

Georgia Bar Journal

February 2010 ■ Volume 15 ■ Number 5

A large group of approximately 40 people, mostly men in suits and a few women, are posed on the wide, ornate marble steps of a grand building, likely the Georgia State Capitol. The group is arranged in several rows, with some individuals standing on the steps and others on the ground in front. They are all smiling and looking towards the camera. The background shows the classical architecture of the building, including columns and a balcony with a decorative railing.

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Cover photo: State Bar President Bryan M. Cavan pictured with lawyer-legislators in the Georgia General Assembly. **(Left to right, bottom row)** Bryan M. Cavan, president, State Bar of Georgia; Rep. Rich Golick, chairman, House Judiciary (non-civil); Sen. John Wiles, chairman, Senate Special Judiciary; Rep. Wendell Willard, chairman, House Judiciary (civil); Sen. Preston Smith, chairman, Senate Judiciary; Speaker of the House David Ralston. **(Second row)** Sen. Seth Harp, Sen. Ronald Ramsey, Rep. Jay Powell, Rep. Stephanie Stuckey Benfield, Rep. Mike Jacobs, Rep. Elly Dobbs. **(Third row)** Rep. Mary Margaret Oliver, Sen. Bill Cowsert, Rep. Tom Weldon, Rep. Tom Knox, Rep. Rob Teilhet, Rep. Matt Ramsey, Rep. Doug McKillip. **(Fourth row)** Sen. Dan Weber, Sen. John Crosby, Rep. Stacey Abrams, Rep. DuBose Porter, Rep. Kevin Levitas. **(Fifth row)** Sen. David Adelman, Rep. Stephen Allison, Rep. Edward Lindsey, Sen. Curt Thompson, Rep. Rick Crawford, Rep. Randal Mangham. **(Sixth row)** Rep. Billy Maddox, Rep. Lee Thompson. **(Seventh row)** Rep. Roger Lane, Rep. Mark Hatfield, Rep. Doug Collins. **Not pictured:** Rep. Larry O'Neal, Rep. Pam Stephenson, Sen. Bill Hamrick, Sen. Judson Hill.

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

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by Bryan M. Cavan

A Special Thank You to Georgia's Lawyer-Legislators

By the time this issue is printed, the General Assembly will be in full swing. I briefly considered a "Hug your lawyer-legislator

campaign," but better sense prevailed. However, I thought it would a most appropriate time to recognize the members of our profession who serve in the General Assembly for their hard work and dedication.

The 38 lawyer-legislators of the state Legislature reflect Georgia's demographic and geographic diversity and span both sides of the political aisle. Their efforts toward representing the best interests of their constituents and those of the state as a whole epitomize the ideal of lawyers serving the public.

There are 27 lawyers among the 180 members of the Georgia House of Representatives (see accompanying

list), led by new House Speaker David Ralston (R-Blue Ridge). Other lawyers who are in top leadership positions in the House include Majority Whip Edward Lindsey (R-Atlanta) and Minority Leader DuBose Porter (D-Dublin). The two House committees that handle the legislation dealing with the justice system

are, appropriately, headed by lawyers. Rep. Wendell Willard (R-Sandy Springs) chairs the House Judiciary Committee, and Rep. Rich Golick (R-Smyrna) chairs the Judiciary Non-Civil Committee.

Two lawyer-legislators left the House in recent months when former Speaker Glenn Richardson resigned and Robbin Shipp joined the Fulton County District Attorney's Office. Three more losses are anticipated in 2010 as Rep. Porter is running for Governor, Rep. Tom Knox (R-Cumming) is seeking the post of Insurance Commissioner and

Rep. Rob Teilhet (D-Smyrna) is a candidate for Attorney General.

In the state Senate, there are presently 11 lawyers serving among 56 members (see accompanying list). Sen. Preston Smith (R-Rome) is chairman of the Senate Judiciary Committee, and Sen. John Wiles (R-

"On behalf of the members of the State Bar of Georgia, I wish to extend thanks to our lawyers in the Georgia General Assembly, who give so generously of their time and talents to serve us and all of the citizens of our state."

Marietta) chairs the Special Judiciary Committee.

The Senate lost two lawyer-legislators recently when Kasim Reed was elected Mayor of Atlanta and Ed Tarver was appointed as U.S. Attorney for the Southern District of Georgia. Two more losses are expected in 2010 as Sen. David Adelman (D-Decatur) is awaiting confirmation as U.S. Ambassador to Singapore, and Sen. Seth Harp (R-Midland) is seeking the position of State Insurance Commissioner.

I am very proud that we were able to arrange the cover photograph for this issue of the *Georgia Bar Journal*. You can imagine that, during the busy first week of the current legislative session, it took a monumental effort to gather these lawyer-legislators for the group photograph, and I appreciate their taking the time to do so. A generation ago, however, it might have been an impossible task (and we would have required a wider camera lens) because the numbers of lawyers in the House and Senate were considerably larger.

At 16 percent, the lawyer members of Georgia's Legislature barely exceeds the national average of 15 percent, according to the National Conference of State Legislatures grouping by occupation. Across the country, the number of elected officials making state laws who have studied and practiced law has gradually dwindled over the past half-century. Why this has occurred is the source of debate.

One theory is the long-held public perception that there were too many lawyers in the legislature in the first place, and the electorate has taken out its eroded confidence in the legal profession at the ballot box. This perception was expressed in a *New York Times* article, reporting on the annual convention of the New York State Press Association and quoting the then-editor of the *Watertown Times* as saying, "In the past a good share of the Legislature has been made up of gentlemen belonging to the legal fraternity, and it will hardly

Lawyers in the Georgia General Assembly	
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Rep. Mike Jacobs (R-Atlanta)	
Rep. Tom Knox (R-Cumming)	Senate
Rep. Roger Lane (R-Darien)	Sen. David Adelman (D-Decatur)
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be pretended that they have not taken care of themselves. Let them go to the rear for a time, and let other trades and callings take a hand in framing the laws."

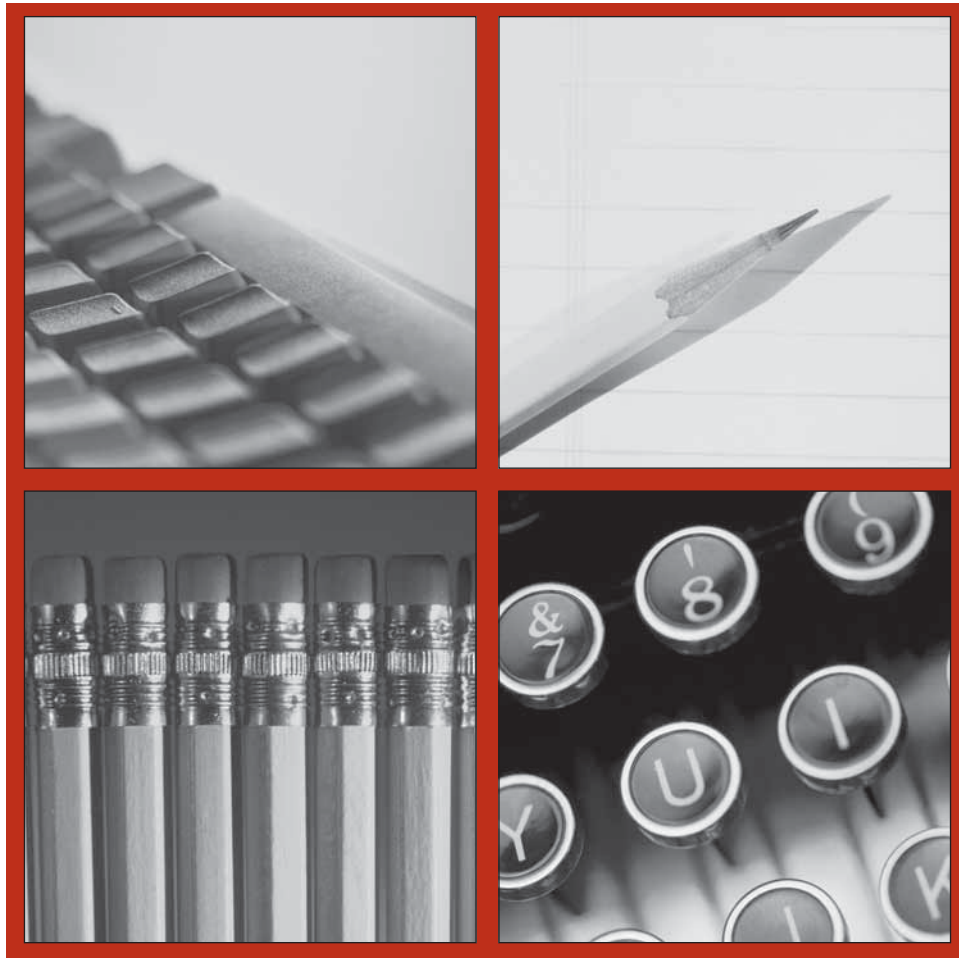
The date of that article? June 24, 1891. So if the national decline in the number of lawyers in the legislature is the result of a dislike for lawyers or a "throw the rascals out" sentiment, it took an awfully long time to become evident.

A more likely cause is the increase of recent decades in the demands on one's time associated with the practice of law, together with the hearings and committee work that extend well into the year, beyond the legislative session. The notion of a part-time legislator is misplaced. My suspicion is that this has reduced the number of lawyers who become candidates for the legisla-

ture. Additionally, there has been a change in feelings at some law firms that traditionally had supported their members' participation in community leadership. Now, many of those same firms are ambivalent about whether their members are active in public service, as long as they meet their billable hours quota.

Having a partner or associate serve in the state legislature once was considered a mark of prestige for the law firm, and for some it still is. But because of the amount of time demanded, for many firms, such service is more difficult to justify, especially in today's economy. While the financial impact on a small firm is greater, our lawyer-legislators must find the appropriate balance, when weighing the demands of serving in elected office with those of representing

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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.

their clients, earning a living and enjoying quality time with their families. These days, successful campaigns for seats in the Georgia Legislature often require constant fund raising into six-figure territory, certainly a less-than-appealing part of the job that would cause some lawyers to avoid politics.

All Bar members should be thankful for the three dozen of our colleagues who are willing and able to make the commitments and sacrifices necessary to serve in the Legislature. For the good of our state, we need to increase their number. It is an easy argument to make that having more participants in the legislative branch with an advanced academic and practical understanding of the language of the law, the Constitution and the justice system will result in an improved and more efficient law-making process. Our lawyer-legislators pay a big price, personally and professionally.


In recent years, there have been too many instances when legislative measures or certain provisions were overturned by the courts as unconstitutional or where statutory language was later found to be inconsistent with legislative intent. Too often, the warnings of lawyer-legislators about such problems fall on deaf ears in committee or in the House or Senate chamber, and the legislation passes anyway.

This is an election year, and all 236 members of the Georgia General Assembly will be required to seek reelection in primaries on July 20 and the general election on Nov. 2. The candidate qualifying period will be April 26-30.

There has been encouragement from several presidents of our Bar for lawyers to seek a seat in the Georgia Legislature, and I echo their urging. If you are considering a candidacy for the Legislature in 2010, I hope you

will do so. Likewise, if you know a fellow Bar member who is planning to run, please give them encouragement and support their campaign. More importantly, meet and get to know our lawyer-legislators and support them in their campaigns.

The time of legislatures being dominated by lawyers may indeed be a thing of the past. But it is also clear the downward spiral in the number of lawmakers who are also lawyers is a trend that needs to be reversed.

