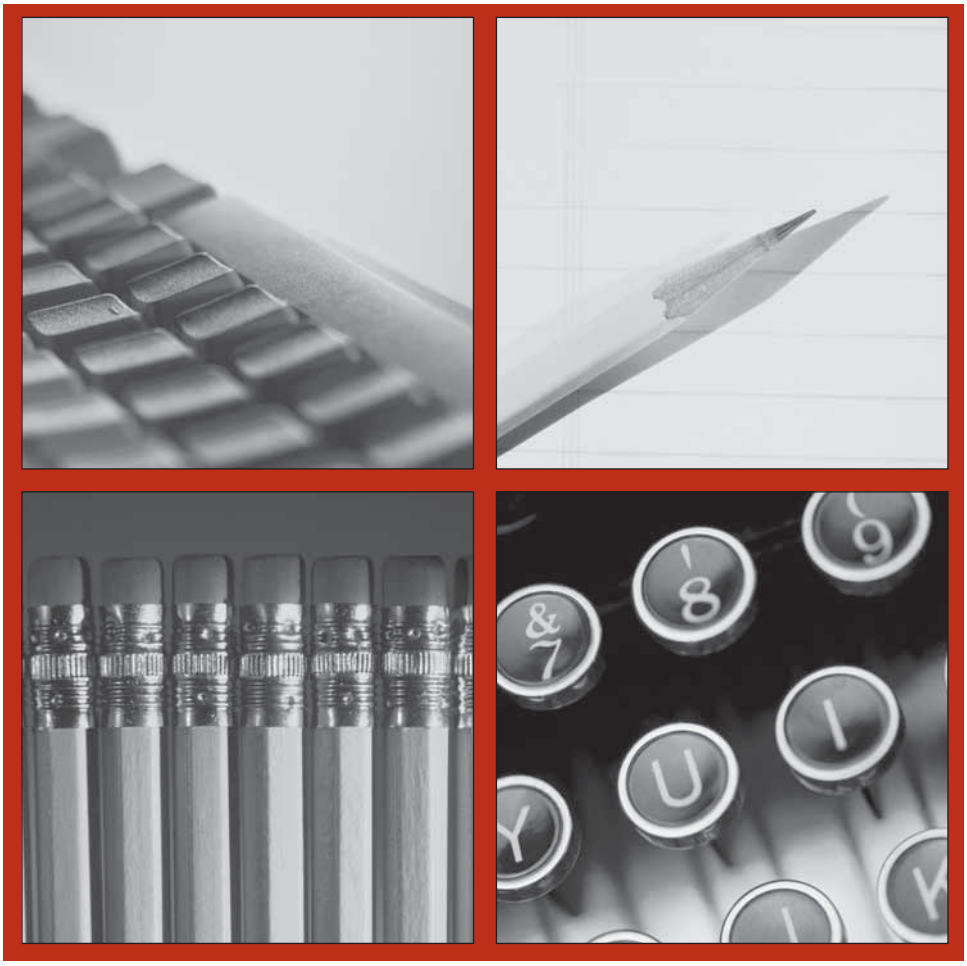

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The Editorial Board of the *Georgia Bar Journal* is in regular need of scholarly legal articles to print in the *Journal*. Earn CLE credit, see your name in print and help the legal community by submitting an article today!*

Submit articles to Sarah I. Coole, Director of Communications,
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**Not all submitted articles are deemed appropriate for the* Journal.
The Editorial Board will review all submissions and decide on publication.

firm. Southall reported that his firm has been diverse since its inception. He added that the firm did not see a reduction in its workforce due to the recession. Towery discussed the plan her firm implemented in 2007 to provide training, including a three-day training weekend, consultants, a mentoring program and an alliance with Kumar Pathek, LLC, to promote and improve diversity. The plan yielded positive results. However, in 2009, it was reported that their diversity strategy was no longer working. Towery reiterated the importance of corporate clients demanding that law firms step up and fix the problem. She also advised minority attorneys to become more visible during the business development process. Choy reported that the economic downturn did not cause a decline in his firm's diversity.

After the Diversity CLE, attendees were invited to participate in a free workshop presenting tips on starting your own law firm. GBJ

Marian Cover Dockery is an attorney with a background in employment discrimination and she is also the executive director of the State Bar of Georgia Diversity Program. For more information on the Diversity Program, go to www.gabar.org/programs/georgia_diversity_program.

(Left to right) Law Firm Panel members Sam Choy, June Towery, Lovita Tandy, moderator Michael Tyler and Kenneth Southall.

Members of the Corporate Panel included *(left to right)* moderator Richard Goerss, John Lewis, Paul Weisbecker, Rick McMurty and Sonya Richburg.

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Kudos

> **Ford & Harrison LLP** announced that 17 attorneys were named to the 2010 edition of ***The Best Lawyers in America®*****. Jeffrey W. Bell**, **D. Gerald Coker**, **Patricia G. Griffith**, **David C. Hagaman**, **C. Lash Harrison**, **James C. Hoover, Thomas J. Kassin**, **Ronald R. Kimzey**, **Michael L. Lowry**, **Jeffrey D. Mokotoff, John L. Monroe Jr.**, **Norman A. Quandt, Chad A. Shultz, Claude T. Sullivan** and **Frederick L. Warren** (labor and employment); **Joycelyn L. Fleming** (immigration law); and **John F. Allgood (**alternative dispute resolution).

>


Sentell


Pillow


Simms


Estrin

Kilpatrick Stockton announced that partner **Perry Sentell** was selected to serve as the **chair** of the **Augusta Leadership Council of the American Cancer Society**. The Leadership Council of Augusta is responsible for moving the mission of the American Cancer Society forward in the areas of mission delivery and income development. It is composed of prominent members of the Augusta business and medical community.

Associate **Mindy Pillow** was elected to the 2009-10 board of directors of the **Junior League of DeKalb County.** Pillow serves as the vice president community. Her law practice is primarily concentrated on commercial litigation and the representation of victims in catastrophic injury cases.

Associate **Sidney Simms** was appointed to serve on the advisory board of the **First Book-Metro Atlanta**, an organization that provides new books to children in need. He focuses his practice on real estate finance and capital markets.

Associate **Lauren Estrin** was inducted into the Class of 2009 of **Outstanding Atlanta** at its 41st Awards Ceremony in November. Each year, Outstanding Atlanta, formed in 1968, recognizes young professionals between the ages of 21 and 36 for distinguishing themselves in their careers and for making a difference for the betterment of the community of Atlanta.

> Twelve **Hull, Towill, Norman, Barrett & Salley** lawyers were recognized in ***Best Lawyers in America®.*** *Best Lawyers* is based on an annual peer-review survey in which leading attorneys cast more than 2.8 million votes on the legal abilities of other lawyers in the same and related specialties. The following attorneys were recognized by their peers: **William Hale Barrett,** corporate law; **Douglas D. Batchelor Jr.**, health care law; **Mark S. Burgreen,** tax law; **James B. Ellington,** first amendment law, labor and employment law; **George R. Hall**, legal malpractice law, personal injury litigation, professional malpractice law; **William F. Hammond**, tax law; **R.E. Hanna III**, real estate law; **David E. Hudson,** bet-the-company litigation, commercial litigation, first amendment law, personal injury litigation; **James V. Painter**, medical malpractice law; **Patrick J. Rice**, bet-the-company litigation, commercial litigation, personal injury litigation; **F. Michael Taylor**, personal injury litigation; and **James S.V. Weston**, medical malpractice law.

>

Womble Carlyle announced that **Nisbet (Ken) Kendrick III** was named to the ***2009 Super Lawyers—Corporate Counsel Edition.*** Kendrick was recognized in the alternative dispute resolution category. The list recognizes the nation's top attorneys in business-related practices, such as alternative dispute resolution, antitrust litigation, appellate, civil litigation defense, white collar criminal defense, professional liability defense and personal injury defense.

Womble Carlyle was named the **2009 winner** of the **Law Firm Diversity Award** by DRI (formerly the Defense Research Institute), the Voice of the Defense Bar. The DRI Awards are national in scope and only one law firm in the country is honored annually for its commitment to diversity. The firm received the award in October at DRI's Annual Meeting in Chicago.

> **Cantor Colburn** partner **Elizabeth Ann "Betty" Morgan** was appointed to the **Board of Directors** of the **American Intellectual Property Law Association** (AIPLA) through 2011. AIPLA is a premier intellectual property national bar association, constituted primarily of lawyers in private practice, corporate practice, government service and the academic community involved in the practice of patent, trademark, copyright, trade secret and unfair competition law, as well as other fields of law affecting intellectual property.

Morgan was also appointed to the **Courts & Tribunals Subcommittee** of **The International Trademark Association Enforcement Committee** for the 2010-11 committee term.

Fisher & Phillips LLP announced that **Tex McIver**, a partner in the Atlanta office, is listed in ***Who's Who Legal 2009,*** which recognizes attorneys internationally for their practices in labor and employment law. *Who's Who Legal* identifies the foremost legal practitioners in 31 areas of business law. The publication features more than 10,000 of the world's leading private practice lawyers in more than 100 countries.

Homer Deakins, a founding shareholder of **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**, was honored with the **"Entrepreneur of the Year"** award presented by the Greenville Tech Foundation's Entrepreneur Forum, in Greenville, S.C., at its annual gala in September. Through its "Entrepreneur of the Year" award, the Entrepreneur Forum annually recognizes individuals who have contributed significantly to the prosperity of upstate South Carolina through their entrepreneurial activities, business leadership and involvement in the community.

Augusta trial lawyer **Joseph R. Neal Jr**. was inducted into the **Melvin M. Belli Society** in July at the Legion of Honor in San Francisco, Calif. The Belli Society is an international society of trial lawyers dedicated to excellence in advocacy and furthering the study of law through charitable and educational means.

Attorney, activist and community leader **Judith A. O'Brien** received the **Kathleen Carlin Justice Seekers Award** at the 2009 Men Stopping Violence Annual Awards Dinner in October. The awards dinner recognizes individuals who have dedicated time and energy to fostering safety and justice for women. O'Brien is a partner at **Sutherland**.

Chambers and Partners, a leading legal directory and research organization, ranked the Atlanta office of **Hunton & Williams LLP** among the **top firms** in Georgia for banking and finance; environment; labor & employment; and general commercial litigation. The firm received national rankings in climate change, environment and privacy & data security. Attorneys who received individual rankings are: **Kurt Powell** and **Chris Arbery**, labor & employment law; **John Schneider** and **Greta Griffith**, banking and finance law; **Robert Hogfoss** and **Catherine Little**, environmental law; and **Lawrence Bracken** and **Matthew Calvert**, general commercial litigation.

DeKalb County District Attorney **Gwendolyn Keyes Fleming** was selected as a member of the Atlanta Business Chronicle's ***Who's Who in Atlanta's*** legal and accounting professions. She is among a select group of 100 metro Atlanta professionals selected for this honor.

King & Spalding announced that senior litigation partner **Dwight J. Davis** was appointed by Gov. Sonny Perdue as representative to the state's **Board of Natural Resources**. Davis is one of 18 citizens appointed by the governor and confirmed by the Georgia Senate. The board is responsible for setting rules and regulations ranging from air and water quality to hunting seasons and provides input into issues such as the agency's budget recommendations and legislative initiatives. The board is expected to play an important role in resolution of Georgia's current water crisis and in addressing sustainability issues associated with the states growing need for energy.

Smith Moore Leatherwood LLP announced that **Elizabeth J. Bondurant** and **H. Sanders Carter Jr**. were recognized for insurance law in the **2010** ***Best Lawyers in America***® listing.

United Way of Metropolitan Atlanta announced that **Horace Sibley,** retired partner, **King & Spalding**, stepped down from his position as chair of the United Way Regional Commission on Homelessness (the Commission) after seven years of service. Under Sibley's leadership, the community has made great strides in its goal to end homelessness by 2013. Together, the Commission and its community partners created more than 2,000 supportive housing units for the chronically homeless and another 600 specifically for homeless women and children. More than 1,500 homeless people have found employment, and more than 10,000 people have been reunited with loved ones and other support networks.

Owen, Gleaton, Egan, Jones & Sweeney, LLP, announced that **Amy Kolczak** was inducted into the Class of 2009 of **Outstanding Atlanta** at its 41st Awards Ceremony in November.

Jones Day announced that the following attorneys were ranked in the ***2009 Chambers USA:*** **Cindy A. Brazell, Aldo L. LaFiandra** and **Ralph F. (Chip) MacDonald**, banking & finance; **Richard H. Deane Jr., G. Lee Garrett Jr., Stephanie E. Parker** and **E.**

Kendrick Smith, litigation; **Jeffrey Ellman**, bankruptcy/restructuring; **H. Stephen Harris Jr.** and **L. Trammell Newton Jr.**, antitrust; **G. Graham Holden**, **Christine M. Morgan** and **Charles A. Perry**, environment; **A. Michael Lee** and **Scott A. Specht**, real estate; **Timothy Mann Jr., William B. Rowland, Lizanne Thomas** and **John E. Zamer** corporate/mergers & acquisitions; and **Deborah A. Sudbury**, labor & employment.

On the Move

In Atlanta

> **Kilpatrick Stockton** announced that **Colin Bernardino, Mike Bertelson** and **Chad Theriot** were elected into the **partnership** as of Jan. 1, 2010. Bernardino focuses his practice on representing both debtors and creditors in bankruptcy; Theriot focuses his practice almost exclusively on construction & government contracting law; and Bertelson focuses his practice on patent law. The firm's office is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.

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Fellows LaBriola LLP announced that **Kevin P. Weimer** became a **partner** of the firm. Weimer represents businesses and corporations of all sizes and individuals in a wide spectrum of legal matters, including business and commercial litigation, employment litigation and counseling, insurance coverage, serious personal injury and wrongful death matters and False Claims Act litigation. The firm is located at Suite 2300, South Tower, 225 Peachtree St. NE, Atlanta, GA 30303; 404-586-9200; Fax 404-586-9201; www.fellab.com.

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Locke Lord Bissell & Liddell, LLP, announced that **Randall W. Johnson** joined the firm as **of counsel** in its Atlanta office. Johnson has more than 22 years of experience in corporate transactions and has significant experience in the areas of securities, trade credit and finance, venture capital transactions, and mergers and acquisitions. The office is located at 1170 Peachtree St. NE, Suite 1900, Atlanta, GA 30309; 404-870-4600; Fax 404-872-5547; www.lockelord.com.

> **Morris, Manning & Martin, LLP**, announced the election of its new **managing partner, Louise M. Wells**. Wells, who has been with the firm for more than 30 years, is the first female to hold the position since the firm was founded in 1976. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

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Terrence Lee Croft, a trial lawyer with more than 40 years of courtroom experience and more than 25 years of experience as a neutral, announced that he has joined **JAMS,** The Resolution Experts, the nation's largest private provider of mediation and arbitration services. Throughout his career Croft has successfully resolved more than 2,500 disputes. He will be based in the JAMS Atlanta Resolution Center which is located at 1100 Peachtree St. NE, Suite 640, Atlanta, GA 30309; 404-588-0900; Fax 404-588-0905; www.jamsadr.com.

> 
Fletcher


Stoddard

Nall & Miller, LLP, announced that **Clinton F. Fletcher** joined the firm as a **senior associate** and **Matthew B. Stoddard** joined the firm as an **associate**. Fletcher's practice concentrates in the areas of aviation litigation, business law, motor carrier litigation, premises liability, products liability and warranty rights and lemon law. Stoddard's practice concentrates in the areas of business law, health care law, motor carrier litigation, product liability, and professional liability. The firm is located at 235 Peachtree St. NE, Suite 1500, Atlanta, GA 30303; 404-522-2200; Fax 404-522-2208; www.nallmiller.com.

> 
Duedall


Collins

Hunton & Willliams LLP announced the addition of **Mark I. Duedall** as **counsel** in the bankruptcy, financial restructuring and creditors' rights practice group. Duedall was previously with international investment bank Houlihan Lokey Howard & Zukin, where he headed its southeastern restructuring and distressed mergers and acquisitions practice.

Aisha Blanchard Collins joined the firm as the 2009-11 Pro Bono Fellow. This unique position is entirely committed to pro bono work for a two-year term in the firm's Atlanta office. Collins will be working with the firm's Southside Legal Center on matters regarding adoptions, business law, uncon-

tested guardianships, private landlord/tenant disputes and other juvenile and public interest law matters. The office is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

In Macon

> **Daisy Hurst Floyd,** dean of Mercer University's Walter F. George School of Law since 2004, announced that she will step down as dean at the end of this academic year to become University Professor of Law and Ethical Formation. In her new role, Floyd will lead the University in collaborations between undergraduate and professional education to prepare students for lives of purpose and responsibility. She will build upon her work with the Carnegie Foundation for the Advancement of Teaching, which has focused on the formation of ethical identity in law students and the relationship between liberal arts and professional education. The Walter F. George School of Law is located at 1021 Georgia Ave., Macon, GA 31207; 478-301-2605; www.law.mercer.edu.

> 
Greer


Quinlan

James, Bates, Pope & Spivey, LLP, announced that **George S. Greer** was named **partner**. Greer practices in the areas of commercial real estate and development, corporate law, public and affordable housing and estate planning. Also, **Patricia M. Quinlan** and **Kort D. L. Peterson** joined the firm as **associates**. Quinlan focuses her practice on estate planning and business. Peterson practices in the area of wealth management. The firm is located at 231 Riverside Drive, Suite 100, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jbpslaw.com.

In Savannah

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Hunter Maclean announced that **Lorianne Denslow** was named **partner** in the firm's Savannah office. Her practice specializes in corporate tax and employee benefits. The firm's Savannah office is located 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

> **Tiffany E. Caron** joined **McCallar Law Firm** as an **associate**. Caron, formerly with the U.S. Trustee's Office in Chattanooga, Tenn., repre-

Serving the Bench & Bar: Georgia's Court Interpreters

by Linda P. Smith

Professionally-trained foreign language interpreters now assist non-English speakers in courtrooms around the state thanks to the Supreme Court of Georgia Commission on Interpreters (the Commission), the Administrative Office of the Courts (AOC) and the Georgia Bar Foundation. The Commission conducts quarterly workshops for prospective interpreters preparing them for certification exams in designated foreign languages as well as court procedures, legal terminology, etc. Scholarships funded by the Georgia Bar Foundation have made these classes available to a number of prospective court interpreters who otherwise lack the resources to enroll. The fee for the workshop is $250; a separate charge for the certification exam is also $250.

In 2003, the Supreme Court formally created the Commission on Interpreters to safeguard the rights of non-English speaking court users. Since that time the AOC has provided staff support to the Commission and maintained an online registry of licensed foreign language interpreters (www.georgiacourts.gov.) Chief Justice Carol Hunstein serves as commission chair.

Additional information on the Commission's activities and services can be found on the website or by contacting Stephanie Chambliss Hines, 404-463-1906, or Linda Smith, 404-656-6478, at the AOC.

Correction

On page 79 of the August issue of the *Georgia Bar Journal*, Judge Philip C. Smith was incorrectly listed as Stephen K. Leibel in a photo with LFG Executive Director Lauren Larmer Barrett. We do apologize for this error.

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

sents individuals and corporations in the areas of commercial litigation, bankruptcy and insolvency, focusing on corporate reorganization. The firm is located at 115 W. Oglethorpe Ave., Savannah, GA 31401; 912-234-1215; Fax 912-236-7549; www.mccallarlawfirm.com.


Glenn


Ellis

Ellis, Painter, Ratterree & Adams LLP announced that **Robert S. Glenn Jr**. joined the firm as a **partner** and **Benjamin D. Ellis** joined the firm as **of counsel**. Glenn concentrates his practice on admiralty and maritime law, construction litigation and alternative dispute resolution. Ellis practices in the areas of corporate and securities law, trusts and estates, and banking and finance. The firm is located at 2 E. Bryan St., 10th Floor, Savannah, GA 31401; 912-233-9700; Fax 912-233-2281; www.epra-law.com.

In Thomasville


DeSantis


Phillips-Lee

Whitehurst, Blackburn and Warren announced the arrival of their newest **associates Peter A. "Trey" DeSantis III** and **Malia Phillips-Lee**. DeSantis' practice concentrates in the areas of real estate transactions and general litigation. Phillips-Lee speaks intermediate and conversational Spanish, which aids the firm in communicating with Spanish-speaking clients. The firm is located at 809 S. Broad St., Thomasville, GA 31792; 229-226-2161; Fax 229-228-9014; www.wbwattorneys.com.

In New Smyrna Beach, Fla.

Sandra M. Sovinski, former managing partner of Atlanta-based Kaplan Ward & Patel's Florida office, announced the opening of **Innovative IP, LLC**, a law firm focusing on domestic and international patent and trademark prosecution and other related intellectual property matters. The firm can be reached at P.O. Box 217, New Smyrna Beach, FL 32170; 800-729-5541; Fax 800-932-1751; www.innovative-ip.net.

Warning. . . . Warning. . . .

by Paula Frederick

"That's odd," you say, hanging up the telephone. "Joe's outgoing voice mail says his mailbox is full and can't accept more messages."

"I noticed that too! I figured he was on vacation," your assistant responds. "He ignored my e-mails all last week, but I finally caught up with him yesterday. Apparently he's been in the office but he's swamped."

Worried, you head down the hall to check on your newest partner. You find his assistant Jane at her usual cubicle outside Joe's office. "Don't interrupt Joe," she warns. "He's working on a deadline, and we can't get another extension in the *Luger* case. If he doesn't get that brief to me by noon, there's no way I'm going to be able to get it out today!"

You ignore her and, stepping around a stack of bankers' boxes, enter Joe's office. He's on the phone. "I *know* it's my second extension," he says, "but I've got an overdue brief in a really big case and I need the rest of the day to get that done. I'm in court tomorrow and Friday, but first thing Monday I promise I'll finish the responses to discovery. I'll e-mail them Monday night."

Joe puts his hand over the telephone receiver and waves you into the office. "I'll just be a minute," he whispers, motioning you towards a chair.

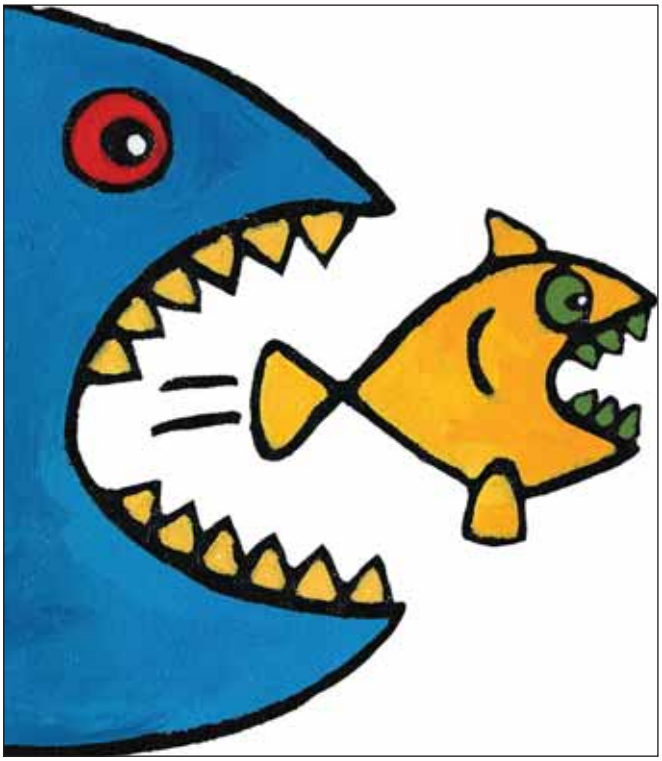
As you look for a chair that isn't piled high with paper Jane rushes into the office, waving wildly to get Joe's attention. "Did you ever find the *McNike* file?" she asks. "He's on the phone again."

"Tell him I'm out of the office," Joe instructs. He finally hangs up the phone. "What a week!"

"What's going on?" you demand. "If I didn't know better I'd think you were the sorriest lawyer in town! You're too busy to delete old voice mail, it looks like a bomb went off in your office and you're driving your assistant crazy! Get a grip, before something bad happens!"

"Business is booming! I thought I was lucky to be so busy in this economy. Somehow it's all gotten out of hand," Joe admits.

"There's a tipping point, and you're on the other side of it! You're already *losing* business! I gave BigClient your name—he's looking for someone to handle his divorce, but he says you haven't even returned his telephone calls!"