On behalf of the members of the State Bar of Georgia, I wish to extend thanks to our lawyers in the Georgia General Assembly, who give so generously of their time and talents to serve us and all of the citizens of our state. 

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



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by Cliff Brashier

Military Legal Services Initiative Up and Running

For much of the past two years, a special State Bar committee has been working diligently toward the development of a new

program that would iden-

tify and address the

unmet needs for legal

services among U.S. mili-

tary personnel, reservists,

veterans and their families

here in Georgia.

Under the leadership of Chair Charles L. Ruffin and largely comprised of Bar members with military experience and/or a strong interest in military and veterans' law, the panel has spent a great deal of time researching the issue, establishing contacts within Georgia's 13 current military installations and learning about complex matters ranging from the Uniformed Services Employment and Reemployment Rights Act (USERRA) to Post Traumatic Stress Disorder (PTSD).

As Jeffrey O. Bramlett, immediate past president of the State Bar, said when the committee was created in 2008, its purpose was to design a comprehensive program that encourages Georgia lawyers to stand in the gap between legal services available to on-duty military personnel and unmet needs. "Georgia lawyers are grate-

ful for the military service of our troops and returning veterans," Bramlett said at the time. "This committee is looking for ways lawyers can personally and voluntarily give of themselves where servicemembers and veterans are not getting the legal help they need."

The committee's work—overseen and approved along the way by the Board of Governors—has resulted in a foundation upon which the initiative is now ready to move forward and meet its intended objective.

**"The committee's work—
overseen and approved along the
way by the Board of Governors—
has resulted in a foundation
upon which the initiative is now
ready to move forward and meet
its intended objective."**

Highlights of the groundwork to this point include:

- The enlistment of nearly 700 Georgia lawyers who have expressed an interest in participating in this initiative. This is the result of a barwide survey taken in the fall of 2008. The legal services Bar members will be making available range from civil litigation, landlord/tenant issues, criminal defense and

family law to wills and estates and the prosecution of disability benefits claims.

- The appointment of Norman Zoller as the coordinating attorney for the program. During his 34 years in the legal profession, Zoller has previously served as the first clerk of the U.S. Court of Appeals for the 11th Judicial Circuit and later as circuit executive, a post he held until his retirement in 2008. He is also an Army veteran with almost seven years on active duty, including two tours in Vietnam, and was a judge advocate officer for 15 years in the National Guard and Army Reserves. He is keenly aware of the legal issues often faced by our servicemembers and veterans and uniquely qualified to take over the day-to-day operation of this program.
- Participation in the State Bar's Midyear Continuing Legal Education program in January with the presentation of "Nuts and Bolts of Military and Veterans Law." Future training programs include an ICLE program for April or May, "Meeting the Legal Needs of Active, Predeployment and Returning Servicemembers," and a second CLE program later in 2010, "Veterans Administration Claims

Process; traumatic brain injury, post-traumatic stress disorder, clinical depression, et al." Participation in these programs by active duty JAG officers and committee members will also be solicited. Ethics and professionalism segments as well as lawyers' accreditation with the Veterans Administration are also being considered, along with Bar luncheons around the state and CLE webinars on several subjects, including family law, the Service Members Civil Relief Act and USERRA/employment issues.


Zoller is also coordinating with other pro bono providers, including the Georgia Legal Services Program, the Atlanta Legal Aid Society, Atlanta Volunteer Lawyers Foundation and Pro Bono Partnership, along with various State Bar sections, the Young Lawyers Division and the Atlanta Bar Association and Veterans Administration offices at the federal and state government levels while building an organization for delivery of services. By late February, he will have visited all 13 military installations in Georgia.

In the meantime, committee members will be working to implement guidelines for the program, as well as communications strate-

gies to make military servicemembers and veterans aware that legal assistance is available to them.

"At a time when our country is making increased commitments of men and women in uniform both at home and abroad, the State Bar wants to do all we can to supplement the excellent work provided by military judge advocates on active duty and in the National Guard and Reserves," State Bar President Bryan M. Cavan said. "We think this is a place where the private bar can help as well, and we intend to do our part by providing professional legal services on a reduced fee or on a fully pro bono basis."

Ruffin added, "The Bar has been considering the mechanics of an effective program to address these unmet legal needs for many months, and we now look forward to this new program being able to translate Jeff Bramlett's original vision into operational reality."

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

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

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by Amy V. Howell

Where Are All the Heroes?

Recent scandals have led me to consider the phenomenon of the fallen public hero. It seems that every day there is another head-

line uncovering the details of intimate trysts, drug abuse, financial deception, etc. Even as I write this article, another public official has admitted fathering a child from an extramarital affair. With a popular culture that is saturated with media images of sexu-

ality, deception and intrigue—the apparent cornerstones of the desperate search for fame and public notoriety—I seek instead a public figure who is truly worthy of watching. I seek someone to inspire me.

“We need to believe that there are people who choose the right path despite temptation, and we need these people to show us the way.”

To evaluate the heroes of my peers, I conducted some semi-scientific research . . . on Facebook. With a simple question to a broad range of friends, I learned of parent-heroes and icon-heroes like Martin Luther King Jr. I also searched my mind to recall anyone in recent history who I would be willing to nominate as a hero. My

search was futile. Those who I once greatly admired long since let me down, and now cynicism prevents me from ascribing the title of hero to anyone in the public light. After my research and reflection, I can only conclude that we are no longer willing to risk the disappointment of making someone in the public light an actual “hero.”

So why is it so hard for our public figures to do the right thing?

I acknowledge that technology and the media create an even greater burden on today’s heroes to always, and in every waking moment and every word, gesture and thought, place their hero obligations above all other human flaws. I recognize the impossibility of this burden, and I can only fathom the burden of constant public scrutiny. The fall of modern heroes makes me wish for the days when the media and public honored the symbolism of


those heroes and did not expose their flaws—not for the benefit of those public figures, but out of respect for society’s need to believe that we can all do better and we all can be more.

With that said, the failure of heroism today cannot be blamed solely on the media’s critical eye. Indeed, we should expect more of ourselves and more of our leaders. If you tell us don’t do drugs, then you shouldn’t either. If you tell us that marriage is an important family value, then you should value it as well. Even fictional heroes like Superman had vulnerabilities, e.g., kryptonite. But, unlike today’s leaders—the once and never heroes of this decade—Superman always had the integrity to act honorably despite his flaws. In the end he did the right thing, upholding the awesome responsibility of his powers to help others. So why

is it so hard for our modern day heroes to do the same—to pick public service over private indiscretions, to celebrate integrity rather than accept personal gain—to do the right thing?

I began this article as an obituary to the hero. I was prepared to announce the modern hero dead and to further lament the days when our heroes were great and noble. I was certain of the finality until a conversation with my 3-year-old daughter about why she loves princesses. Without going into the many important details of dresses and wands, she believes in something that is bigger than her or anything she has ever experienced. It is her innocent faith that good will prevail over bad (and that she’ll do it in a fabulous dress and tiara), that leads me to understand our universal need for a hero. We need to believe that

there are people who choose the right path despite temptation, and we need these people to show us the way.

Although my willingness to believe in the modern public hero has currently waned, I am willing to believe that a new era of leadership will soon emerge and will maintain their integrity, be true to their word and serve as heroes for the next generation. If not them, then you, then us. We can be each other’s heroes, and we can support each other in making good choices. Perhaps then the headlines will herald the triumphs of a new culture of heroism and my only challenge will be choosing just one. 

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Noticing the Bankruptcy Sale:

The Purchased Property May Not Be as “Free and Clear of All Liens, Claims and Encumbrances” as You Think

by William L. Rothschild and Allen P. Rosenfeld

Almost all bankruptcy sale orders recite that the subject property is sold “free and clear of all liens, claims and encumbrances,” or words to that effect. Such orders invariably add that any interests in the property attach instead to the sale proceeds, and that any disputes over the sale proceeds will be resolved later in bankruptcy court. In other words, a typical bankruptcy sale order states that it blocks any adverse claimant whatsoever who may later appear from asserting an interest in the purchased property, and directs the claimant instead to chase the sale proceeds through the bankruptcy court. As a result, closing attorneys who are unversed in bankruptcy law may pay less attention to title reports and site inspections than they normally would, or even take no action at all when they spot an apparent title discrepancy.



Don't believe everything you read. Just ask the Atlanta couple (the Purchaser), the closing attorneys or the title insurer who recently found out the hard way. In 1999, the Purchaser bought the home of a chapter 7 debtor following the entry of a standard bankruptcy sale order.¹ In 2004, a private lending company named Palmetto Capital Corporation

(Palmetto) contacted the Purchaser with this news: (1) Palmetto held a mortgage² on the property that was valid and properly noticed under Georgia law before the bankruptcy sale; (2) Palmetto neither received proper notice of the bankruptcy sale nor had actual knowledge of it; and (3) as a matter of law, a bankruptcy sale order does not bind a party who was without both legal notice and actual knowledge of the sale. Palmetto therefore asserted that its lien remained valid and prior to the Purchaser's fee simple interest, no matter what the sale order stated to the contrary.

One may wonder how a lienholder can wait so long after a sale to assert its claim. Palmetto's details appear in the endnote.³ Although the facts in *Palmetto* are not ordinary, they do follow a pattern. Many title disputes decide which innocent party will bear the loss after someone else exploits a string of low-probability events,

takes the money and becomes judgment proof.

Palmetto and the Purchaser litigated for five years. Meanwhile, the note secured by Palmetto's lien accrued annual interest at 19 percent. In 2009, a decade after the bankruptcy sale, the Superior Court of Fulton County agreed with Palmetto's legal analysis. Palmetto's lack of actual knowledge of the sale was undisputed. The court held that Palmetto lacked legal notice and granted Palmetto's summary judgment motion.⁴ The Purchaser's title insurer then bought Palmetto's lien for a sum that included all outstanding principal on its secured note plus annual interest of over 17 percent. The contribution of the closing attorneys, if any, is not known.

Large commercial bankruptcy sales normally draw experienced bankruptcy counsel for all parties early in the process. By contrast, residential purchasers are more

likely to negotiate sale contracts through real estate agents and to meet a lawyer only at closing. That lawyer may have only a passing knowledge of bankruptcy law and may represent the new mortgagee instead of the purchasers themselves. This article introduces bankruptcy sale law and practice to the residential closing attorney, and then offers some specific advice.

The Bankruptcy Sale in Federal Law and Practice

The typical residential sale in bankruptcy occurs in a chapter 7 (liquidation) case when the trustee appointed to the case believes that a sale would bring money into the bankruptcy estate, i.e., that sale proceeds would remain after applicable deductions for mortgages and other liens, taxes, usual nonbankruptcy fix-up and sale expenses and any exemptions available to the debtor.⁵ Otherwise, the trustee would aban-

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don the bankruptcy estate's interest in the property, and the mortgagee would either foreclose or work out a settlement with the debtor.

When a buyer is found, the bankruptcy sale diverges from the normal nonbankruptcy sale in three ways: the sale contract will contain special language (no warranty of title); the trustee must file a motion requesting an order from the bankruptcy court approving the sale; and the motion will usually request sale authority "subject to higher and better offers."⁶ The trustee will then file the sale motion, usually with the sale contract attached, obtain a hearing date and serve notice of the motion and hearing upon creditors and other parties in interest. If granted, the sale order will be served in the same manner as the motion and hearing notice were served.

Whether the transaction involves a chapter 7 trustee and a two-bedroom ranch house or a chapter 11 debtor in possession⁷ and a 15-acre chemical plant, the three most important aspects of a bankruptcy sale are still notice, notice and notice.

Adequate Notice is Critical

Orders authorizing bankruptcy sales dispense with the need for *consent*, but not for *notice*. If adequate legal notice is given, then on a proper factual showing the bankruptcy court may exercise two extraordinary powers. First, the bankruptcy court may remove a lien from property to be sold and place the lien instead on the sale proceeds, whether or not the noticed lienholder consents or even appears at all.⁸ Second, the bankruptcy court may prevent an appeal from affecting the validity of the sale unless the appellant posts a bond to stay the closing.⁹ No incantation within the sale order itself, however, can remove an existing lien or other interest from bankruptcy estate property where proper legal notice is not given and the adverse claimant had no actual knowledge of the sale.

Bankruptcy cases are by and large in rem proceedings. They concern the ingathering, liquidation and distribution of particular pieces of real and personal property that are collectively called the "estate." Nonetheless, a bankruptcy sale order follows the same rules of *res judicata* as any other in personam judgment. One such rule is that a party cannot be bound to an in personam judgment without having notice and an opportunity to be heard. The reason is the Fifth Amendment's provision that "[n]o person shall be . . . deprived of . . . property, without due process of law . . ."¹⁰ That rule applies to bankruptcy sales because "[t]he bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment."¹¹

Bankruptcy notice law developed in straightforward fashion. In 1848 the U.S. Supreme Court established the bankruptcy court's power to sell a property free and clear of a nonconsenting lienholder under any circumstances at all.¹² In 1875 the Court clarified that the bankruptcy court's power to sell property free and clear is limited by the normal rules of in personam due process to the claimant, including notice and opportunity to be heard.¹³ In 1884 the Court added that an aggrieved claimant has a choice of remedies: either accept the sale and follow the proceeds; or ignore the sale order altogether and foreclose under applicable state law.¹⁴

In the *Palmetto* case, Palmetto elected to foreclose because the recipient of the proceeds was judgment-proof. After an initial exchange of letters with the Purchaser, Palmetto filed a suit to quiet title.

The Purchaser Bears All Risks of Improper Notice

A real estate seller normally warrants title. If a title problem occurs later and the seller is solvent, the purchaser has recourse. This is not the case in a bankruptcy sale. The trustee, who is the seller, does not

warrant title or anything else. It is best trustee practice not even to sign an affidavit denying personal knowledge of unfiled mechanics' or materialmen's liens, on the theory that the trustee has no knowledge at all, and the execution of any affidavit may be construed to imply some knowledge.

Even if the seller would be liable for the failure to provide good title under applicable nonbankruptcy law, that result has little or no value following a bankruptcy sale. It is likely that the bankruptcy estate will have been disbursed and the case closed. It is also doubtful that the simple breach of warranty of title creates any personal liability for the trustee.¹⁵

If Litigation Ensues, the Purchaser Bears the Burden of Proof that Notice was Proper

In subsequent litigation, such as the *Palmetto* case, an adverse claimant must of course establish that its lien retains priority under applicable nonbankruptcy law. The burden then shifts to the purchaser, however, to prove that the claimant received proper notice of the bankruptcy sale or otherwise acquired actual knowledge of the sale.¹⁶

The bankruptcy docket will always be accessible, and will include the first evidence of adequate notice. This evidence consists of the notifying language within the motion, notice and order, and certificates of service showing names and addresses of recipients. If those documents leave any room for doubt, however, then the passage of time makes further facts more difficult to establish. For example, was the named addressee an officer of the adverse claimant at the time? Did the adverse claimant gain actual knowledge through some other means?

Noticing the Bankruptcy Sale

Although noticing is critical, two aspects of residential sale practice

discourage proper attention to the notice. First, although the purchaser alone bears the risk of bad noticing, the bankruptcy trustee, as seller, normally drafts the sale motion and sends out notices of the sale hearing. Second, the closing attorney may not become employed until after the noticing is complete and the sale order has been entered. Regardless of when he or she is hired, however, every closing attorney must review the propriety of the bankruptcy sale noticing. The timing of the employment only affects the attorney's responses if the noticing appears bad.

There are four functions included in proper noticing: (1) identifying the proper recipients; (2) serving them at their proper addresses; (3) sending them the right information; and (4) serving the notice package on time.

Identify All Possible Adverse Claimants

A closing attorney's first task is to identify all possible adverse claimants. Outside of the bankruptcy context, that means ordering a title report and a site inspection.¹⁷ In a bankruptcy case, closing attorneys should also check the case docket for any notices of appearance or other filings that could possibly pertain to the subject property.

The closing attorney should not let any legal judgments concerning the validity, extent or priority of an apparent interest in the subject property affect the *noticing* of that interest. Rather, at this stage the attorney need only make sure that any potential claimant is on the notice list.

Serve Notices Under Bankruptcy Rule 7004

After identifying potential claimants, the closing attorney's next step is to make sure that the trustee has gotten, or will get, the sale information to them properly. Federal Rule of Bankruptcy Procedure 7004 applies to sale motions.¹⁸ For example, Rule 7004 permits service by mail in a precise fashion to individual persons and legal entities:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the [sale motion and notice] to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

....

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the [sale motion] to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.¹⁹

Northern District of Georgia Bankruptcy Judge James E. Massey wrote an excellent monograph on how to serve, titled *Service of Pleadings in Contested Matters*.²⁰ Exact adherence to that rule may make all the difference later. In Palmetto's case, the superior court judge critically and correctly ruled that mailings in 1999 to a law firm that had represented Palmetto against the same debtor in 1998, but had never made an appearance in the bankruptcy case itself, did not constitute adequate notice. Note that the rule permits mailing to a "general agent."²¹ Even if the addressee-lawyer had represented Palmetto in 1999, however, a lawyer in Georgia is not a "general agent."²¹

Include Sufficient Information in the Sale Motion and Notice of Hearing

The closing attorney's next step is to make sure that the content of the sale documents is sufficient. Bankruptcy Rule 2002(c)(1) provides skeletal requirements for the content of the notice. Further requirements concerning content are more fluid than those for service, because the party who receives

any notice at all is subject to a duty of further inquiry.²²

Again, Judge Massey wrote the definitive monograph. In *Motions for Authority to Sell Property Free and Clear of Liens and Encumbrances*, Judge Massey sets forth best practices for information and format.²³ For example, one should list all potential adverse claimants in the caption of the sale motion, and describe in the body of the motion the nature of each claim.

Send the Sale Notice Package Early Enough

The closing attorney's last step is to make sure that the notice package was or will be sent early enough. Bankruptcy sales have a minimum length of time between noticing and the sale hearing of 21 days plus three additional days for mailing. The court may, however, shorten the time period for cause.²⁴

After the Sale is Noticed

Make Special Efforts for the Claimant Discovered Late

Of course, the closing attorney hired early enough in the process can make sure that the task is done properly the first time. The attorney hired after the notice package has gone out, but before the sale hearing, should do the following. On discovering a potential claimant who either received no notice at all or received notice of doubtful adequacy, the attorney (in addition to informing the trustee) should send the sale motion and its notice of hearing by hand delivery or by immediate electronic means (fax or e-mail). If the documents are sent electronically, then the attorney should send a hard copy by next day delivery as well. The attorney should also identify and call the claimant's representative. If the minimum time period has passed before a newly-discovered claimant receives notice, and the claimant does not expressly waive a lateness objection, then the bankruptcy judge must decide whether to go forward with the hearing

as scheduled or to postpone the hearing.

In fact, even if the noticing appears to have been perfect, best practice for a closing attorney hired before the sale hearing is to make direct contact with every claimant to confirm the claimant's actual knowledge of the sale. That is the belt and suspenders approach.

The closing attorney who discovers a potential noticing lapse only after the sale hearing has two options: (1) report the problem to the trustee and demand a re-noticed sale hearing and a new sale order; or (2) get the newly discovered party to release its interest of record.


Unfortunately, simply obtaining the omitted claimant's consent to the sale will not suffice if that claim tips the balance so that the total amount of claims exceeds the value of the property, i.e., if the sale proceeds would then not pay in full all claims secured by an interest in the property. A court would then need universal consent to authorize the sale.²⁵ Further, any earlier consents would no longer be valid, because they were predicated on payment in full. Circumstances may exist in which the omitted claimant's post-hearing consent suffices, but the closing attorney who agrees to accept that consent alone, and does not demand a re-noticed sale hearing, does so at his or her own risk.

In any event, the closing attorney should pay particular attention to the open deed of the lending institution that can no longer be found. That institution may have merged into another institution or shut down entirely. The deed holder may have assigned its interest to someone else, who of course did not file its assignment of record (or the title search would have found it). Nonetheless, that assignee may later knock on the purchaser's door to claim an interest through the now-defunct original deedholder. The closing attorney should try to track down the current deedholder. In addition, the attorney should meticulously document an exact adherence to Bankruptcy Rule 7004.

Keep your Backup Files

As noted above on page 14, the purchaser will have the burden to prove that proper notice was given. Accordingly, the closing attorney should document all contact with potential claimants and preserve the documentation.

Conclusion

In the bankruptcy sale discussed above, Palmetto's interest as collateral assignee of the debtor's mortgage was noted on the closing attorney's title report, yet no one contacted Palmetto. The closing attorney may have wrongly assumed that the sale order language would cure all title problems. He may have wrongly assumed that the collateral assignor—who did appear and who later absconded with the mortgage proceeds—had the legal power to speak for Palmetto as the assignee. In either event, the attorney failed to take advantage of the bankruptcy sale's cardinal rule. Never assume; always give notice! 



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in Chapter 11 and Chapter 7 cases, including debtors in possession, trustees, creditors' committees, potential purchasers and avoidance defendants. He appears in state trial and appeals courts on real estate, commercial law and trust issues and has appeared in bankruptcy courts throughout the country. He represents trustees and other litigants on appeal in Georgia and federal courts. He received his J.D. from Harvard Law School and a B.A. cum laude from Yale College.



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Endnotes

1. *In re Elrod*, No. 99-61395 (Bankr. N.D. Ga. Sept. 24, 1999).
2. Strictly speaking, the underlying instrument was a deed to secure debt, not a mortgage. The difference is not material to this article, so for convenience we use "mortgage" to refer to both.
3. In 1998 Palmetto took a collateral assignment of the mortgage on the home, to secure the note of the mortgage owner and collateral assignor to Palmetto. The assignor still owned the mortgage, but Palmetto then became the holder and obtained the exclusive right to any sale proceeds. The collateral assignment of an interest in land is itself a recordable interest in that land. *Palmetto Capital Corp. v. Smith*, 284 Ga. App. 819, 645 S.E.2d 9 (2007); see *Owens v. Conyers*, 189 Ga. 793, 7 S.E.2d 675 (1940); *Cross v. Citizens Bank & Trust Co.*, 160 Ga. 647, 128 S.E. 898 (1925). Palmetto properly filed the collateral assignment. Despite the recorded assignment, and despite explicit language in the instrument to the contrary, the collateral assignor received the bankruptcy sale proceeds. Only in 2004, when the assignor stopped paying its note to Palmetto, did Palmetto have reason to check its underlying collateral.
4. *Palmetto Capital Corp. v. Junger*, No. 2005-cv-99226 (Super. Ct. Fulton County, Ga. Feb. 10, 2009).
5. Pursuant to O.C.G.A. § 44-13-100(a)(1) (2002), a debtor may exempt \$10,000 in value of a residence, or \$20,000 if title to the property is in the name of one of two spouses, even if the other spouse is not a bankruptcy debtor.
6. This condition of sale may sometimes be waived. A waiver of this condition, however, is beyond the scope of this article.