"Help!" Joe cries, dropping his head into his hands.

Believe it or not, too much business can cause as many problems for a lawyer as not enough. The Office of the General Counsel regularly sees grievances against lawyers who are simply overwhelmed by the demands of their professional and personal lives. Watch for the warning signs that indicate you are overworked and over-stressed, and take steps to get help.

If you have an e-mail inbox over its size limit, if your voice mail is full of messages that you are afraid to delete or if there are piles of files occupying every surface in your office, it's time to stop, take a deep breath, get organized and ask for help! Contact the State Bar's Law Practice Management Program at 404-527-8773 or nataliek@gabar.org for practice management tips. GBJ

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

Discipline Summaries

(Sept. 16, 2009 through Oct. 16, 2009)

by Connie P. Henry

Voluntary Surrender/Disbarments

Marsha Gay Boniface
Asheville, N.C.
Admitted to Bar in 2000

On Sept. 28, 2009, the Supreme Court of Georgia disbarred Attorney Marsha Gay Boniface (State Bar No. 067299). This reciprocal disciplinary action arose out of Boniface's disbarment in the State of North Carolina. Boniface misappropriated approximately $23,780 from her attorney trust account.

Wade Gunnar Anderson
Macon, Ga.
Admitted to Bar in 1987

On Sept. 28, 2009, the Supreme Court of Georgia disbarred Attorney Wade Gunnar Anderson (State Bar No. 018390) in State Disciplinary Board Docket Nos. 5081, 5084, 5085, 5141 and 5181, plus an additional matter known as the "Moore 2" closing. The cases arose out of Anderson's handling of his real estate trust account.

Anderson was a real estate closing attorney approved by First American Title Insurance Company (FATIC). In 2005 several of his employees quit and he assigned to his remaining employee the task of sending wire transfers of funds from closings. That employee mistakenly double-wired funds from a single closing, and then the employee quit. As Anderson had no employees left to assist him, FATIC recommended Whatley as a "qualified closing assistant." Within a two-week period Whatley double wired funds on nine separate closings and then Whatley quit. As a consequence of the double wires, Anderson's trust account became overdrawn by approximately $2,300,000 and the recipients did not immediately return the funds, so numerous other trust account checks bounced. A temporary restraining order was issued and a receiver was appointed to take over the law practice.

The Moore 2 Closing

This matter arose from Anderson's practice of creating a paper trail by writing a check drawn on the trust account for deposit directly back into the same trust account showing the funds from the closing. Instead of putting the check for the Moore 2 closing in the trust account, Whatley added it to the funds for deposit to the operating account and the funds were spent before the mistake was noticed. As Anderson was unable to satisfy obligations due to his trust account being overdrawn, FATIC satisfied some of the debts and has a judgment against Anderson for $301,128.14.

SDB Docket No. 5081

Here, Anderson conducted a closing for a client and received more in certified funds than was required to conduct the closing, so he gave the client an escrow account check for the difference of $6,289.60. The check was returned for insufficient funds. The client received a full refund after the receiver was appointed.

SDB Docket No. 5084

In this case a client entered into a contract to buy a condominium and paid earnest money that went into Anderson's escrow account. The contract fell through and the parties agreed the earnest money should be returned to the client. By then Anderson had transferred all escrowed funds he held to a new law firm. The client received her refund from the new firm.

SDB Docket Nos. 5181 and 5085

These matters were based on reports from the Trust Account Notification Program that approximately 63 checks totaling over $76,000 drawn on Anderson's account were presented against insufficient funds.

The checks were made good by the receiver.

SDB Docket No. 5141

This matter concerns Bradbary, who owned a penthouse condominium that a buyer Anderson was assisting wanted to purchase. It was alleged that the hot tub in the condo had leaked and caused damage to the building and other units in the building. Bradbary arrived at the closing expecting to receive the full amount of the funds due without deduction for the potential damage as he had a letter from the condo's law firm stating there was no damage claim. Anderson and the buyer had a letter from the same firm stating that the potential damage claim was $75,052.27. With FATIC's advice and consent, the parties agreed that Anderson would act as an escrow agent and withhold funds from Bradbary's proceeds to satisfy the possible damage claim. Anderson drafted an escrow agreement that the parties executed, and the closing was completed. Anderson felt that Bradbary was being dishonest in attempting to close without setting aside funds for the damage claim and he testified that he personally was subject to risk as any damages paid by FATIC could be the source of an action by FATIC against Anderson. Anderson worked to resolve the clouds on the title and reduce the amount of the damage claims, and then paid himself $30,000 from the escrowed funds without Bradbary's knowledge. The damage claim ultimately was determined to be $19,452.39, which FATIC paid. It is unclear what happened to the rest of the escrowed funds. There still should have been $45,052.27 in the account for Bradbary even after Anderson paid himself. Anderson states the funds were there when the receiver took over. Bradbary requests return of $55,599.88. Anderson was not entitled to any of the escrowed funds as fees and it was his duty to safeguard those funds for Bradbary.

The Court found that the double wiring of funds took place without Anderson's direction or knowledge, but although Anderson took steps to remedy the situation, he failed to adequately supervise his staff and the operation of his practice. The double wiring did not benefit Anderson and he did not receive any proceeds from the double wiring. The Court was more troubled by the Bradbary case. The Court found that Anderson acted in bad faith by unilaterally paying himself from the Bradbary funds without consent.

In aggravation of discipline the Court noted Anderson's two prior Formal Letters of Admonition which allows for disbarment for a subsequent disciplinary infraction. Before Anderson may petition for reinstatement, he must (1) satisfy the judgment in favor of FATIC in the amount of $301,128.14; (2) to the extent not covered by the FATIC judgment, make restitution to Bradbary of $55,599.98 plus interest at the legal rate applicable to liquidated damages from April 11, 2005, through the date of repayment; (3) successfully complete the Law Practice Management Program of the State Bar; and (4) complete the first Ethics School administered by the State Bar after reinstatement.

Christopher M. Kunkel
Norcross, Ga.
Admitted to Bar in 1983

On Oct. 5, 2009, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Christopher M. Kunkel (State Bar No. 430329). Kunkel pled guilty on July 31, 2009, to violating 18 § USC 371, Conspiracy to Commit Wire Fraud, in the U.S. District Court for the Northern District of Georgia, Atlanta Division.

Joyce A. Wilson
Washington, D.C.
Admitted to Bar in 1984

On Oct. 5, 2009, the Supreme Court of Georgia disbarred Attorney Joyce A. Wilson (State Bar No. 768710). This reciprocal disciplinary action arose out of Wilson's disbarment in the District of Columbia. The D.C. Court found that while Wilson was acting as a court-appointed guardian for a ward of the state, she misappropriated approximately $10,000 from her ward's assets for her own personal use. Wilson failed to respond to the D.C. Bar Counsel investigating the allegations and failed to participate in the disciplinary proceedings. Wilson was personally served with the notice of reciprocal discipline in this case but failed to respond.

Wendell S. Henry
Stone Mountain, Ga.
Admitted to Bar in 1991

On Oct. 5, 2009, the Supreme Court of Georgia disbarred Attorney Wendell S. Henry (State Bar No. 348066). The State Bar filed Formal Complaints on four disciplinary matters but Henry failed to file an Answer to two of the Formal

Complaints, and his Answers in the remaining two matters were stricken as a sanction for his abuse of the discovery process. The State Bar was granted a default judgment in each matter, such that the allegations of each complaint were deemed admitted.

With regard to the first matter, a client discharged Henry, hired new counsel and both the client and new counsel requested the client's file from Henry. Henry failed to surrender the file. New counsel then served Henry with a court order requiring surrender of the file, but Henry ignored the order. The client then filed a grievance against Henry with the State Bar. The State Bar twice wrote Henry in an effort to obtain his response to the allegations set out in the grievance, but he failed to respond to either letter. Henry finally provided new counsel with a copy of part of the file, and improperly billed her $250 for copying. Henry did not respond to inquiries from the Investigative Panel, although he acknowledged service of the Notice of Investigation.

In the second matter, Henry undertook to represent a client in a workers' compensation matter in June 2001. In March 2005, Henry advised the client that the employer wanted to settle the matter and that he would be working on a settlement package. In December 2005, after repeated attempts to reach Henry by phone were unsuccessful, the client filed a grievance with the State Bar and mailed Henry a letter discharging him. Despite the client's requests, Henry failed to return her file. Henry failed to respond to inquiries from the Investigative Panel and failed to timely respond to the Notice of Investigation despite having acknowledged service thereof.

With regard to the third matter, Henry was a member agent of a title insurance company. In such capacity he had the authority to issue title insurance policies and the responsibility to report the issuance of policies to the company, collect premiums for those policies, remit the premiums and necessary paperwork, return unused forms and submit to the company's examination of his escrow account. During 2007, Henry began failing to meet his responsibilities to the company and refused to submit to an examination of his escrow account. Effective Oct. 11, 2007, the company terminated him as a member agent. Henry continued to refuse to submit to an audit of his escrow account or to otherwise account to the company for premiums, commitments, forms and other property that belong to the company. Henry acknowledged service of the Notice of Investigation, but in this case he submitted an untimely written response to the Notice in which he knowingly made false statements.

Finally, with regard to the fourth matter, between Oct. 31, 2007, and Feb. 22, 2008, Henry actively represented a client in a workers' compensation matter despite being on interim suspension during that time. Henry acknowledged service of the Notice of Investigation, but submitted an untimely response that contained false statements.

In addition to the above, the Court noted that the the first two grievances filed against Henry proceeded to Formal Complaint only after Henry failed or refused to accept delivery of certified letters advising him of the Investigative Panel's decision to issue him Investigative Panel reprimands with regard to those matters. Further, the State Bar and the special master gave Henry more than sufficient opportunity to explain his behavior and to assert his defenses to the various charges, but Henry failed or refused to participate meaningfully in the disciplinary proceedings.

The Court noted the absence of factors in mitigation of discipline, but found in aggravation that Henry has a prior disciplinary history; that this case involves multiple offenses and multiple clients; that Henry's behavior exemplifies a pattern and practice of misconduct; and that Henry either failed to participate in the disciplinary process or submitted false statements during that process, thereby obstructing it.

Suspensions

George E. Powell Jr.
Dahlonega, Ga.
Admitted to Bar in 1986

On Sept. 28, 2009, the Supreme Court of Georgia accepted the petition for voluntary discipline of George E. Powell Jr. (State Bar No. 585943) and ordered that he be suspended from the practice of law for a period of three years. In connection with six related real estate closings, Powell prepared HUD-1 settlement statements that did not accurately represent the transactions. Specifically, he indicated that funds not paid to the seller were to be paid to one lender as the seller's lender, but failed to indicate that those net funds were actually being held on behalf of the seller for ultimate payment to a different lender. Subsequent HUD-1 statements for the same closings indicated that the funds were being attributed either to the seller or to payment of the mortgage without specifying a particular lender. After three civil actions were filed related to the properties at issue, the parties resolved the matter through mediation. Powell's clients were placed in the first lien position on the properties as intended, and all funds were distributed according to the terms of the mediation agreement. In mitigation of discipline the Court found the following mitigating factors: the absence of a prior disciplinary record, the absence of a selfish motive, a cooperative attitude towards the proceedings, good character and remorse.

Suspension Lifted

Anthony Gus Caroway
Tallahassee, Fla.
Admitted to Bar in 1996

On Sept. 28, 2009, the Supreme Court of Georgia accepted the petition of Anthony Gus Caroway (State Bar No. 111079) to lift his 24-month suspension. Caroway satisfied the condition for lifting the suspension set forth in the Court's opinion suspending him from the practice of law.

Public Reprimand

In the Matter of R.A.H.

On Oct. 5, 2009, the Supreme Court of Georgia issued a Public Reprimand In the Matter of R.A.H. The following facts are deemed admitted by Respondent's default: A client retained Respondent to represent him in an aggravated assault case, which later was dead docketed. Two years later Respondent represented the same client in an aggravated stalking case in which the client was convicted. The client wrote to Respondent several times asking him to file a motion to dismiss the aggravated assault case or to send him the indictment number so he could file the motion himself, but Respondent never responded to the client's requests. In aggravation of discipline, the Court took into consideration Respondent's prior discipline, which included an interim suspension and two Formal Letters of Admonition.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Sept. 16, 2009, four lawyers have been suspended for violating this Rule and two have been reinstated. GBJ

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

Five Quick "To Dos" for Your Practice in the New Year

by Natalie R. Kelly

If you are a list person like I am, you are probably already working on creating a "to do" list for the new year. I believe you will find that adding these five office management "to dos" to the top of that list will create a seamless transition from this year to the next. These suggested "to dos" can help you and your firm become more efficient, and maybe even more profitable, in the year to come.