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7. The seller in a chapter 11 case may be a "debtor in possession." Pursuant to 11 U.S.C. § 1107, a debtor in possession has the same rights and duties as the trustee for these purposes. For convenience, we use "trustee" to mean either party.
8. 11 U.S.C. § 363(f) provides:
 - (f) The trustee may sell property under subsection (b) or (c) of this section [363] free and clear of any interest in such property of an entity other than the estate, only if—
 - (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
 - (2) such entity consents;
 - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all such liens on such property;
 - (4) such interest is in bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
9. *Id.* § 363(m).
10. See *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.7 (1979) ("It is a violation of due process for a judgment to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard"); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard") (holding under the Fourteenth Amendment)).
11. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589 (1935).
12. *Houston v. City Bank of New Orleans*, 47 U.S. 486 (1848).
13. *Ray v. Norseworthy*, 90 U.S. 128 (1875). The Court held:

Concede to the fullest extent the powers of the bankrupt court to do everything specified in the Bankrupt Act, still it is clear that the mortgage and privilege of the petitioner could not be cancelled and displaced without notice nor without an opportunity to be heard, . . . Notice in some form must be given in all cases, else the judgment, order, or decree will not conclude the party whose rights of property would otherwise be divested by the proceeding.

...

... [I]f the [trustee] desires to sell the property free of encumbrances he must obtain authority from the bankrupt court, and must see to it that all the creditors having liens on the property are duly notified, and that they have opportunity to adopt proper measures to protect their interests.

Id. at 135-37 (footnotes and citations omitted).
14. The case of *Ray v. Norseworthy*, 23 Wall. 128, is conclusive on that subject, and is, we think, sound in principle. The effect of this proposition is that after the sale was made [the earlier lienor] was at liberty to accept such a part of the sum for which the property sold as her two notes would entitle her to in their relation to all other liens on it, by which she would have ratified the sale; or to proceed in her own way to subject the property to payment of her debt, which she has done by the foreclosure suit now on review.
15. *Factors' and Traders' Ins. Co. v. Murphy*, 111 U.S. 738, 742 (1884).
16. Since *Mosser v. Darrow*, 341 U.S. 267 (1951), it is increasingly doubtful that a bankruptcy trustee is personally liable for an act of simple negligence to creditors and others with whom the trustee has a fiduciary relationship. The hurdle for imposing personal liability would be higher for such as a purchaser, with whom there is no fiduciary relationship, but the issue is not clear. See generally E. Allan Tiller, *Personal Liability of Trustees and Receivers in Bankruptcy*, 53 AM. BANKR. L.J. 75 (1979); cf. O.C.G.A. § 53-12-199(a) ("No trustee shall be personally liable on any warranty made in any conveyance of property lawfully sold, unless the trustee expresses an intention to be personally bound by such covenant.") (1997) (comparable state trust code section).
17. O.C.G.A. § 44-2-1 (deed recordation)(1991); O.C.G.A. § 44-5-169 ("Possession of land shall constitute notice of the rights or title of the occupant").
18. FED. R. BANKR. P. 6004(c) provides that a "motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold." FED. R. BANKR. P. 9014(b) provides that the "motion shall be served in the manner provided for service of a summons and complaint by Rule 7004."
19. FED. R. BANKR. P. 7004(b)(1), (3) (as modified for sales).
20. Judge James E. Massey, *Service of Pleadings in Contested Matters*, at http://www.ganb.uscourts.gov/judges/massey/massey_srvpled_v2.pdf.
21. Transcript of Oral Ruling at 10 *et seq.*, *Palmetto Capital Corp. v. Junger*, No. 2005-cv-99226 (Super. Ct. Fulton County, Ga. Feb. 9, 2009); see O.C.G.A. § 10-6-50 (distinction between general and special agents) (2009); Addley v. Beizer, 205 Ga. App. 714, 423 S.E.2d 398 (1992) (lawyer is a special agent).
22. O.C.G.A. § 23-1-17 (1982) provides: "Notice sufficient to excite attention and put a party on inquiry shall be notice of everything to which it is afterwards found that such inquiry might have led. Ignorance of a fact due to negligence shall be equivalent to knowledge in fixing the rights of parties."
23. Judge James E. Massey, *Motions for Authority to Sell Property Free and Clear of Liens and Encumbrances*, at [http://www.ganb.uscourts.gov/judges/massey/massey_363\(f\).pdf](http://www.ganb.uscourts.gov/judges/massey/massey_363(f).pdf).
24. FED. R. BANKR. P. 2002(a)(2), made applicable by FED. R. BANKR. P. 6004(a), provides for 21-day notices (the minimum was raised from 20 days by amendment effective Dec. 1, 2009). FED. R. BANKR. P. 9006(f) provides for an additional three days for mailing. FED. R. BANKR. P. 9006(c) provides that the court may reduce the time for cause shown.
25. See 11 U.S.C. § 363(f).

Non-Privity Lien Rights on Private Construction Projects:

The Court of Appeals of Georgia Provides Clarity

by J. Andrew Williams

In the last two years the Court of Appeals of Georgia, as reflected in its holdings in four different cases interpreting a single statute, has taken significant strides to clarify the rights and obligations of private construction actors (especially general contractors, sub-subcontractors and suppliers) throughout the state of Georgia when it comes to the preservation of, or defense against, lien rights. These recent decisions impact literally every private construction job in the state.

The subject statute, O.C.G.A. § 44-14-361.5 (“Liens of persons without privity of contract”), governs the requirements of Notices to Contractors, which the statute requires to be given “to the owner or the agent of the owner and to the [general] contractor” by “any person having a right to a lien [“potential lienor” herein] who does not have privity of contract with the [general] contractor” Examples would include a sub-subcontractor or a supplier providing labor, materials or equipment to a project. Providing a Notice to Contractor is, with the exceptions discussed below,

required in order to maintain a lien pursuant to O.C.G.A. § 44-14-361 (“Creation of liens; property to which lien attaches”).

O.C.G.A. § 44-14-361.5 also governs the requirements of Notices of Commencement, which the statute mandates must be filed by “owners, agents of owners or contractors” with the superior court clerk’s office in the county where the project is located. Such filings are a condition precedent to a potential lienor’s obligation to provide a Notice to Contractor.

Given the wide-ranging relevance of O.C.G.A. § 44-14-361.5, and the flurry of recent Court of Appeals decisions regarding the statute, general contractors, sub-subcontractors and suppliers especially, as well as their counsel, would benefit from the lessons that these Court of Appeals cases provide.

The Statute

O.C.G.A. § 44-14-361.5(b)¹ provides in relevant part that no later than 15 days after a general contractor physically commences work on a property, a Notice of Commencement must be filed by the owner, the agent of the owner or the contractor with the clerk of the superior court in the county in which a project is located. A copy of the Notice of Commencement also must be posted on the project site. The Notice of Commencement is to include, among other things, the name and location of the project being constructed; the legal description of the property upon which the improvements are being made; and the name and address of the true owner of the property. The contrac-

tor is required to provide a copy of the Notice of Commencement to any subcontractor, materialman or person who makes a written request of the contractor. Failure to do so within 10 calendar days of the contractor's receipt of the written request relieves the potential lienor making the request from any requirement to provide a Notice to Contractor to the owner and general contractor, ordinarily a necessary condition precedent to maintaining and enforcing a lien on the project. Nor, according to subsection (d) of the statute, is a Notice to Contractor required to be provided by a potential lienor where the owner, the agent of the owner or the contractor fails to file a Notice of Commencement with the clerk of the superior court in the county in which the project is located.

O.C.G.A. § 44-14-361.5(a) and (c) deal with the requirements of a potential lienor's Notice to Contractor. According to subsection (a) of the statute, to be able to enforce a lien on a project, "any person having a right to a lien who does not have privity of contract with the contractor and is providing labor, services, or materials for the improvement of property" must, within 30 days from the filing of the Notice of Commencement by the owner or general contractor, or 30 days following the potential lienor's first delivery of labor, services or materials to the property, whichever is later, provide a written Notice to Contractor to the owner and to the general contractor "for a project on which there has been filed with the clerk of the superior court a Notice of Commencement." According to subsection (c) of the statute, the potential lienor's Notice to Contractor must be sent by "registered or certified mail or statutory overnight delivery" to the owner or the agent of the owner and to the general contractor at the addresses set forth in the Notice of Commencement. The Notice to Contractor must set forth the name, address and telephone number of the potential lienor; the name and



The Court of Appeals of Georgia

Photo by Derrick W. Stanley

address of each person at whose instance the labor, services or materials are being furnished by the potential lienor; the name and location of the project set forth in the Notice of Commencement; and a description of the labor, services or materials being provided by the potential lienor and, if known, the contract price or anticipated value of the labor, services or materials to be provided or the amount claimed to be due, if any.

The Recent Decisions of the Court of Appeals of Georgia

Recent Court of Appeals cases have addressed issues involving both Notices of Commencement and Notices to Contractors under O.C.G.A. § 44-14-361.5. A detailed understanding of these cases is necessary to fend off or pursue lien rights of non-privity lienors on construction projects.

(1) *Failure of an owner, agent of the owner or a general contractor to*

correctly identify in a Notice of Commencement the true owner of property upon which improvements are being made, or failure to include a legal description of that property, renders a Notice of Commencement fatally deficient, relieving a potential lienor of the requirement to provide a Notice to Contractor to an owner and contractor in order to enforce a lien

The Court of Appeals recently used two cases to emphasize the importance of strict adherence by the owner, the agent of the owner or the contractor to the Notice of Commencement requirements of O.C.G.A. § 44-14-361.5(b)(2) and (3) that the Notice contain the name and location of the project being constructed; the legal description of the property upon which improvements are being made; and the name and address of the true owner of the property.

First, in *General Electric Co. v. North Point Ministries, Inc.*,² General Electric Company d/b/a GE Consumer & Industrial

Products, a Division of General Electric Company (GE), sued North Point Ministries, Inc. (NPMI) to foreclose on a lien. The trial court granted summary judgment to NPMI, ruling that GE's lien was unenforceable due to GE's failure to provide a Notice to Contractor. GE appealed on the grounds that it was not required to provide a Notice to Contractor, because the Notice of Commencement filed by NPMI's contractor was fatally defective. The Court of Appeals agreed and reversed.

The record reflected that NPMI's contractor's Notice of Commencement deviated in two essential ways from compliance with the requirements of O.C.G.A. § 44-14-361.5(b). First, it described the property on which the project was located by street address only, without supplying the legal description required under O.C.G.A. § 44-14-361.5(b)(2). Second, it listed "North Point Community Church" as the owner, rather than NPMI, the actual owner of the property. Thus, the Notice of Commencement failed to name the "true owner" of the property, as required by O.C.G.A. § 44-14-361.5(b)(3). NPMI's contractor's Notice of Commencement was therefore fatally deficient. Either of these defects rendered the Notice insufficient to trigger the Notice to Contractor provisions of O.C.G.A. § 44-14-361.5, thus relieving GE of the obligation to provide a Notice to Contractor in order to preserve its lien rights.

Next, in *Harris Ventures, Inc. v. Mallory & Evans, Inc.*,³ Harris Ventures, Inc. (Harris) filed an action on a lien discharge bond against Mallory & Evans, Inc. (Mallory) and Travelers Casualty and Surety Company of America, Inc. (Travelers), seeking to recover payment allegedly owed for labor that Harris supplied to the Emory Johns Creek Hospital project. The evidence showed that the owner of the project was EHCA Dunwoody, LLC. The project's general contractor filed a Notice of

Commencement with the superior court clerk's office pursuant to O.C.G.A. § 44-14-361.5(b). The Notice of Commencement, however, erroneously identified the project's owner as "EHCA John's Creek, LLC" and did not include a legal description of the project in accordance with O.C.G.A. § 44-14-361.5(b)(2) and (3).

Harris commenced work for improvements on the project and supplied labor on account to Henderson Mechanical Contractors, Inc. (Henderson), a subcontractor of Mallory. Harris failed to provide a Notice to Contractor in accordance with O.C.G.A. § 44-14-361.5(a) and (c). At some point Henderson ceased paying Harris for services rendered, and Harris filed a claim of lien against the project. Harris subsequently filed suit and obtained a default judgment against Henderson. When payment was not forthcoming, Harris filed suit against Mallory and Travelers, asserting a claim against the lien discharge bond.

The parties filed cross-motions for summary judgment. The defendants asserted that Harris was not entitled to payment because it failed to give a Notice to Contractor in accordance with O.C.G.A. § 44-14-361.5(a) and (c). Harris asserted that its duty to give the Notice to Contractor was obviated in part because the Notice of Commencement was fatally deficient under O.C.G.A. § 44-14-361.5(b). The trial court ruled that the Notice of Commencement substantially complied with O.C.G.A. § 44-14-361.5(b), triggering Harris's duty to give a Notice to Contractor, and held that Harris's failure to do so invalidated its lien as a matter of law.

The Court of Appeals, citing the *General Electric Co.* case discussed above for the proposition that the failure to: (1) correctly identify the true owner of the property upon which improvements are being made; and (2) include a legal description of that property render a Notice of Commencement fatally deficient, found that it was undisputed that the Notice of

Commencement filed by the general contractor contained each of these defects. Consequently, the Notice of Commencement did not comply with the basic requirements of O.C.G.A. § 44-14-361.5(b), and this failure of compliance relieved Harris of its obligation to provide a Notice to Contractor.

(2) Filing of a Notice of Commencement by the owner, the agent of the owner, or by the contractor within fifteen days of physically commencing work on a property is not a condition precedent to a potential lienor's obligation to provide a Notice to Contractor. Instead, a Notice of Commencement must have been filed at the time when a potential lienor must have provided a Notice to Contractor to the owner and contractor to preserve its lien rights

The Court of Appeals also has recently clarified that an owner's or general contractor's failure to file a Notice of Commencement with the clerk of superior court within the deadline of "15 days after the contractor physically commences work on the property" set by O.C.G.A. § 44-14-361.5(b) does not relieve a potential lienor of its obligation to provide a timely Notice to Contractor to the owner and contractor in order to maintain its lien rights.

In *Beacon Medical Products, LLC, v. Travelers Casualty & Surety Co. of America*,⁴ a case arising out of the same project as the *Harris Ventures, Inc.* case discussed above, subcontractor Mallory and surety Travelers were again sued on a lien discharge bond, this time by Beacon Medical Products, LLC d/b/a Beacon Medaes (Beacon), for materials that Beacon had supplied on the project. The parties filed cross-motions for summary judgment. The trial court denied Beacon's motion and granted summary judgment in favor of the defendants, ruling that Beacon's lien was unenforceable because Beacon failed to provide a Notice

to Contractor pursuant to O.C.G.A. § 44-14-361.5(a). The Court of Appeals affirmed.

The evidence in the case showed that the general contractor began work on the project on Feb. 1, 2005, but did not file a Notice of Commencement until May 13, 2005, well after the deadline of "15 days after the contractor physically commences work on the property" set by O.C.G.A. § 44-14-361.5(b). Mallory ordered and received construction materials from Beacon. Beacon made its final delivery of materials for the project on Feb. 22, 2006, and then submitted invoices for the items delivered. Although some of the invoices were paid, an unpaid balance of \$139,141.80 remained.

Beacon filed a lien on the project for the unpaid balance owed for its materials. Mallory purchased a lien discharge bond from Travelers as substitute security for Beacon's lien claim. When payment was not

provided, Beacon filed suit, asserting a claim against the lien discharge bond.

The parties filed cross-motions for summary judgment. The defendants asserted that Beacon was not entitled to payment because it failed to give a Notice to Contractor as required by O.C.G.A. § 44-14-361.5(a). Beacon, however, asserted that its duty to give a Notice to Contractor was obviated because the general contractor had failed to timely file a Notice of Commencement as required by O.C.G.A. § 44-14-361.5(b). Rejecting Beacon's argument, the trial court concluded that the Notice of Commencement requirements were satisfied since the Notice was filed prior to Beacon's provision of materials for the project. Consequently, the trial court ruled that Beacon's duty to give a Notice to Contractor had been triggered and that its failure to do so invalidated its lien as a matter of law. The Court of Appeals affirmed.

According to the Court, although it is true that O.C.G.A. § 44-14-361.5(b) requires an owner or contractor to file a Notice of Commencement within 15 days of beginning work on the project, neither subsection (a) nor (d) of the statute makes any reference to this time requirement in its provisions. Instead, subsection (a) requires a potential lienor to give a Notice to Contractor "for a project on which there has been filed with the clerk of the superior court a Notice of Commencement setting forth therein the information required in subsection (b) of this Code section." Significantly, the Court noted, while subsection (a) makes specific reference to the information that must be contained in a Notice of Commencement under subsection (b), it makes no similar reference to the timeliness of filing the Notice of Commencement. Likewise, the plain language of subsection (d) of the statute ("The failure to file a Notice of Commencement shall render the



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provisions of this Code section inapplicable . . .”) does not refer to the 15-day deadline or timeliness of the Notice of Commencement. Accordingly, the omitted language from subsections (a) and (d) pertaining to the time requirement cannot be deemed a redundancy or meaningless surplusage but rather is presumed to be a matter of considered choice. Therefore, the Court concluded that O.C.G.A. § 44-14-361.5(a) and (d) do not require the filing of a Notice of Commencement within the 15-day deadline as a condition precedent to a potential lienor’s requirement to give a Notice to Contractor. Therefore, the failure to file a Notice of Commencement as provided in subsection (d) applies when there has been a *total failure* to file a Notice of Commencement *at the time when a sub-subcontractor or supplier must provide a Notice to Contractor to perfect its lien under subsection (a)*.

(3) Failure by “the owner, the agent of the owner, or by the contractor” to post a Notice of Commencement at the job site does not relieve a potential lienor from the obligation to provide a Notice to Contractor to the owner and general contractor to preserve its lien rights

In *Rey Coliman Contractors, Inc. v. PCL Construction Services, Inc.*,⁵ the Court of Appeals addressed the question of whether O.C.G.A. § 44-14-361.5 requires a potential lienor to give a Notice to Contractor if the general contractor fails to comply with the requirement of O.C.G.A. § 44-14-361.5(b) to *post* a copy of the Notice of Commencement on the project site.

Rey Coliman Contractors, Inc. (Rey Coliman) contracted to provide material and labor for another subcontractor, which contracted with PCL Construction Services, Inc. (PCL), the general contractor on the construction project. Rey Coliman subsequently filed a lien. PCL filed a declaratory judgment action seeking a ruling that the lien was void and ineffective because Rey Coliman

failed to give PCL a Notice to Contractor as required under subsections (a) and (c) of O.C.G.A. § 44-14-361.5. Rey Coliman claimed that it had no obligation to give a Notice to Contractor because PCL failed to comply with O.C.G.A. § 44-14-361.5(b) requiring the general contractor to *post* a copy of the Notice of Commencement on the project site.

According to the Court of Appeals, O.C.G.A. § 44-14-361.5(b) contains three provisions related to providing potential lienors with the information contained in a Notice of Commencement. First, PCL complied with the notice provision in subsection (b) requiring the owner, the owner’s agent or the contractor to file a Notice of Commencement with the clerk of the superior court in which the project was located, thus enabling the Notice to be maintained for review in an index in the clerk’s office in accordance with subsection (e). Importantly, subsection (d) provides that the general contractor’s failure to file a Notice of Commencement with the clerk “shall render the provisions of this Code Section inapplicable.” Thus, in this situation, a potential lienor would not have to provide a Notice to Contractor to the owner and contractor in order to have lien rights.

A second notice provision in subsection (b) provides that a general contractor is required to give a copy of the Notice of Commencement to a potential lienor who asks for it in writing. Again, importantly, the general contractor’s failure to give a copy within 10 days of receipt of such a written request “shall render the provision of this Code section inapplicable to the subcontractor, materialman, or person making the request.” It was undisputed that Rey Coliman made no written request to PCL for a copy of the Notice of Commencement.

Finally, the Court of Appeals noted that subsection (b) also contains a third notice provision, which requires that “[a] copy of the Notice of Commencement shall be posted on the project site.”⁶

According to the Court, in contrast to the two previous notice provisions in subsection (b) of O.C.G.A. § 44-14-361.5, nothing in the statute states that the failure of the owner or contractor to post a copy of the Notice of Commencement on the project site renders the Notice to Contractor requirements of a potential lienor inapplicable.

O.C.G.A. § 44-14-361.5 explicitly states that its provisions for lien perfection (i.e., the Notice to Contractor provisions) do not apply where the owner or contractor has failed to comply with requirements to file a Notice of Commencement with the clerk of the superior court, or the contractor fails to provide a copy of the Notice of Commencement upon written request. In those cases, the potential lienor is relieved of the requirement in subsections (a) and (c) to provide a written Notice to Contractor to the owner and general contractor. By contrast, although O.C.G.A. § 44-14-361.5(b) requires posting the Notice of Commencement on the project site, nothing in the statute states that Notice to Contractor provisions are rendered inapplicable for a failure to post, nor does the statute attach any time requirement for posting or otherwise control the manner of posting.

The Court noted that in construing statutes controlling payment bonds on public work projects, it had previously recognized that a similar requirement to post the Notice of Commencement on the work site was a less reliable method of notice than the requirement for filing the notice with the clerk of court, because posting was “subject to dispute and dependent upon the recollections of various employees” at the work site.⁷ Taking the provisions of O.C.G.A. § 44-14-361.5 as a whole, the Court of Appeals found that the legislature considered the less reliable nature of posting the Notice of Commencement on the project site, and plainly intended to treat a failure to post differently from a failure to file the Notice with the supe-

rior court clerk or a failure to give a copy of the Notice upon written request. If the legislature had intended for a potential lienor's Notice to Contractor requirement to be inapplicable for failure to post a copy of the Notice of Commencement on the project site, it could have explicitly stated that intention in the statute.

Accordingly, the failure to post the Notice of Commencement on the project site did not relieve Rey Coliman of the duty to perfect its lien by providing a Notice to Contractor to the owner and contractor.

Conclusion

Clearly, general contractors, sub-contractors and suppliers as well as their counsel must be aware of the recent decisions of the Court of Appeals interpreting O.C.G.A. § 44-14-361.5, which quite clearly provides the following guidance to those advising clients in the construction industry that:

- Failure to correctly identify the true owner of the property upon which improvements are being made, or failure to include a legal description of that property, renders a Notice of Commencement fatally deficient;
- Filing of a Notice of Commencement by "the owner, the agent of the owner, or by the contractor" within 15 days of physically commencing work on a property is *not* a condition precedent to a potential lienor's obligation to provide a Notice to Contractor to the owner and contractor. Instead, a Notice of Commencement must have been filed at the time when a potential lienor must provide a Notice to Contractor to preserve its lien rights; and, finally,
- Failure by "the owner, the agent of the owner, or by the contractor" to *post* a Notice of Commencement at the job site does *not* relieve a potential lienor from the obligation to

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provide a Notice to Contractor to the owner and contractor. 