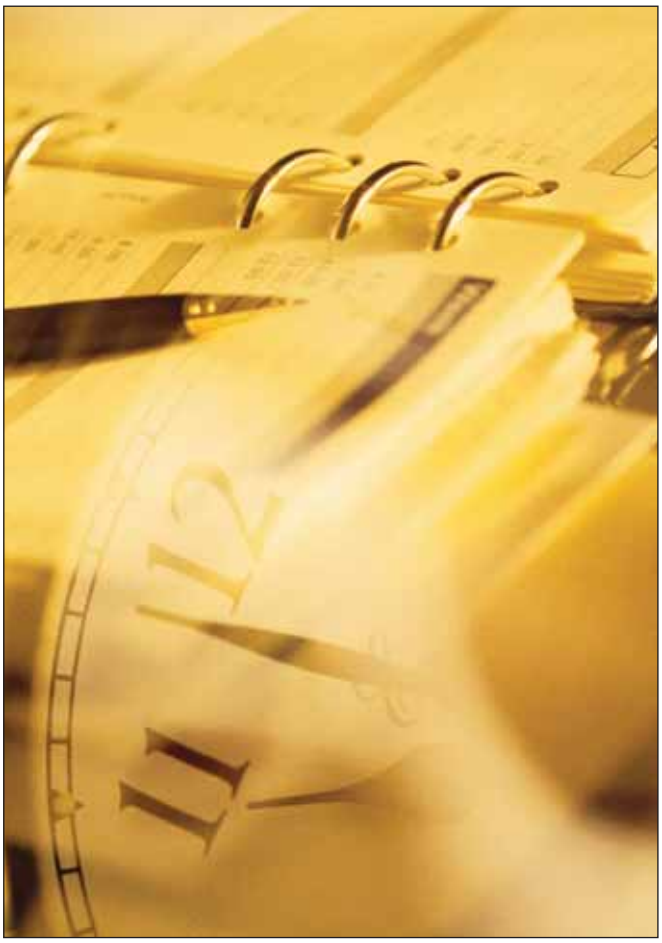
Get Practice Management Software

You've heard time and time again that this software is a must for efficient practice management. In fact, it's difficult to understand how you are practicing effectively without it. So, take a moment to review the list below for a system suitable for your practice and make an appointment with the Law Practice Management program to learn more or to go ahead with a purchase of this important software.

Top Applications for Practice Management by Firm Size

Small Firm

- Amicus Attorney by Gavel & Gown Software Inc.—www.amicusattorney.com
- AbacusLaw by Abacus Data Systems Inc.—www.abacuslaw.com
- Practice Master by Software Technology Inc.—www.practicemaster.com
- Time Matters by LexisNexis—www.timematters.com



Mid-Sized Firm

- Client Profiles—www.clientprofiles.com
- Perfect Practice by ADC Legal Systems Inc.—www.perfectpractice.com
- ProLaw by Thomson Elite—www.prolaw.com
- Omega Legal by Omega Legal Systems Inc.—www.omegalegal.com
- TrialWorks by Lawex Corp.—www.trialworks.com

Large Firm

- Aderant—www.aderant.com
- Thomson Elite's 3E and Enterprise—www.elite.com
- RealLegal Practice Manager—www.reallegal.com
- CaseManagerPro by Solutions In Software Inc.—www.casemanagerpro.com
- Legal Files by Legal Files Software Inc.—www.legalfiles.com

Do Daily Backups and Bi-Monthly Restores

This is the other thing you've heard preached over and over; and if by chance you have had the unfortunate pleasure of dealing with an office disaster, you know first-hand how important it is to have a good backup of your firm's data. Check out www.backupreview.info for a list of top products and services; and pay close attention to these top contenders when looking for an online vendor: Mozy (www.mozy.com), Carbonite (www.carbonite.com), Iron Mountain (www.ironmountain.com) and EVault (www.evault.com). I also like the portable backup FreeAgent Go and Replica units from Seagate (www.seagate.com). Thumb drives, tape drives (high-end), CDs and DVDs work fine too, as long as you can restore files from them.

Use PDFs

You've resigned to go all the way paperless in your office, but you were paying attention at that last CLE where you were warned of the dangers of sending out Word documents with their metadata or e-mails that have not been encrypted. Using PDF files—most often generated by Adobe Acrobat Standard or Professional Edition (or online at www.adobe.com)—can help deliver more secured documents. With options available such as securing the document so that only you can print or download it, this format is the way to go with generating documents in your law office in the new year.

Keep Better Books

This is not just about having a checkbook that you balance for every account that you have. It's taking more responsibility in the process and making sure you are being prudent when it comes to managing client money (trust accounting) and your operating account (income and expense tracking and planning). With tighter economic times comes the need to do a better job of keeping up with the money in your practice. Call us for help with options if you are still doing things by hand, or just sending it all off to your accountant.

Stay On Top of Client Billing

One of the top requested areas for advice in 2009 was client billing. "How do we get paid?" was the theme of many conversations held in our offices and our educational programs this past year. Beyond raising hourly billing rates, moving to flat fee billing and other alternatives, we urged many firms to take a look at their entire billing and collections process. Do your clients get your bills in a timely manner and at a time when they are most likely to pay? How do the bills look and do you make it easy for them to be paid? Credit cards? Debit cards? Staff contact for past due bills? The list of questions you could ask about your bills may seem endless, but you can ensure a very stable system for client billing by investing time into the systems you use and the procedures you follow in your practice each month. I like ABACUS Law Gold or ABACUS Accounting (www.abacuslaw.com), Amicus Accounting (www.amicusaccounting.com), PCLaw (www.pclaw.com) and TABS3 (www.tabs3.com); or for billing and trust accounting only, no general ledger accounting, Timeslips (www.timeslips.com). Also, do a monthly review of everyone who owes (A/R report) so that you can determine an appropriate plan for collection.

Bonus

Plan/Take a Vacation

Once you've got your brand new shiny 2010 practice humming away, you need to take some time for yourself. Plan a full vacation. If you stop long enough to decide what you'll wear to the beach or for that mountain hike, you are still getting some well-deserved relaxation and down time. Even if you are not able to take the trip, a mental break from the flurry of office activity can mean the difference between a hurried office management decision and one of the wisest things you've done yet for your practice! 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.

The Art of Economy:

Council of State Court Judges Create an Economical Conference

by Bonne D. Cella

The challenge to protect the court's core function of maintaining the Rule of Law amid today's budget restrictions requires innovative thinking in and out of the courtroom according to Judge Ronald Ginsberg, president of the Council of State Court Judges (the Council). Considering this, the Council sought a more economical venue for their 39th Annual Fall Conference, which is usually held at a resort location.

Judge Larry Mims invited and encouraged the 108 active members to come to his hometown of Tifton for the conference—although some of the members had to be convinced to break with tradition and try something new.

Bob Bray, executive director of the Council, worked with Mims, the Tift County Commissioners, Tifton Tourism and the State Bar of Georgia's South Georgia Office[1] to plan the three-day event. The University of Georgia Conference Center in Tifton offered state of the art meeting facilities and the new and pristine Hilton Garden Inn skillfully accommodated the distinguished guests, including Chief Justice Carol Huntstein and Court of Appeals Judges Anne Elizabeth Barnes, Sara Doyle and Harris Adams.

"Welcome to Tifton" baskets brimming with peanuts, pecans, candy, jams, grits, fresh produce and sundry items along with maps and lists of local not-to-be missed destinations were placed in each guest's room, compliments of Tifton merchants and businesses.

Photos by Bonne D. Cella

Julie Hunt, Tifton businesswoman, entertained members of the Council of State Court Judges at her lakeside home.

Extracurricular activities included a luncheon for spouses at the historic Three Graces at The Lankford Manor, a private tour of the Georgia Agrirama with dinner, guided fishing on a private lake with the local Bass Busters Club, golf at beautiful Sunsweet Hills, and a tour of a charming cottage and garden restored to its original beauty by Tifton interior designer Mary Glynn Hendricks and her husband, Larry. A community leader, Hendricks works hard to promote her hometown and was glad to help host the judges' conference.

The tour was followed by tea and an elegant dinner with live musical entertainment at the beautiful home of local businesswoman Julie Hunt.

Judge Maurice Hilliard Jr. of Roswell sent a gracious thank you note to his hosts stating, "It was an incredible experience, and my vote will go to Tifton for any other meetings in the future!"

Many other locations in Georgia (not usually thought of as meeting destinations) have much to offer visitors, and their local citizens are generous and hospitable. Create your own unique and economical conference while seeing more of what Georgia has to offer! GBJ

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

Endnote

1. The South Georgia Office will be glad to help plan and facilitate your law-related events.

2009 Council of State Court Judges Annual Fall Conference

(Left to right) Hon. Larry Mims, judge, State Court of Tift County; Hon. Ronald Ginsberg, president, Council of State Court Judges; Marla Moore, director, Administrative Office of the Courts; and Bob Bray, executive director, Council of State Court Judges, arrive at the Hilton Garden Inn.

Judges and their guests tour the Agrirama, Georgia's Museum of Agriculture and Historic Village, located in Tifton.

Historic Three Graces at the Lankford Manor.

(Back row, left to right) Bass Buster guides Gary Courtoy, James Kushmer and David Pettis; Hon. Ronald Ginsberg and Hon. Neal Dettmering. *(Front row, left to right)* Hon. Anne Barnes, Hon. Patricia Booker and Hon. David Watkins.

Section News and Updates

by Derrick W. Stanley

Over the past several months, varying sections of the Bar have held events that have provided networking and educational opportunities as well as fulfilling meetings required in their bylaws.

Specific Problems in Franchising–Drafting and Practice was a networking lunch program held at Maggiano's Little Italy in Buckhead by the Franchise and Distribution Section. This discussion was moderated by Tom Branch, Mallernee & Branch, and Melissa Rothring, Nexcen Brands. Topics that were discussed included: transfers, renewals, expiration vs. termination and conversions.

The Entertainment and Sports Law Section ended the season with their Summer Mixer on Aug. 27. Hosted by Stephen Weizenecker, Adorno & Yoss LLC, section members gathered at the law firm to network after a long day at the office.

IDS Ideas – Practice Pointers for Complying with the Duty of Disclosure was presented to the Intellectual Property Law Section on Sept. 21. Robert E. Stachler II, Gardner Groff Greenwald & Villanueva, PC; Rebecca C.E. McFadyen, Ballard Spahr Andrews & Ingersoll, LLP; and Michael R. Asam, Fish and Richardson, P.C., discussed best practices for complying with the duty of disclosure. The panel discussed *Dayco, McKesson* and *Larson* and led a roundtable discussion on the gray areas of the topic and gave practice pointers to the attendees.

Court of Appeals of Georgia Judge Sara L. Doyle spoke at the Appellate Practice Section luncheon and annual meeting on Sept. 24, at the law offices of Holland & Knight LLP. New officers were elected and section members had the opportunity to network with Doyle and other judges in attendance.

On Sept. 30, the Environmental Law Section presented a brown bag luncheon titled *Superfund Allocation After Burlington Northern – A Technical Perspective* at Arnall Golden Gregory LLP. Brooke Dickerson and John Spinrad, Arnall Golden Gregory LLP, and Jay Vandeven, ENVIRON, led this discussion that provided one hour of general CLE credit.

Photo by Derrick W. Stanley

Members of the Appellate Practice Section meet to discuss the strategic direction of the section.

At 7:30 a.m. on Oct. 7, the Labor and Employment Law Section held the first in a series of breakfast seminars. *What's Going on at the U.S. Department of Labor?* brought many attorneys to the Bar Center to hear Regional Solicitor Stanley E. Keen provide an overview of the department including recent changes and trends in some of the agencies. The section plans to have several more of these events throughout the Bar year.

During the month of October, the Intellectual Property Law Section sponsored the CLE program *In Re Bose* with the help of the section's Trademark

Committee. Charles Heiken, principal at the Boston office of Fish and Richardson P.C., outlined his strategy and the implications of the decisions made. Panelists Virginia Taylor and Jim Johnson asked questions and guided the discussion for the participants. The following day, Oct. 13, the patent committee of the section assisted in delivering *The Bilski Case at the Supreme Court*. This CLE event drew a large crowd of interested attorneys who had been following this case through different CLE programs. Associate Erika Arner, from the Reston, Va., office of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, reviewed the positions taken by *Bilski*, the U.S. Patent and Trademark Office director and dozens of expected amicus parties. This program was underwritten by Finnegan who provided the lunch and all costs associated with this program.

Hon. Franklin N. Biggins, Fulton County Magistrate Court, was the keynote speaker at the Creditors' Rights Section luncheon and annual meeting on Oct. 15, at the Wildfire restaurant in Atlanta. Biggins discussed the rules of the court and effective practices for attorneys. He also amused the attendees with anecdotes from his past and how they have influenced his practice on the bench.

The newly formed Employee Benefits Section held an afternoon tea on Oct. 22, at the Four Seasons in midtown Atlanta. Prospective members came to join the section and discuss ways to get up and going as well as assigning volunteers to committees. This new section has been working very hard and should have their first CLE program in the near future.

The Appellate Practice Section held an organizational meeting on Nov. 4, at the Bar Center. The purpose of this meeting was to charge volunteers with objectives to move the section into the future. Upcoming events were discussed and volunteers stepped up to chair programs that will contribute to the continued success of the section.

It is also necessary to mention the importance of ICLE to the success of the section events. ICLE co-sponsors events that offer CLE credit. Due to the strength of the long-standing relationship, ICLE works to ensure section events are tracked and maintain the highest level of education.

To enjoy the benefits of section membership, please visit www.gabar.org/sections and complete the application, selecting as many sections as you would like to join. You may also contact Derrick Stanley at 404-524-8774 or derricks@gabar.org. GBJ

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

Boolean and Natural Language Searching in Casemaker 2.1

by Sheila M. Baldwin

Full Document Searching in Casemaker is no doubt the area where most research takes place and therefore the area where training and practice should be concentrated. This issue we will explore the language used when searching within the Full Document Search area. The Casemaker search engine employs intuitive technology which includes both Boolean and Natural Language protocols. It is important to understand the basic logic behind each one to gain the most relevant and abundant results.

Four Basic Search Functions

Boolean logic, named after the British mathematician George Boole who pioneered this system in the mid 19th century, enables precise queries by specifying the relationships between words to give meaning and context when searching a topic. Boolean searches require careful selection of keywords and the use of logical connectors between keywords. The following are the four basic elements.

And

By separating words with just a space, documents with all search terms will appear, yielding documents containing both search terms. For example, divorce alimony.

Or

By putting parentheses around two terms separated by a comma (no spaces allowed), the user will find documents with either term in the text or both, such as (alimony,support).

Not (exclusion)

By placing a hyphen in front of a term (no spaces allowed), the unwanted term is eliminated from the search. For example, property –residential will yield documents with the term "property" but excludes documents with "property" and "residential."

Phrase

By surrounding a phrase with quotation marks, documents with that exact phrase appear, such as "statute of limitations."

ANY STATE • ANY NATION • ANYWHERE • ANY STATE • ANY NATION • ANYWHERE•

ANY STATE • ANY NATION • ANY STATE • ANYWHERE • ANY NATION • ANY STATE • ANY NATION •

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Advanced Tools

The Advanced Tools are logic connectors that formulate searches based on the relationship between the terms such as proximity, frequency or similarity.

Intersection Tools

Advance Boolean searches include the use of Intersection Tools. By putting the "@" symbol in front of a number, the user can return documents with multiple terms present. This tool is helpful in harvesting the most relevant documents. Examples include:

- "support alimony divorce @1" yields results with at least 2 of the terms—similar to an "or"
- "support alimony divorce @0" yields any of the 3 terms
- "support alimony divorce @2" yields all terms—similar to "and"

Proximity

Defining the proximity of keywords also adds to the relevance of a search. All proximity parameters can be entered into any search field by using "w/." The proximity parameter can be placed anywhere within the search string. "w/3" means within three words, "w/sent" within a sentence and "w/para" within a paragraph. (see figs. 1 and 2).

Inclusion Search

Place a plus sign (+) before a word to find results that *must* include the term such as "+custody" which yields documents that must include the word custody.

Thesaurus Search

By placing a tilde (~) immediately in front of a term, documents with that term and/or any synonyms of the word appear. Using "~parole" yields documents containing: "parole," "probation," "release," "free, "discharge," etc. (see figs. 3 and 4).

Suffix Expansion Search

By placing an asterisk (*) directly behind a root word, all forms (plurals, past tense, etc.) will be found. In this example, "stalk*" will yield documents containing: stalk, stalks, stalker, stalking, etc.

Multiple Function Search

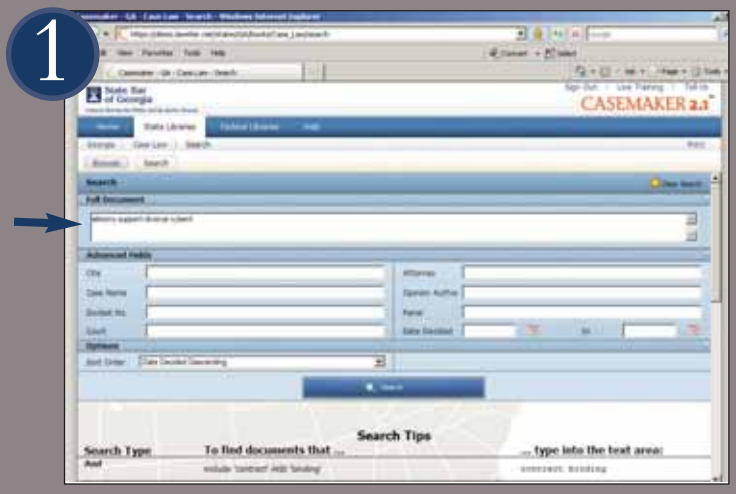
Searching with these terms, "modification counterclaim child custody 19-9-*," 29 cases are found. Narrow the search by adding devices such as the tilde and the asterisk and you produce this query, "modification ~counterclaim child +custody –support 19-9-*," which results in six cases. (see figs. 5 and 6).

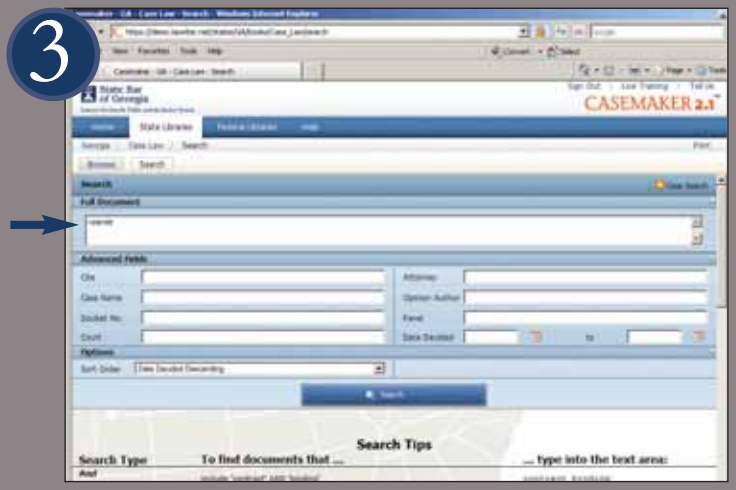
Natural Language

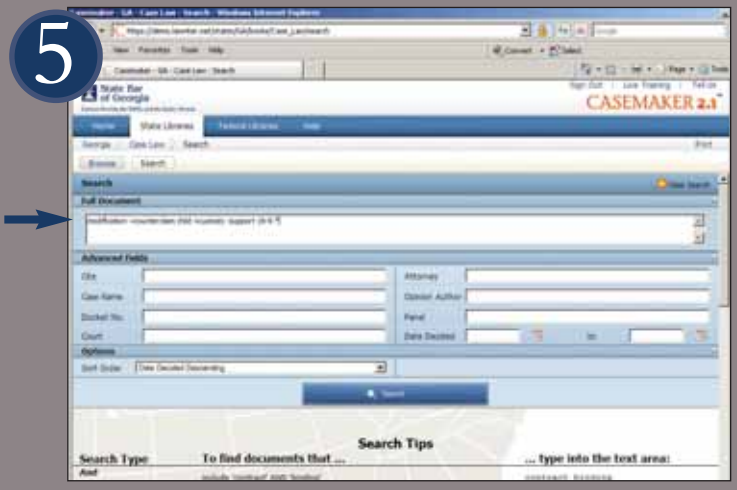
Natural Language searches are accomplished by typing words or a phrase into the Casemaker Full Document Search area. The search engine uses its own intelligence to find the results that match your query based on the data contained in the selected library. Be aware that too many terms will result in an error message, phrases without quotation marks work better than complete sentences and correct spelling is necessary. Try using this method initially to locate documents that suggest concepts, word choices and legal terminology to help you formulate a comprehensive Boolean search. Well-constructed Boolean searches occasionally miss relevant documents or produce an overabundance of extraneous results. It may be worthwhile to perform a Natural Language search even after using the Boolean approach.

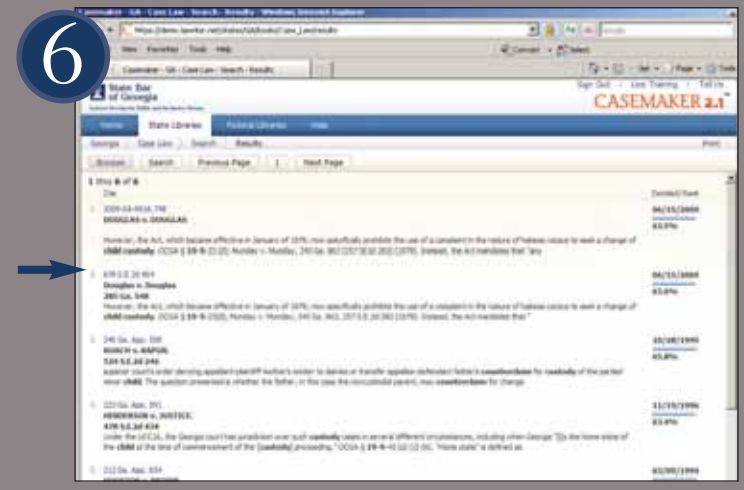
To conduct successful research on Casemaker, experiment with the features mentioned in this article. There is no substitute for practice; the more you use Casemaker, the better researcher you will become. Please feel free to e-mail sheilab@gabar.com or call 404-526-8618 if you have any questions about Casemaker. GBJ

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







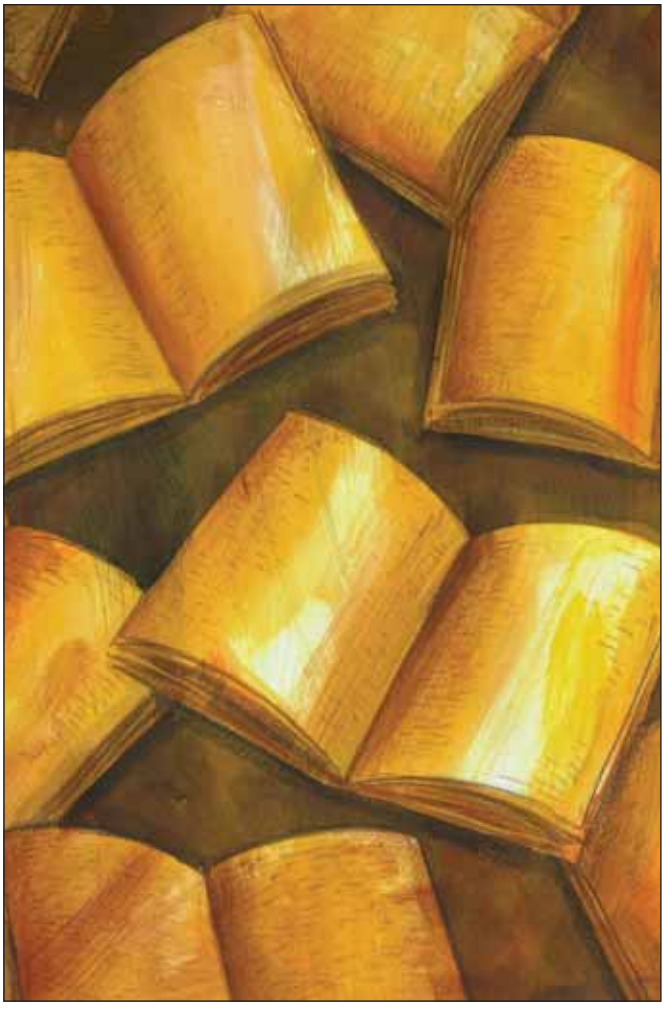


We offer Casemaker training classes four times a month. Upcoming training classes can always be found on the State Bar of Georgia's website, www.gabar.org, under the News and Events section. Onsite Casemaker training can also be requested by local and specialty bar associations.