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Endnotes

1. O.C.G.A. § 44-14-361.5, with provisions receiving recent Court of Appeals attention highlighted, states:
 - (a) To make good the liens specified in paragraphs (1), (2), and (6) through (9) of subsection (a) of Code Section 44-14-361, *any person having a right to a lien who does not have privity of contract with the contractor and is providing labor, services, or materials for the improvement of property shall, within 30 days from the filing of the Notice of Commencement or 30 days following the first delivery of labor, services, or materials to the property, whichever is later, give a written Notice to Contractor as set out in subsection (c) of this Code section to the owner or the agent of the owner and to the contractor for a project on which there has been filed with the clerk of the superior court a Notice of Commencement setting forth therein the information required in subsection (b) of this Code section.*
 - (b) *Not later than 15 days after the contractor physically commences work on the property, a Notice of Commencement shall be filed by the owner, the agent of the owner, or by the contractor with the clerk of the superior court in the county in which the project is located. A copy of the Notice of Commencement shall be*

posted on the project site. The Notice of Commencement shall include:

- (1) The name, address, and telephone number of the contractor;
- (2) *The name and location of the project being constructed and the legal description of the property upon which the improvements are being made;*
- (3) *The name and address of the true owner of the property;*
- (4) The name and address of the person other than the owner at whose instance the improvements are being made, if not the true owner of the property;
- (5) The name and the address of the surety for the performance and payment bonds, if any; and
- (6) The name and address of the construction lender, if any.

The contractor shall be required to give a copy of the Notice of Commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to give a copy of the Notice of Commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provision of this Code section inapplicable to the subcontractor, materialman, or person making the request.

(c) A notice to contractor shall be sent by registered or certified mail or statutory overnight delivery to the owner or the agent of the owner and to the contractor at the addresses set forth in the notice of commencement setting forth:

- (1) The name, address, and telephone number of the person providing labor, services, or materials;
- (2) The name and address of each person at whose instance the labor, services, or materials are being furnished;
- (3) The name of the project and location of the project set forth in the notice of commencement; and
- (4) A description of the labor, services, or materials being provided and, if known, the contract price or anticipated value of the labor, services, or materials to be provided or the amount claimed to be due, if any.

- (d) *The failure to file a Notice of Commencement shall render the provisions of this Code section inapplicable.* The filing of a Notice of Commencement shall not constitute a cloud, lien, or encumbrance upon or defect to the title of the real property described in the Notice of Commencement, nor shall it alter the aggregate amounts of liens allowable, nor shall it affect the priority of any loan in which the property is to secure payment of the loan filed before or after the Notice of Commencement, nor shall it affect the future advances under any such loan. Nothing contained in this Code section shall affect the provisions of Code Section 44-14-361.2.
 - (e) The clerk of each superior court shall file the Notice of Commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such Notice of Commencement shall be indexed under the name of the true owner and the contractor as contained in the Notice of Commencement.
- O.C.G.A. § 44-14-361.5 (emphases added). A 2008 amendment rewrote the introductory language of subsection (c), which previously read as follows: "(c) A Notice to Contractor shall be given to the owner . . . and to the contractor at the addresses set forth in the Notice of Commencement setting forth: . . ."
2. 289 Ga. App. 382, 657 S.E.2d 297 (2008).
 3. 291 Ga. App. 843, 662 S.E.2d 874 (2008).
 4. 292 Ga. App. 617, 665 S.E.2d 710 (2008).
 5. 296 Ga. App. 892, 676 S.E.2d 298 (2009).
 6. A factual dispute existed as to whether the Notice of Commencement was actually posted on the project site, but for purposes of PCL's motion for summary judgment, the Court determined that the trial court properly construed the record in favor of Rey Coliman and assumed that PCL had not posted a copy of the Notice of Commencement on the project site.
 7. *J. Kinson Cook, Inc. v. Weaver*, 252 Ga. App. 868, 871, 556 S.E.2d 831, 833 (2001).

More Than Money

How the Legal Profession, Including Lawyers and Non-Lawyers, Can Give to Public Legal Services When Money and Lawyer Time are Scarce

by Len Horton

The recession has significantly expanded the number of people needing legal assistance in Georgia. These nouveau pauvre, who are being schooled in poverty by their recent economic misfortune, are challenging Atlanta Legal Aid, Georgia Legal Services and other providers of civil legal aid to find ways to assist them.

When Alston & Bird's Cheryl Naja, pro bono community service manager, and Mary Benton, co-chair of the Pro Bono Committee, saw this problem up close, they realized that helping the newly poor would require finding new ways to help providers of public legal assistance.

"We had already found a way for employees at Alston & Bird to help Atlanta Legal Aid by handling intake to the elder hotline," said Naja. "Then this bigger idea just clicked."

Confronted with the fact that financial resources are scarce and lawyers already are doing as much as they can, Naja and Benton began asking new questions. What could employees of law firms, both lawyers and staff, give other than money? And what were the needs of the providers beyond more money and more lawyers? What if the unmet needs of providers were matched to the not-just-legal talent in law firms? Answering these questions led to Georgia's first volunteerism/pro bono summit at the Bar Center this past December.

As Steve Gottlieb, executive director of Atlanta Legal Aid said, "Money is the big issue, but that's off the table. Volunteer lawyers are the next biggest need, but they are stretched to the breaking point already. So the challenge for us is how to get non-lawyers in the legal community involved in meaningful ways."

The summit became a brainstorming session among providers, law firms and others concerned about pro-



viding legal assistance to disadvantaged Georgians. A total of nine providers listed needs that volunteers might meet. Those needs ranged from someone who can evaluate an insurance policy to someone experienced in grant writing.

The unique meeting was introduced by State Bar of Georgia President Bryan M. Cavan. He welcomed the participants and explained that this was not a time for business as usual. "IOLTA revenues are down this year because of the bad economy, and other sources of financial support are all cutting back," he said. Introducing Chief Justice Carol Hunstein, he pointed out that her presence underscored the importance of this first-of-its-kind meeting.

In the keynote address, Justice Hunstein said that a creative approach is required during times of diminished financial resources. She went on to say that exploring innovative ways for law firms and concerned non-lawyers to assist public civil legal services providers is one of the last ideas remaining to be considered. She then encouraged attendees to take a "productive approach going beyond finances" when discussing ways to help.

Charlie Lester, moderator of the event and former president of the State Bar of Georgia, led the meeting in which leaders of organizations working to help the poor made presentations on their unmet special needs. Participants included Steve Gottlieb, executive director, Atlanta Legal Aid; Phyllis Holmen, executive director, Georgia Legal Services; Dawn Smith, Atlanta Volunteer Lawyers Foundation; Jessica Pennington, Truancy Intervention Project; Sharon Hill, Georgia Appleseed; Lisa Moore, Georgia Lawyers for the Arts; Rachel Spears, the Pro Bono Partnership; Monica Khant, the Georgia Asylum and Immigration Network; and Amy Zaremba, the Georgia Law Center for the Homeless.

Each civil legal services provider discussed its needs beyond adding staff lawyers. Following are some needs from the participating organizations.

Atlanta Legal Aid

- Additional assistance screening calls particularly from non-English speakers
- entering data in computer databases
- programming in HotDocs
- organizing materials for training sessions

Atlanta Volunteer Lawyers Foundation

- Volunteers from all areas of law firms

Georgia Lawyers for the Arts

- In-kind donations including printing, computers, software, speakers for programs and training materials
- Translation services

Pro Bono Partnership

- New fundraising software
- Work necessary to update marketing materials

Georgia Asylum and Immigration Network

- Event planning and software

Some Georgia Banks Stop Unlimited Insurance for IOLTA and Other Lawyer Trust Accounts

by Len Horton

In 2008, the FDIC decided to provide unlimited insurance of deposits in transaction accounts, which includes checking accounts and IOLTA accounts. This Transaction Account Guarantee program created by the FDIC on Oct. 14, 2008, was set to expire effective Dec. 31, 2009. The FDIC has decided to extend unlimited insurance protection to these transaction accounts, including lawyer trust accounts, through June 30, 2010.

As part of its decision to extend the coverage, it permitted banks to opt out of the program if they wish. Several banks doing business in Georgia decided to opt out of the program effective Jan. 1, 2010. You can download the list of banks at www.fdic.gov/regulations/resources/TLGP/optout.html. This listing is sorted by states. Banks headquartered in other states but doing business in Georgia may be found under the other state's listing.

Georgia's lawyers should notice that, even without this unlimited insurance, each trust account is now FDIC insured for up to \$250,000 for each client.

If your bank is no longer offering unlimited insurance, you always have the option of switching to another bank. Effective, July 1, 2010, unlimited insurance will no longer be available at any bank unless the FDIC makes another extension of the insurance coverage. However, until then, most banks are buying unlimited insurance on transaction accounts.

If you have any questions, please contact Len Horton at the Georgia Bar Foundation at 404-588-2239.

Georgia Appleseed

- Accounting expertise and assistance in analyzing data
- Spanish translation services to assist in explaining the "No Child Left Behind" concept

Georgia Law Center for the Homeless

- Website updating on a continuing basis
- Professional evaluation of printed materials including the quality of their layout and design
- Volunteers to assist with intake at shelters
- Board member with a strong financial background

Georgia Legal Services

- Assistance in grant writing, information technology planning and implementation, office administration and support for the georgiaadvocates.org website including updating legal forms
- Mass scanning assistance and volunteers who can perform legal research
- Translation services
- Assistance in handling Social Security applications, which

can require people with medical knowledge

Truancy Intervention Project

- Assistance in completing the organization's 990 form and other issues dealing with governance
- Donation of school supplies and MARTA cards
- Evaluation of marketing materials and web design improvement
- Volunteers who can analyze data and make sense out of it

Benton then gave the view from the perspective of law firms. "Even without as much ability to support public civil legal services," she said, "law firms are still committed to doing everything they can to help."

She explained that one goal for the providers should be to get some project or component of their work into the law firm's budget. Most firms prefer some discrete, manageable, finite project that can become their part of the provider's work. The less time the project requires out of the law firm's office, the better. Whatever the project is, it should provide associates the

opportunity to build identifiable skills such as interviewing clients, conducting negotiations and spending some time in court.

One side effect that the firm also enjoys is when the press covers the pro bono work of the firm and credits the associates by name. "Then everyone wins," said Benton.

Rita Sheffey, Hunton & Williams partner, Atlanta Bar Association secretary and chair of the Pro Bono Committee, discussed how bar associations can contribute to this pro bono initiative. For example, each of the 21 sections of the Atlanta Bar Association is encouraged to adopt or create a project that can definitely involve providers.

With the encouragement of Sheffey, the Atlanta Bar Association found another highly significant way to contribute. It decided to sponsor this first volunteerism/pro bono summit to explore one of the last untapped sources of support for providers of civil legal assistance to Georgia's disadvantaged.

Norman Zoller, coordinating attorney for the Military and Veterans Legal Assistance Program, explained his plans to provide CLEs and find innovative ways to provide legal services to veterans and current armed forces personnel.

Sue McAvoy, director/public interest adviser at Emory University School of Law, discussed how law schools fit into this


process. All Georgia law schools have pro bono programs tailored to the interests of the students, faculty and public. She explained how law firms are encouraged to participate in many of these projects with the students. She also encouraged using the new graduate listservs at each law school.