Fifteen Frequent Flaws

by Karen J. Sneddon and David Hricik

We all have been humbled to see the occasional gaff crop up in our writing. The occasional gaff becomes a problem when the gaffs litter every sentence. This installment of "Writing Matters" describes 15 things that readers may view as sloppy writing, slipshod thinking and bad lawyering. So, as you are polishing a letter to a client, a memo for a senior partner or a filing for a court, consider these 15 frequent flaws.



When It's a Problem

With the speed of typing, apostrophes are starting to float around the page and be attracted to unsuspecting letters. It's remarkable that we see "it's" used for the possessive. "It's" *always* means "it is." So check that quick typing fingers don't inject wayward apostrophes.

"I.e.," When You Mean "e.g."

Even assuming it to be proper use in the first instance (that is, should you ever use "i.e." or "e.g." rather than actual English), these two abbreviations for

Latin words are often misused. "I.e." means "that is;" "e.g." means "for example."

SHOUTING AT THE READER

It may be helpful for lawyers to capitalize the initial letter of defined terms in agreements, such as real estate closing documents or settlement agreements. Doing so avoids ambiguity and brings clarity. BUT USING CAPITALIZATION TO EMPHASIZE IS ANNOYING.[1]

The Awkward S/he

Using gender neutral language is a good thing. But sensitivity to the use of gender neutral language has spawned the awkward s/he. How do you pronounce "s/he"? Alternatives include using "she" in some paragraphs, and "he" in another. Another option is to rewrite the sentence using plural. So, *an attorney filing for CLE must file his application* becomes *attorneys filing for CLE must file applications.*

Except in Unusual Circumstances, "Cannot" Should be One Word

"Cannot" means that something is impossible. *Due to the storm, the jurors cannot deliberate.* In contrast, "can not" indicates a choice. *Due to the storm, the jurors can not deliberate.* This indicates that they can, if they want to. In most cases, you cannot use two words to say what you likely intend.

"Impact" as a Verb

Over time the meaning and use of words can change. One such change is when a word that was a noun becomes a verb, such as the word "access." The one change from noun to verb that catches most readers' eyes is the word "impact."[2] Whether it has an impact on readers or not, many lawyers use "impact" as a

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Mr. Samuel Jones, a veteran who has lived in his home for over 30 years, paid off his original mortgage loan in 2006. In 2007 he took out a $55,000 equity loan. In 2008, his mortgage company informed him of a payment increase which would include taxes and insurance, unless he paid those costs separately. Mr. Jones wrote to the mortgage company that he would continue paying these costs separately, and he did so.

Mr. Jones never missed a mortgage payment, but he began receiving delinquency notices from the mortgage company, which he disputed. In July, he received a notice that his home had been sold in a foreclosure sale.

Mr. Jones contacted GLSP to help him keep his home. A GLSP lawyer contacted the attorney for the mortgage company, and provided the letters that Mr. Jones had written and his payment history. As a result the mortgage company rescinded the foreclosure sale.

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verb, as in "the law impacted society." Its use has grown over the years, but to many readers, it has a negative impact. For that reason, avoid it unless you know it will not impact your reader's reaction.

"Must" Instead of "Should" or "May"

To a lawyer, the use of "may" instead of "must" is a critical distinction. One indicates choice; the other, obligation. Yet, often we see legal writers casually use these words interchangeably.

Irregardless

Based on the increased use of this "word" in our every day conversations, "irregardless" may become an actual word. However, at this point, it's not an actual word. "Regardless" means "without regard to." What does "irregardless" mean? Regardless, lawyers use "irregardless" when they should not.

The Principal is Your Pal, but the Principle is Not

We learned in grade school that "the principal is your pal." Yet, this catchy phrase doesn't eliminate the inadvertent slip of these homophones. "Principal" can be either a noun or an adjective. It refers to a person or thing that is highest in rank or importance. So, proper use of "principal" isn't limited to the individual in charge of a school. For example: *As of December 1, the balance of the principal on Gwen's home mortgage is $85,000.* "Principle" is an adjective that relates to an ideal, standard, doctrine or law. For example: *The principles of economics suggested that the housing bubble had to burst.*

Advising Advice

Similar in meaning, the difference between these words is the part of speech. "Advise" is a verb; "advice" is a noun. For example: *The attorney advised her client to consider her advice.*

Torturous Issues

Automatic spell check can create problems. Consider the often used word "tortious" that becomes"tortuous" or, even worse, becomes "torturous."

Sprawling Sentences

Deftly used punctuation can infuse writing with a sense of sophistication. It can also encourage sentence sprawl. Each sentence in a paragraph becomes longer than the preceding sentence until even Marcel Proust would be impressed. Reading a text out loud can help check for sprawling sentences. If you run out of breath before the end of the sentence, you've probably identified a sprawling sentence.

"Alright" Isn't

"All right" is all right; alright is not.

Clichés

Vivid writing keeps the reader engaged in the material. To increase the vivaciousness of the material, we often sprinkle in metaphors. These metaphors project an image. An overused metaphor becomes a cliché, such as "sell like hotcakes." So rather than suggesting a novel, engaging image, a cliché projects a stale, generic image that doesn't keep the reader engaged. To check whether your phrase is a cliché, use http://www.westegg.com/cliche/.

Overuse of Quotes

The number of quotations to include can be difficult to determine. Quotes can be valuable, and the absence of quoted language can be problematic. As one California court recently noted,

> Brevity may be the soul of wit, but it is sometimes not conducive to *legal proof*. . . . If readers want to know whether a paraphrase or characterization is accurate, the best way is for writers to quote the source material, so readers can see for themselves the exact words behind the paraphrase or characterization. Too many legal writing instructors discourage quotation of source materials. That only makes more work for those readers who may not necessarily want to take the writer's word for it.[3]

But too many quotes, especially a series of quotes in close proximity, can be difficult for the reader to absorb. The reader may be so overwhelmed at the number of quotes to process that he or she is left to wonder whether the writer could actually discern the relevant information. Thus, judicious use of quotes highlights the relevant language, without inundating the reader with quotation marks. 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. The Legal Writing Program at Mercer Law School has consistently been ranked as one of the Nation's Top Legal Writing Programs by U.S. News & World Report.

Endnotes

1. For an examination of formatting issues, including "Stop screaming at me in rectangles: Why all capital letters just don't work," see Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108, 115 (2004).
2. One freelance writer and editor even has a webpage tapping into this debate. His webpage is http://www.impactisnotaverb.com/.
3. *Griffin Dewatering Corp. v. N. Ins. Co. of N.Y.*, 97 Cal. Rptr. 3d 568, n. 7 (Cal. Ct. App. 2009) (emphasis in original).

The National Institute for Teaching Ethics and Professionalism

by Clark D. Cunningham and Charlotte S. Alexander

In 2005, the Chief Justice's Commission on Professionalism (the Commission) authorized seed funding through a three-year grant that made possible an entirely new professionalism initiative: national workshops that bring together leaders from both legal education and the profession to share effective and innovative methods for teaching ethics and professionalism to both law students and practitioners. To operate these workshops, a consortium of nationally-recognized centers on ethics and professionalism came together to form the National Institute for Teaching Ethics and Professionalism (NIFTEP).

Each consortium member provides funds to match the grant from the Commission. The Georgia State University College of Law, as one of the consortium members, provides administrative support with funding from the W. Lee Burge Endowment for Law & Ethics. NIFTEP workshops are also officially sponsored by the American Bar Association Standing Committee on Professionalism, which participates in workshop planning and sends representatives to each workshop.

Workshop participants, who are selected through a national application process, are designated as

Photos provided by NIFTEP

Prof. Patrick E. Longan, William Augustus Bootle Chair in Ethics at Mercer University School of Law, presents on professionalism during a NIFTEP workshop.

NIFTEP Fellows and receive full funding to cover their expenses to attend the workshop, for which no registration fee is charged. The Fellows are joined at each workshop by prominent speakers from the fields of

law, education, journalism, medicine and psychology.

As explained by NIFTEP Fellow Prof. Paul Paton, director of the Ethics Across the Professions Initiative at the University of the Pacific McGeorge School of Law, "The fellowship is a critical part of the endeavor and builds community that lasts." In his view, NIFTEP is "something unique and important for the bar and the academy that offers an extraordinary opportunity to those participating in it. Its impact is felt nationally and internationally."

John Berry, director of the Florida Bar's Legal Division, was chair of the ABA's Standing Committee on Professionalism when NIFTEP was founded and has participated in most of its workshops. According to Berry, "The strength of NIFTEP is that it gives help and encouragement to the individual schools and professors making differences in their schools and just as importantly, it allows all who value the inculcation of professional identity to come together in a way to have the greatest impact for constructive change."

Orrin "Skip" Ames, partner at Hand Arendall LLC in Mobile, Ala., program chair of the Defense Research Institute Lawyers' Professionalism and Ethics Committee and adjunct law professor (ethics), attended the spring 2009 workshop and reported that, "Everything that I learned was relevant and helpful to my law practice and to my teaching. During my years as an attorney and as a teacher, this workshop was clearly one of the best experiences that I have had."

Prof. Cynthia Batt, director of Clinical Programs at Temple University Beasley School of Law, also agreed that the NIFTEP workshop in which she participated "was one of the best conferences I have ever attended," further saying that she "came away feeling inspired and affirmed in my work."

Jim O. Stuckey II, past chair, ABA Standing Committee on Professionalism and current associate general counsel, SCANA Corporation speaks during a NIFTEP workshop.

Since NIFTEP's inception in 2005, more than 80 law professors and practitioners from around the country have taken part in these stimulating and highly par-

(Top to bottom) Representatives of the Chief Justice's Commission on Professionalism to the NIFTEP workshop: Donald R. Donovan, chair, State Bar of Georgia Committee on Professionalism; Ian E. Smith, King & Spalding LLP; and Avarita L. Hanson, executive director, Chief Justice's Commission on Professionalism.

ticipatory workshops which have addressed topics ranging from performance-based assessments currently in use in law schools and in practice, the basic competencies of a lawyer in the first year of practice, professional identity formation among law students, the practice of law as a business, and the development of moral decision-making in law students and new lawyers.

In June 2009, NIFTEP requested that each of the 80 prior workshop participants complete a detailed online evaluation form. Out of all possible responses, the evaluation received a response rate of 81 percent, nearly one-third of which were State Bar of Georgia members. More than half of the responses indicated that the workshop was "one of the best I've ever attended" in comparison to other ethics and professionalism workshops, and more than one-third indicated that the workshop was "one of the best I've ever attended" in comparison to *all other* professional development or academic workshops. Douglas Ashworth, director of the State Bar's Transition into Law Practice Program and past NIFTEP Fellow, described the insights he gained from the NIFTEP workshop on "how to tailor programs on professionalism" as causing "a light bulb to come on."

Through the evaluation, many former fellows shared ways that they have used their NIFTEP workshop experience in their teaching or practice. For example, among the practitioners, two lawyers from other states reported that they had used the example of the State Bar's mentoring program to develop mentoring programs at their law firms and in their own state bar associations; a teacher of ethics CLEs stated that he learned from the NIFTEP workshop how to draw a reluctant audience into a discussion by using video clips, photos and hypotheticals creatively; and a member of the ABA's Law Practice Management Section reported that discussions at the NIFTEP workshop influenced the section's formation of their own objectives and goals around ethics and professionalism instruction.

Law professors' responses were similarly positive, including reports that the NIFTEP workshops had influenced curricular reform and the development of new, creative and interactive ways to teach professional responsibility in the law school classroom.

In 2008, the Commission not only renewed its grant to NIFTEP for another three years, but increased the amount to enable NIFTEP to offer two workshops per year. The university members responded by doubling their contributions and Georgia State University College of Law allocated funds to employ the first deputy director for NIFTEP.

Members of the State Bar can participate in NIFTEP workshops in three different ways. You may apply through the national application process for selection as Fellows; you may be chosen as one of three representatives by the Commission; and you may participate as invited speakers.

For more information about NIFTEP, please visit http://law.gsu.edu/niftep/. To be placed on the mailing list to be notified when applications are available for the 2010 NIFTEP workshops scheduled for March 19-21 and Nov. 13-15, and to receive other NIFTEP news, please e-mail NIFTEP Deputy Director Charlotte Alexander at calexander@gsu.edu and put NIFTEP Mailing List in the subject line. The 2010 workshops are scheduled to be held at Red Top Mountain State Park Lodge in Cartersville, which has been the venue for NIFTEP workshops since 2006. GBJ

Clark D. Cunningham is the director of NIFTEP and the W. Lee Burge Professor of Law and Ethics at Georgia State University College of Law. He can be reached at cdcunningham@gsu.edu.

Charlotte Alexander is the deputy director of NIFTEP and can be reached at calexander@gsu.edu.

The Murphys Have Moved In!

The Murphy clan of 22 are officially moved in to their brand new, state-of-the-art home in McDonough, Ga.!

BUT MORE HELP AND SUPPORT IS NEEDED!

Donations today will help pay off the house tomorrow, and provide support for the family long into the future—protecting the kids and the new house!

There is also a long list of items still needed for the new house online.

The Murphys are made up of 4 biological and 18 adopted children, most with Down syndrome and other special needs. On Aug. 19, they arrived at their brand new home, complete with adaptive therapy and safety features.

The house was donated thanks to fundraising by the Keenan's Kids Foundation. More donations are needed to pay the home loan and keep the project going!

Want to learn more about the Murphys and how you can help this special family? Visit www.murphyhouseproject.com today!

keenan's kids foundation

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.

John Bryan Achord
Savannah, Ga.
Admitted 1973
Died October 2009

Richard Adam Bacon
Peachtree City, Ga.
University of Georgia School of Law (1980)
Admitted 1980
Died June 2009

Joseph R. Baker
Stockbridge, Ga.
John Marshall Law School (1970)
Admitted 1970
Died September 2009

Charles F. Barnwell Sr.
Atlanta, Ga.
Emory University School of Law (1955)
Admitted 1954
Died September 2009

Kenneth R. Brown
Jonesboro, Ga.
Woodrow Wilson College of Law (1969)
Admitted 1970
Died August 2009

Althea Lorraine Buafo
Macon, Ga.
Mercer University Walter F. George School of Law (1987)
Admitted 1987
Died October 2009

Maureen Therese Buletti
Atlanta, Ga.
University of Georgia School of Law (2006)
Admitted 2006
Died November 2008

Elizabeth White Calvert
Savannah, Ga.
University of Georgia School of Law (1987)
Admitted 1987
Died October 2009

Kenneth L. Chalker Sr.
Kennesaw, Ga.
John Marshall Law School (1966)
Admitted 1966
Died September 2009

Joseph Quentin Davidson Jr.
Panama City Beach, Fla.
Mercer University Walter F. George School of Law (1966)
Admitted 1967
Died August 2009

Brian F. Dorsey
Marietta, Ga.
Emory University School of Law (1977)
Admitted 1977
Died May 2009

Thurman E. Duncan
LaGrange, Ga.
Columbia University School of Law (1949)
Admitted 1951
Died October 2009

Clyde W. Eberhardt
Roswell, Ga.
John Marshall Law School (1947)
Admitted 1947
Died August 2009

Elliott Goldstein
Atlanta, Ga.
Yale Law School (1939)
Admitted 1938
Died September 2009

Milton H. Hutcheson Jr.
Loganville, Ga.
Woodrow Wilson College of Law (1968)
Admitted 1969
Died September 2009

Robert E. Lanyon
Fort Valley, Ga.
Mercer University Walter F. George School of Law (1950)
Admitted 1949
Died January 2009

Thomas Edward Magill
Atlanta, Ga.
Tulane University Law School (1978)
Admitted 1978
Died October 2009

Robert C. Montgomery
Jonesboro, Ga.
John Marshall Law School (1966)
Admitted 1966
Died September 2009

John P. Nixon
Warner Robins, Ga.
Mercer University Walter F. George School of Law
Admitted 1958
Died October 2009

Dewey H. Prince
San Rafael, Calif.
University of Georgia School of Law (1954)
Admitted 1955
Died August 2009

Robert L. Sweezey
Ellicott City, Md.
Georgia State University College of Law (1992)
Admitted 1992
Died October 2009

Henry B. Troutman Jr.
Hilton Head Island, S.C.
University of Georgia School of Law (1949)
Admitted 1950
Died October 2009

Hon. David J. Turner Jr.
Manchester, Ga.
Mercer University Walter F. George School of Law (1967)
Admitted 1967
Died August 2009

William Alford Wall
Athens, Ga.
University of Georgia School of Law (1950)
Admitted 1950
Died September 2009

Henry B. Troutman Jr. was born in July 1923, the son of Henry Battey Troutman Sr. and Maggie Foote Troutman. He was born and raised in Atlanta. Troutman graduated Boys High and attended the University of Georgia, where he was the president of Chi Phi fraternity. During his time at college, he enlisted in the Army, serving during World War II. After his service, he returned to the University of Georgia School of Law, where he met and married Mary Pringle.

Troutman spent 30 years working at the family law firm, Troutman-Sams, Schroder, Lockerman, which is known today as Troutman Sanders LLP. After trying his hand at law for 30 years, he and his wife opened the first sea shell shop in Atlanta, which quickly expanded into three retail stores and two wholesale outlets. From there, he furthered his education to become a chemical addictions counselor, working in many hospitals across the state of Georgia.

Troutman was a recipient of a Lifetime Achievement Award for his work with the State Bar of Georgia, founding the Lawyers Assistance Program which has been adopted by many states across the nation. He had a distinct zest for life and many passions, primarily his love for people. He always made a point to put others before himself. His family and friends were especially important to him and he never met a stranger. Troutman had a quick wit and wonderful sense of humor, a love for fishing, crabbing and the water; and if he wasn't at home resting with the dogs, he was off at the beach with his family.

RETRACTION

In the October 2009 issue of the *Georgia Bar Journal*, attorney Richard Melvin Jones Jr. was erroneously reported as being deceased. The *Journal* apologizes for this mistake.

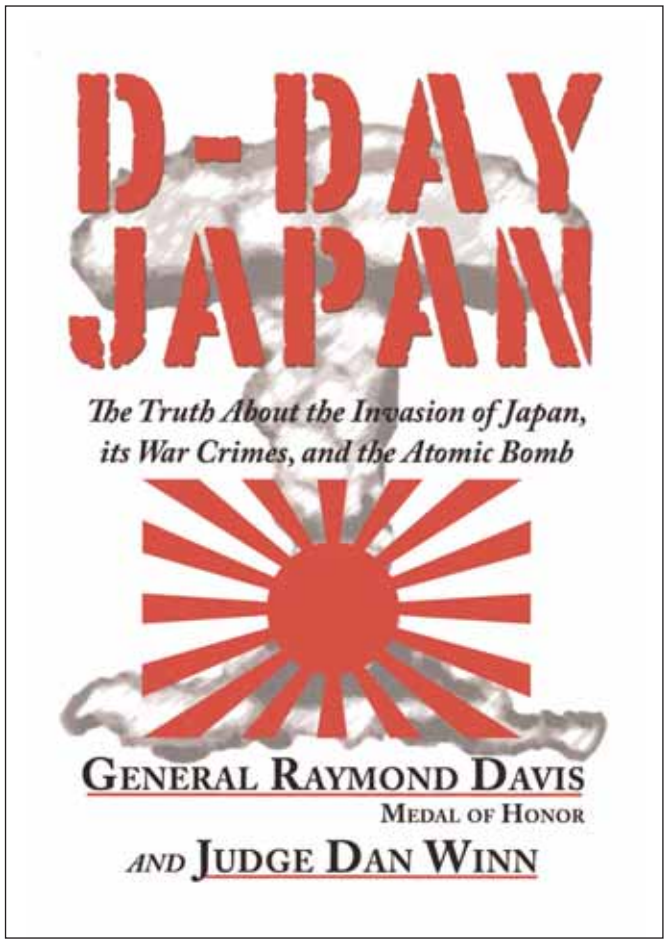
D-Day Japan:

The Truth About the Invasion of Japan, Its War Crimes, and the Atomic Bomb

by Senior Judge Dan Winn and General Raymond Davis
Acclaim Press, 224 pages

reviewed by William L. Lundy

D-Day Japan is a unique and factual book written by the Hon. Dan Winn, senior superior court judge of the Tallapoosa Judicial Circuit, and Gen. Raymond Davis. Both men fought in World War II, Winn as a fighter pilot in the U.S. Marine Corps, and Davis, a Medal of Honor recipient, as assistant commandant, U.S. Marine Corps.



This book focuses on two aspects of the war against Japan in World War II that are either little known, misunderstood or misrepresented: (1) the high Allied and American cost in human life of a planned mainland Japan invasion and its relationship to the decision to drop the atomic bomb; and (2) the atrocities committed by Japan against the Chinese in the years leading up to and during World War II.

We are now almost 65 years removed from the decision by President Harry Truman to use the atomic bomb against Japan, and revisionists/apologists in articles and speeches seek to rewrite history criticizing the United States and Truman for the decision to use the bomb. This book precisely dispels revisionist blaming of the United States.

Winn and Davis, in painstaking detail and factual support, recount the evidence as it truly existed from 1931 to 1945. Georgia attorney and judge Dan Winn adds much flavor to this remarkable book by sharing his first-hand perspective of World War II. He is an outstanding judge for our state, and learning of his remarkable career as a fighter pilot certainly enhances the reader's interest.

Astoundingly, the Japanese killed some 30 million Chinese and Southeast Asians from 1931 until the Japanese surrender in 1945. The facts presented demonstrated that the numbers are

accurate and details of atrocities are true. Photographs and eyewitness accounts, as well as censored documents uncovered from the Japanese Imperial Army, reflect an investigation into the facts that would make any trial lawyer proud.

The book discusses in detail the high cost of an invasion of mainland Japan, set for Nov. 1, 1945. The United States actually had a detailed invasion plan and date set before the dropping of the atomic bombs on Hiroshima and Nagasaki. The invasion plans are set out in the book along with casualty estimates, which are quite chilling.

Casualties would have been in the many hundreds of thousands for Americans and in the hundreds of thousands for the Japanese, including civilian and army personnel. The book makes the case that Truman's decision actually saved lives and ended the war with the preservation of life. This much is clear. American losses during the island-hopping campaign through Iwo Jima, Guadalcanal, Philippines, Gilbert Islands and Okinawa are grim reminders of the cost of taking small islands occupied by the Japanese Imperial Army. The Japanese fought to the death over every inch of soil. A mainland invasion would have been almost unfathomable in human loss.

This book is a must-read for any World War II veteran (or relative of one) and for all Americans interested in the atomic bomb issue and the truth about the end of World War II in the Pacific. It has been endorsed by many groups: the Global Alliance to Preserve the History of World War II in Asia, the U.S. Marine Corps Coordinating Council of Greater Atlanta and many others.

The factual presentation clearly makes the case for our use of the atomic bomb. As a country, we can have a clear conscience in its strategic and humanitarian use. A swift end to the war with preservation of lives was a right and noble goal of President Truman. GBJ

William L. Lundy Jr. is the senior partner in the law firm of Parker and Lundy in Cedartown. He is a 1985 graduate of the Cumberland School of Law of Samford University. Lundy has served as chair of the Investigative Panel for lawyer discipline and as chair of the General Practice and Trial Section of the State Bar. He is an executive committee member of the Georgia Trial Lawyers Association and Workers' Compensation Claimants' Lawyers. Lundy is a past president of the Tallapoosa Judicial Circuit Bar Association. He has spoken at many seminars on trial and mediation topics and is licensed in Georgia and Alabama.