Georgia State College of Law librarian Terrance Manion suggested using MP3 players to make information available for public libraries.

A number of other ideas came from the meeting. Naja pointed out that the Georgia chapter of the Public Relations Society of America provides pro bono services to non-profits who lack the resources to employ their own public relations staff.

Additionally, a give and get document will be created, summarizing who wanted to give what and who needed to get what. Mike Monahan, director of the State Bar of Georgia Pro Bono Project, would make the document available online. A list of participants, whether providers, firms or individuals, would be put on the Atlanta Bar website and on www.georgiaadvocates.org.

Perhaps one of the most useful ideas was that the executive directors of participating organizations would regularly get together to learn from each other and to build on the information that came from this meeting.

This meeting was an almost perfect example of the vision of Hal Daniel when he saw how a Bar Center might bring people together to find solutions to challenging problems. A community of public legal services providers, law firms, law schools, bar associations, law librarians and individuals, both lawyers and non-lawyers, came together to answer a unique question: How can you expand the abilities of organizations to provide civil legal assistance to poor Georgians when these organizations themselves are poor, when demand for their services is increasing, when pro bono lawyers are almost burned out and financial support is waning? Responding to the challenge made by Chief Justice Carol Hunstein and State Bar President Bryan M. Cavan at the start of the meeting, participants found that, far from poor themselves, they have an abundance of creative ideas. And these ideas can tap into the people resources of the legal profession, both lawyer and non-lawyer, to expand the ability of Atlanta Legal Aid, Georgia Legal Services and scores of other organizations to assist Georgia's disadvantaged. 



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

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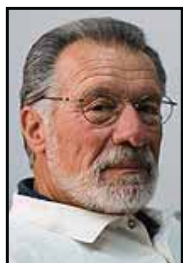
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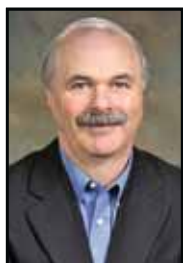
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The Coweta County Courthouse at Newnan

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

The story of Newnan's courthouses begins in 1829 with a court building built by William Hitchcock who, according to Coweta County history, built over 20 such courthouses in Georgia. The building was a stunning example of the marriage of the brick vernacular and the American Greek Revival, which in the 1820s was gaining momentum in Georgia partly as a result of acclaim for the many Greek public buildings designed by Robert Mills in South Carolina. Coweta County could have chosen no more appropriate symbol around which to build her county town.

When the 1825 Treaty of Indian Springs and the subsequent Land Lottery of 1827 had opened up all the lands between the Flint and the Chattahoochee Rivers, Georgia's westward expansion was driven by cotton. Twenty-five years later, when The Atlanta and LaGrange Railroad arrived at Newnan, the irreducible and unquestioned reason for the railroad and for the town was still cotton, and by 1860 Coweta County was ranked 10th among Georgia cotton-producing counties. Hitchcock's courthouse stood on the square at Newnan for 75 years. When it was replaced, the columns of J.W. Golucke's 1904 Coweta County Courthouse still stood for bastions of cotton.

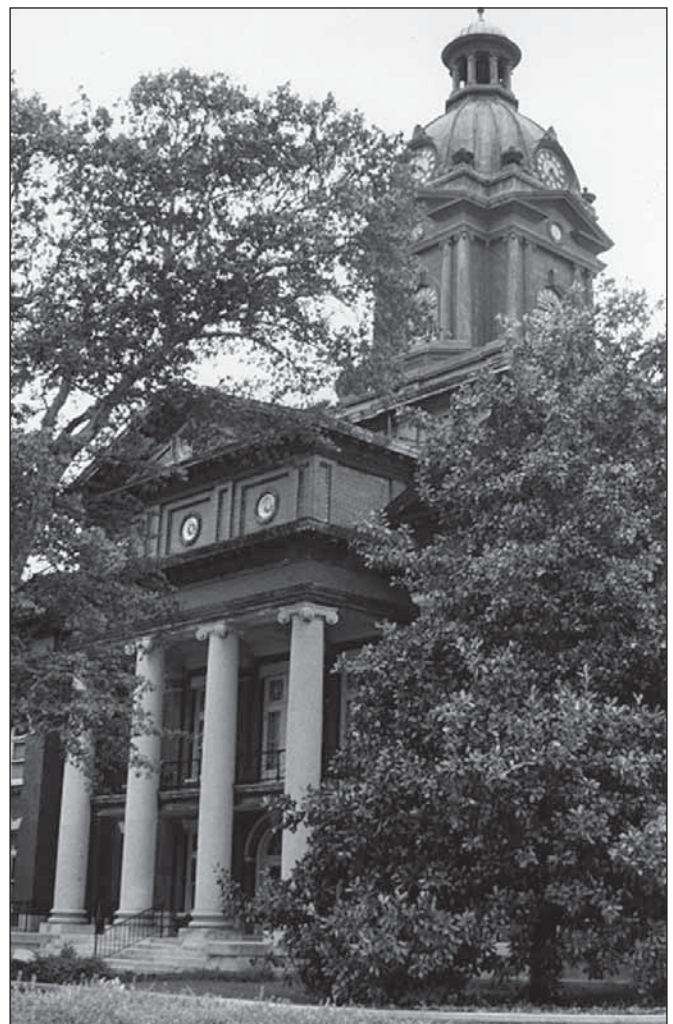


Photo by Wilber W. Caldwell

Coweta County built in 1904, J.W. Golucke, architect

Here in Newnan, we find one of the finest of Golucke's neoclassical undertakings. This was his 10th commission

in Georgia for a classical courthouse in six years. Most of Golucke's designs in the Neoclassical Revival Style had been based on similar plans: the Palladian, four-sided "Villa Rotonda" model with four more or less equal porticos forming temple-like entrances, one at each of the four points of the compass. Allowing equal treatment on all four sides, the Greek cross was the perfect solution to the challenge presented by the central town square. The result, when viewed from any of the four sides was familiar indeed to Southern eyes. Each side recalled the theme so often voiced by Mills, Cluskey and others—the simple, clean, classical message of the Greek Revival and all the magnolia-scented Old South mythology that had later been attached to it.

Despite Golucke's consistency in the use of this familiar Southern plan, his courthouse at Newnan draws boldly on the ornamental motifs of the Beaux-Arts Style. This flowery brand of Classicism was sweeping the country in the years following the Columbian Exposition in Chicago in 1893. It can be no coincidence that, in the same year that this courthouse was built, Americans were gaping at the fantasy buildings of the 1904 Louisiana Purchase Exposition in Saint Louis, whose architecture picked up where the designs of Columbian Exposition had left off, carrying the baroque ornamentation of the new Classicism to even more fantastic extremes. Unlike his earlier Neoclassical buildings, like the simple but elegant 1903 Bartow County Courthouse at Cartersville, the Coweta County Courthouse incorporated, what was for Georgia, a riot of stylish turn-of-the-century decoration. However, by the measure of the buildings at the Saint Louis Fair, Golucke's flourishes here at Newnan were quite tame indeed.

Here at Newnan, Golucke embroidered his loose interpretation of the Ionic order with a broad architrave and a bold frieze decorated with three roundels,

each crisscrossed with Golucke's favored star pattern. The star pattern also appears above the sash and beneath the splayed lintels of the ground floor windows and in the small windows of the clerestory above the courtroom. Borrowing from the Corinthian order, the pediment features both modillions and dentals. The second story windows are of the arched type with bold, masonry and keystone archivolts similar to the fenestration of Golucke's Meriwether County Courthouse in Greenville, 1903. The porticos on the north and south sides of the building feature only two columns, a design very much in keeping with the Beaux-Arts Style. The tower is high and thin. Broken based pediments are supported by paired Ionic columnettes, and the small roundels in the tower echo those of the porticos below.

For most of America, the Neoclassical Revival constituted a return to order after the asymmetrical ramblings of the Picturesque Eclectic. It also represented an affirmation of Eastern financial and industrial power. At the turn of the century, these symbols were unacceptable to much of the American South. In most towns in Georgia, a rudimentary brick "store-front" vernacular was about the only evidence of "the ramblings of the Picturesque," and Eastern financial and industrial power was undoubtedly the last cause these brooding rebels wanted to architecturally affirm. Nonetheless, the Neoclassical Revival knew great popularity in the South, for as with almost everything else, the region would attach her own unique and contrary symbols to the style. In Coweta County, as elsewhere in Dixie, these columns recalled the stubborn myth of the Old South and the Greek democracy of John C. Calhoun. Here in Newnan, as in Madison and Cartersville and a few other towns in the Georgia Piedmont, which by 1900 had realized small amounts of postbel-

lum economic success, people remained of a divided mind. It was not that they could not decide upon a course of action, but that they wanted it both ways. They dreamed of a uniquely Southern kind of economic progress, one that came without the price tag of a modern society. They wanted parts of both the myth of the Old South and the New. What they got was the worst of the old, and little if any of the new.

Golucke knew his clients well. They teetered on the cusp between an emerging modern world and a Romantic world that was lost forever. Both worlds beckoned with half-truths and lies. Both worlds seemed unreachable. They were thus in need of a dual symbol—Excalibur—the sword that cut two ways. This courthouse was such a symbol. GBJ

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

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2009 Advanced Urgent Legal Matters at Sea Seminar

by Steve Harper

Just a few months ago, Georgia attorneys, judges and family members sailed the Caribbean for seven glorious days aboard the Royal Caribbean International Line's largest and most luxurious ship, the *Freedom of the Seas*. This masterpiece of naval engineering featured the first-ever surf park at sea, whirlpools that cantilever over the sides of the ship, a huge rock-climbing wall and much more. The total group of more than 250 people sailed from Port Canaveral, on Nov. 8 and returned to port on Nov. 15.

The order of the day for the seven days was omnipresent and omnipotent smiles in a stress-free environment. After boarding and getting used to the magnificent *Freedom of the Seas*, we got settled in our cabins and enjoyed the festive "Sail Away" party. The "Advanced Urgent Legal Matters at Sea Seminar" began that evening with a welcome by Cliffe Gort, the seminar chair, followed by Hon. James Bodiford's one-hour presentation on "Professionalism in High Profile Cases." All of us then enjoyed more than our share of the fabulous food and seemingly endless fun-filled activities available to everyone. The next day we frolicked on Coco Cay, Bahamas, an island owned by



Photos by Steve Harper

Freedom of the Seas, as seen from an excursion boat at Coco Cay, Bahamas.

Royal Caribbean. The beaches and water activities were fantastic and the food was, as always, superb.

Tuesday was a day at sea. We spent a fair share of the day in the seminar. Topics included a session with

John Greenwald on intellectual property; Judge Bodiford's talk on ethics in our trial courts; "Evidentiary Issues" with Neal Dickert, the author of West's book *Handbook on Georgia Foundations and Objections*; "Urgent Legal Matters in Juvenile Court and Drug Court" presented by Hon. C. David Turk III; and two sessions by Angela Burnette addressing withdrawal of life-sustaining treatment and advanced directives for health care. That evening we enjoyed a wonderful reception hosted by GalaxSea Cruises attended by the ship's captain and many of the ship's officers.

Wednesday we spent the day and evening on St. Thomas, shopping, eating, going on tours, taking advantage of excursions-like parasailing and scuba diving and enjoying all that the beautiful island offered. We sailed overnight to St. Maarten and spent all of Thursday ashore, with more shopping, sightseeing, excursions and of course, great island cuisine. We couldn't have asked for more.