December-March

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 locations
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
See www.iclega.org for location
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

DEC 18
ICLE
Second Amendment
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

DEC 18
ICLE
Clarence Darrow
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

DEC 18
NBI, Inc.
Complex Consumer Bankruptcy Issues
Atlanta, Ga.
6 CLE Hours

JAN 7
ICLE
So Little Time, So Much Paper
Atlanta, Ga.
See www.iclega.org for location
3 CLE Hours

JAN 8
ICLE
Trial Advocacy
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

Note: *To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893.*

JAN 13 ICLE
Family Law Convocation of Professionalism
Atlanta, Ga.
See www.iclega.org for location
3 CLE Hours

JAN 14 ICLE
Landlord and Tenant
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 14 ICLE
Art of Legal Reasoning
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 15 ICLE
Negotiated Corporate Acquisition
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 15 ICLE
Advanced Adoption Law
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

JAN 15 ICLE
Musante: Attacking the Experts
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 20-22 Prosecuting Attorneys' Council of Georgia
2010 Fundamentals of Prosecution
Pine Mountain, Ga.
15 CLE Hours

JAN 21 Lorman Education Services
Economic Development Financing
Atlanta, Ga.
6 CLE Hours

State Bar of Georgia 2010 Midyear Meeting CLE Opportunities

JAN 7 *Nuts and Bolts of Military and Veterans Law*
9 a.m. - 12 p.m.
3 CLE Hours

JAN 7 *Casemaker Training*
10 - 11 a.m. or 3 - 4 p.m.
1 CLE Hour

JAN 7 *Risk Prevention in a Competitive Legal Market*
2 - 5 p.m.
3 CLE Hours with 1 Professionalism Hour* and 1 Ethics Hour

JAN 8 *The Trial of Leo Frank (Video Replay)*
9 a.m. - 12 p.m.
3 CLE Hours with 1 Professionalism Hour* and 2 Trial Practice Hours

JAN 9 *Get a Job! Tips for the Unemployed and Underemployed Lawyer*
1 - 4 p.m.
3 CLE Hours with 1 Professionalism Hour*

Register online now for the 2010 Midyear Meeting at www.gabar.org.

**Professionalism credit is self-reporting, using the optional self-report form.*

December-March

JAN 21
ICLE
Advanced Adoption Law
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

JAN 22
ICLE
Winning Settlement Demand Packages
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

JAN 22
ICLE
White Collar Crime
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 28
ICLE
Winning Settlement Demand Packages
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

JAN 28
ICLE
Start Ups and Early Stage Companies
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 29
ICLE
Georgia Foundations & Objections
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 29
ICLE
Recent Developments
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

JAN 31-FEB 3
ICLE
Update on Georgia Law
Steamboat, Co.
See www.iclega.org for location
12 CLE Hours

FEB 4
ICLE
Electronic Discovery
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 4
ICLE
Complete Legal Negotiator
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 4
NBI, Inc.
Drafting LLC Agreements
Atlanta, Ga.
6 CLE Hours

FEB 5
ICLE
Abusive Litigation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 5
ICLE
Secured Lending
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 5
ICLE
License Revocation & Suspension
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

FEB 5
ICLE
Georgia Auto Insurance
Savannah, Ga.
See www.iclega.org for location
6 CLE Hours

Note: *To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893.*

FEB 10
The Seminar Group
Construction Defects and Distressed Properties
Atlanta, Ga.
6 CLE Hours

FEB 10
NBI, Inc.
Real Property Foreclosure – A Step-by-Step Workshop
Atlanta, Ga.
6 CLE Hours

FEB 11-12
ICLE
Social Security Law
Atlanta, Ga.
See www.iclega.org for location
9 CLE Hours

FEB 11
ICLE
License Revocation & Suspension
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 11
ICLE
Jury Trial
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 12
ICLE
Residential Real Estate
Statewide Satellite Broadcast—Live
See www.iclega.org for location
6 CLE Hours

FEB 12
ICLE
Georgia Auto Insurance
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 12-13
ICLE
Estate Planning Institute
Athens, Ga.
See www.iclega.org for location
9 CLE Hours

FEB 13
The Seminar Group
Wetlands and Water Law
Atlanta, Ga.
10.3 CLE Hours

FEB 17
The Seminar Group
Solar Power—Projects and Permitting
Atlanta, Ga.
6.5 CLE Hours

FEB 18
ICLE
Residential Real Estate
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 18
ICLE
Soft Tissue Injury
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 18
ICLE
Elder Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 19
ICLE
Banking Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 19
ICLE
Advanced Debt Collection
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

FEB 19
ICLE
Criminal Practice
Kennesaw, Ga.
See www.iclega.org for location
6 CLE Hours

December-March

FEB 22
ICLE
Beginning Lawyers
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 23-24
ICLE
Collaborative Law Institute of Georgia (CLIG) Training
Atlanta, Ga.
See www.iclega.org for location
12 CLE Hours

FEB 25
ICLE
Advanced Debt Collection
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 25
ICLE
Advanced Patent Cooperation Treaty (PCT) Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 25
ICLE
Legal Technology Show & Tell
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 26
ICLE
Employers' Duties & Problems
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 26
ICLE
Georgia Appellate Practice
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 27
ICLE
Bar Media
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 4
ICLE
Fundamentals of Health Care
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 4
ICLE
Product Liability Institute
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 5
ICLE
Premises Liability
Statewide Satellite Broadcast—Live
See www.iclega.org for location
6 CLE Hours

MAR 5
ICLE
Effective Jury Selection
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 5
ICLE
Proving Damages
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 9
ICLE
Workouts, Turnarounds & Restructurings
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

Note: *To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893.*

MAR 11
ICLE
Premises Liability
Statewide Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

MAR 11
ICLE
Metro City & County Attorneys
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 11
ICLE
Mediation Advocacy
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 11-13
ICLE
General Practice & Trial Institute
Amelia Island, Fla.
See www.iclega.org for location
12 CLE Hours

MAR 12
ICLE
Trial and Error
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 12
ICLE
Post Judgment Collection
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 12
ICLE
Professionalism & Ethics Update
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
2 CLE Hours

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

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

MAR 16
ICLE
Traumatic Brain Injury
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 17
ICLE
Aviation Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
ICLE
Workers' Comp. for the General Practitioner
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
ICLE
Employment Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
ICLE
Professionalism & Ethics Update
Statewide Satellite Rebroadcast
See www.iclega.org for locations
2 CLE Hours

MAR 19
ICLE
Basic Fiduciary Practice
Statewide Satellite Broadcast—Live
See www.iclega.org for locations
6 CLE Hours

MAR 19
ICLE
Entertainment Law Boot Camp
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

Notice of Withdrawl of Proposed Formal Advisory Opinion

Withdrawal of Proposed
Formal Advisory Opinion Request No. 06-R1

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has WITHDRAWN Proposed Formal Advisory Opinion Request No. 06-R1 effective Sept. 17, 2009. This proposed opinion (also referred to as Formal Advisory Opinion No. 09-1), originally scheduled to be filed with the Supreme Court of Georgia on or after June 15, 2009, will not be filed.

Pursuant to Rule 4-403(d) of the Rules and Regulations of the State Bar of Georgia, Proposed Formal Advisory Opinion No. 06-R1 was published in the June 2009 issue of the *Georgia Bar Journal* for 2nd publication. The Notice, published along with the proposed opinion, indicated the proposed opinion would be filed with the Supreme Court of Georgia on or after June 15, 2009.

Following its publication, but prior to it being filed with the Supreme Court, the Formal Advisory Opinion Board reconsidered Proposed Formal Advisory Opinion No. 06-R1. Upon further review, the Formal Advisory Opinion Board has decided to withdraw the proposed opinion. No formal advisory opinion addressing the issues raised in the request will be drafted by the Formal Advisory Opinion Board.

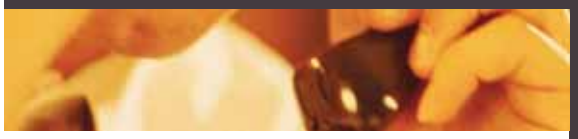
Notice of and Opportunity for Comment on Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

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

A copy of the proposed amendments may be obtained on and after Dec. 1, 2009, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., NW, Atlanta, GA 30303 (phone: 404-335-6100). Comments on the proposed amendments may be submitted in writing to the Clerk at the above address by Dec. 31, 2009.

Proposed Experimental Superior Court Rule for Cobb Judicial Circuit

The Superior Court Judges of the Cobb Judicial Circuit have approved a proposed experimental superior court rule regarding limited scope of representation in civil cases. A copy of the proposed experimental rule may be found at the website of the Council of Superior Court Judges at www.cscj.org. Should you have any comments on the proposed experimental rule, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, Jan. 18, 2010.



Books/Office Furniture & Equipment

LegalEats, A Lawyer's Lite Cookbook: is a fun legal-themed cookbook, with easy to prepare gourmet recipes, targeted to the legal community. A "must" for any lawyer with a demanding palate, **"LegalEats"** makes a great gift and is a welcome kitchen shelf addition. Available at leading online bookstores such as Barnes & Noble and Amazon.com.

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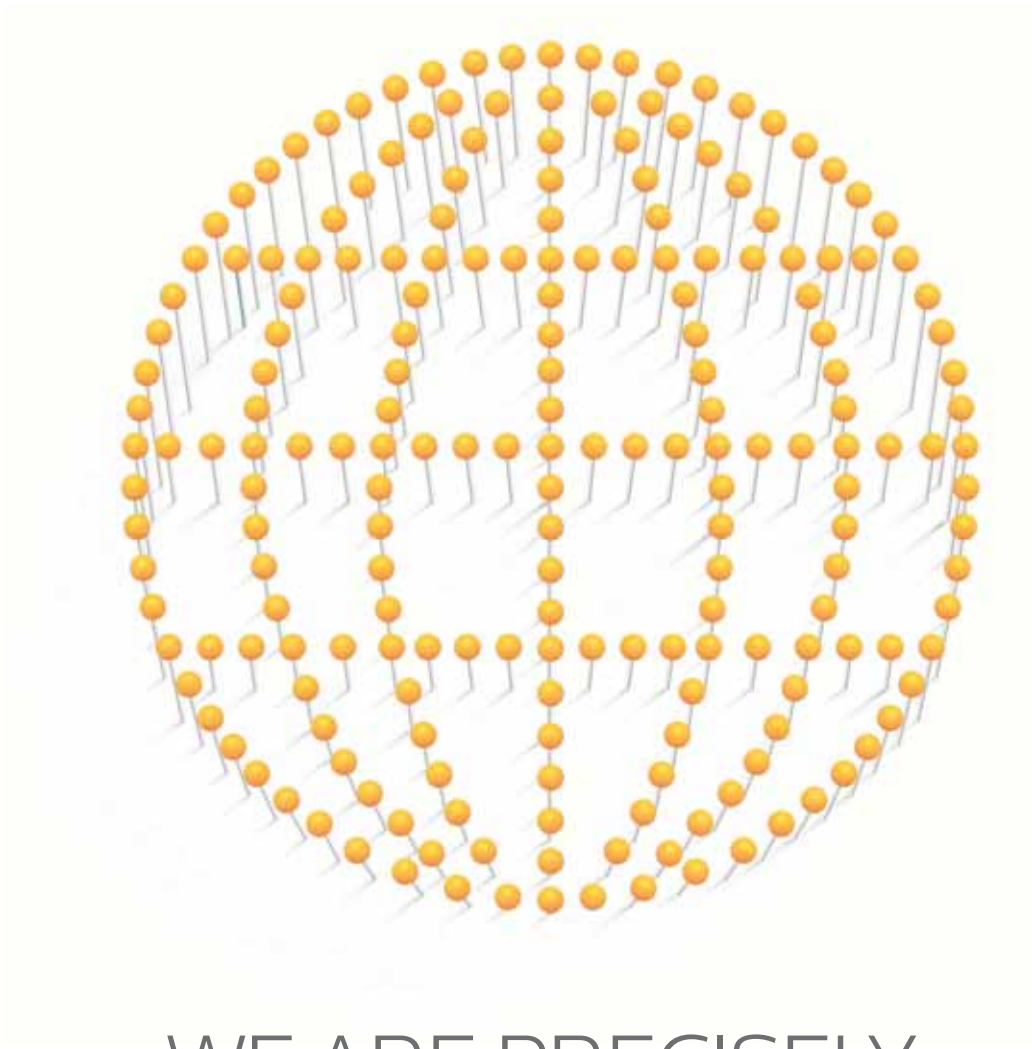

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