Friday was another day at sea, and Gort used this day to finish the seminar. Our Friday sessions included a discussion of family violence and protective orders by Celeste Brewer; two presentations by Bruce Harvey, one on the "Ten Crucial Steps and Techniques of Cross-Examination" and a second dealing with the "First Amendment—Fact of Fiction"; Tom Cauthorn's presentation, "Court-Mandated Mediation," and a session on automobile insurance law with Wallace Miller III, the co-author of West's monograph, *Georgia Automobile Insurance Law*. The seminar contained a full year's worth of Georgia CLE. Gort wrapped up the seminar and challenged us all to make the most of the time we had left, which we did.

Friday night and all day Saturday we enjoyed all the great activities on board. Some of us went ice skating, scores of our


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group saw the ice shows, hearty souls rode the wild surf on the Flomaster, many climbed the rock wall and rang the bell at the top, the more sedate among us played a round or two of miniature golf, some played basketball, more than a few of us went dancing and the casino was visited by many of our Georgia folks. Everyone enjoyed the wonderful shows and entertainment in the grand theater.

We all knew that Sunday had to come, and it did. Getting off the ship was an easy physical task, but emotionally it was hard because everyone wanted the cruise to last longer. The great news is that we will all gather in November of this year to sail the Caribbean with Carnival Cruise Line on board its largest and most beautiful ship, *The Dream*. This grand ship features four twisting waterslides dropping four decks; whirlpools on the upper decks as well as the deck five promenade; a huge Seaside Theatre featuring movies, sports and concerts, nighttime laser shows and much more. We sail from Port Canaveral on Nov. 6 and return to port on Nov. 13. Hope you will join us! 



Steve Harper is an adjunct professor at the University of Georgia School of Law and teaches in the area of trial practice.

He is presently director of programs at the Institute of Continuing Legal Education in Georgia. Harper is admitted to practice as attorney and counselor before the U.S. Supreme Court. He is a member of the Association of Continuing Legal Education Administrators and the American, Georgia and Alabama Bar associations. He received his J.D. from the University of Alabama in 1974 and his bachelor's from the U.S. Military Academy in 1968. He completed the Graduate Law Program at the U.S. Army Judge Advocate General's School, University of Virginia, in 1978.



One of the many opportunities for participants to shop while on the cruise.



The promenade deck on board the *Freedom of the Seas*.



ICLE attendees enjoyed themselves at one of the ice shows.

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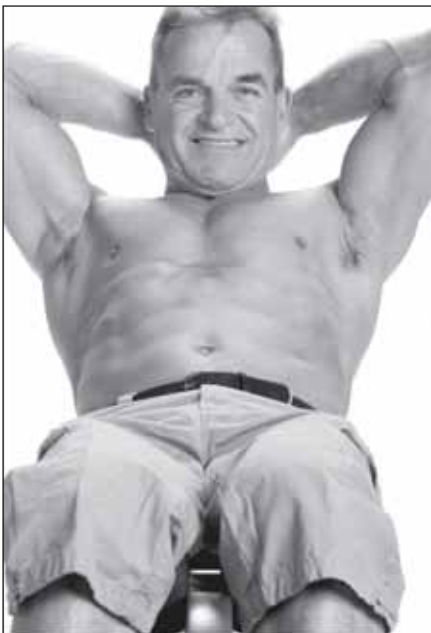
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Kudos

>  **McCorkle & Johnson, LLP**, announced that **Colby E. Longley**, an associate with the firm, has recently been admitted to the **South Carolina Bar**. Longley's legal practice is concentrated in the areas of construction litigation, real property litigation and lien law, in both Georgia and South Carolina.

>   **Womble Carlyle** attorney **Jack Williams** was named the **president** of the **Litigation Counsel of America (LCA)**. Williams, a litigator in Womble Carlyle's Atlanta office, will serve a one-year term as president. The LCA is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellowship in the LCA is highly selective and by invitation only.

Associate **Travis T. Townsend Jr.** was the 2009 winner of the **Rising Star Award**, presented by the Atlanta Urban League. The Rising Star Award is presented annually to a young professional for community service and outstanding leadership.

>  **Nigel Wright**, a partner based in the Atlanta office of **Locke Lord Bissell & Liddell**, was named to *The International Who's Who of Aviation Lawyers 2010*. Wright, who has been named to this list for the fifth straight year, was recognized among a select group of international leaders in the aviation field, which was limited to 388 attorneys worldwide and only 92 in the United States.

>    
Swann Alexander Tyler Vayner

  **Kilpatrick Stockton LLP** announced that partner **Jerre B. Swann** received the **President's Award** from the **International Trademark Association (INTA)**. The President's Award is given to the most distinguished and deserving INTA volunteer for a career dedicated to trademarks and intellectual property protection and advancement.

Partner **Miles J. Alexander** was named "**Atlanta Best Lawyers Intellectual Property Lawyer of the Year**" for 2010. After more than a quarter of a century in publication, *Best Lawyers* is designating "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is being honored as the "Lawyer of the Year."

Partner **Michael W. Tyler** was elected **chair** of the **MARTA Board of Directors for 2010**. The board consists of 18 members representing the City of Atlanta, DeKalb, Fulton, Clayton and Gwinnett counties, and the state of Georgia and is responsible for setting policy and making decisions ranging from finance to customer service.

Associate **Sabina Vayner** was selected to serve a two-year appointment on the prestigious **Annual Review Editorial Board of the ABA Section of Intellectual Property Law** as a member of its Production Committee. Vayner's responsibilities include reviewing and editing submissions, and planning and managing the production schedule for the *Annual Review of Intellectual Property Law Developments*.

Partner **Dan Mohan** was selected to serve as a committee member on the **Health Law Section of the State Bar of Georgia**. This section deals with a wide variety of health care law issues relevant to attorneys for hospitals, physicians, insurers, employers, patients and government agencies.

Associate **Dr. Kathryn Wade** received the Atlanta Volunteer Lawyers Foundation's **One Child One Lawyer Volunteer of the Year Award**. She accepted the award at the 2009 Atlanta Bar Association's "Celebrating Service" Luncheon. Wade was named to this high honor for her work as a volunteer child advocate attorney for three sisters involved in deprivation proceedings in Fulton County Juvenile Court.

The firm's historic leadership in the intellectual property field continued with recognition as the **IP Law Firm of the Year in North America** at the 2009 World Leaders International IP Awards program in London. This is the second consecutive year for the firm to win this award.


> **Constangy, Brooks & Smith, LLP**, was named **Company of the Year for 2009** by the Georgia State Council of the Society for Human Resources Management. The Company of the Year award recognizes a Georgia company that has advanced the human resource profession to ensure that HR is recognized as an essential partner in developing and executing organizational strategy.

- > **Hatcher Stubbs** announced that partner **Robert C. "Cal" Martin Jr.** became a **fellow** of the **American College of Trial Lawyers**. Founded in 1950, the college is composed of the best trial bar from the United States and Canada. Fellowship in the college is extended by invitation only and after a careful investigation, so those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked with the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for fellowship.

- >  **Burr & Forman LLP** announced that **Maria Sheffield** was selected for *Business Insurance Magazine's* **2009 "Women to Watch."** The fourth annual "Women to Watch" report appeared in the Dec. 2009 issue of the magazine honoring outstanding women working in insurance, risk management and employee benefits worldwide. Twenty-five honorees are selected every year. The publication selects the leaders for the "Women to Watch" list using criteria that takes a look at recent professional achievements, influence on the marketplace and contributions to the advancement of women.


- > **McKenna Long & Aldridge LLP** announced that **Clay C. Long**, founder, former co-chairman and partner, was named *Best Lawyers' 2010 Atlanta Corporate Lawyer of the Year*.


Nineteen attorneys from the Atlanta office were recognized as members of *Georgia Trend's* **2009 Legal Elite**: **David Balser**, general practice/trial; **Dan Beale** and **Ann Murray**, labor & employment; **Joseph Blanco**, **Wayne Bradley**, **Jeremy Silverman** and **Ann-Marie McGaughey**, business law; **Deborah Ebel**, family law; **Don Etheridge**, **Scott Harty** and **Russell Love**, taxes, estates & trusts; **Sharon Gay**, **Gordon Giffin**, **Steven Labovitz**, **James Levine** and **Keith Mason**, governmental affairs; **Mark Kaufman** and **Gary Marsh**, bankruptcy/creditors' rights; and **Jim Manley**, personal injury.

- >  The **Emory Public Interest Committee (EPIC)** announced that **Rita A. Sheffey**, partner at **Hunton & Williams**, was selected as the recipient of the **Unsung Devotion to Those Most in Need Award**. The award was presented at the 2010 Inspiration Awards Ceremony and Reception in Emory Law's Tull Auditorium. The Inspiration Awards are EPIC's largest annual fundraising

event, providing stipends to students who take otherwise-unfunded public sector jobs.

- > **Stanford G. Wilson**, managing partner of **Elarbee Thompson**, and **John C. Stivarius**, partner, were selected by their peers as *Georgia Trend's* **"Legal Elite"** for 2009. Wilson was selected in the area of labor and employment law and Stivarius was selected in general practice/trial law.

- >  **HunterMaclean** announced that associate **Edgar M. Smith** was accepted to the State Bar of Georgia's prestigious **Young Lawyers Division Leadership Academy's Class of 2010**. The Leadership Academy, which is based in Atlanta, provides the opportunity for attorneys to observe legislation at the state capitol and to refine professional and pro bono skills.

- >  **Fisher & Phillips LLP** partner **D. Albert Brannen** was selected by his peers for inclusion in the *Georgia Trend* **"Legal Elite"** for 2009. Brannen was recognized for his labor and employment practice.


Partners **F. Kytle Frye III**, **David R. Kresser**, and **Ann Margaret Pointer** were named to the *Super Lawyers Corporate Counsel Edition 2010* for their employment litigation work. Attorneys are chosen for inclusion in *Super Lawyers* by their peers and through the independent research of *Law & Politics* magazine.

- > **Murray Barnes Finister** announced that **Teresa Finister** was admitted to the **American College of Bond Counsel** in October 2009. The American College of Bond Counsel recognizes lawyers who have established reputations among their peers for their skill, experience and high standards of professional and ethical conduct in the practice of bond law.

- >    **Ford & Harrison LLP** announced that **Patricia G. Griffith**, **Jeffrey D. Mokotoff** and **Fredrick L. Warren** were

named to *Georgia Trend* magazine's **"Legal Elite"** list for 2009. For the past seven years, *Georgia Trend* magazine has polled thousands of attorneys across the state to recognize attorneys in several practice areas. Griffith, Mokotoff and Warren were recognized for their labor and employment practices.


- > **Krevolin & Horst** partner **Jeffrey D. Horst** was invited to join the **Advisory Board** of Kennesaw State University's **Corporate Governance Center**. Composed of more than 20 professors from several universities, the Corporate Governance Center is international in scope and interdisciplinary in its approach. The Advisory Board is made up of pioneers and leaders in the field of corporate governance.

- >  **Jeffery A. Styres** was appointed by Chief Justice William L. Waller Jr. of the Mississippi Supreme Court to a seat on the **Mississippi Board of Bar Admissions**. He is one of nine members of the board, all of which are appointed by justices of the Mississippi Supreme Court. Styres serves as senior associate counsel for Southern Farm Bureau Life Insurance Company in Jackson, Miss.

On the Move



In Atlanta

- > **Paige Arden Stanley** established the **Law Office of Paige Arden Stanley, LLC**, after practicing at Powell Goldstein LLP. As part of Stanley's law practice, she has been retained by small business owners to serve as their general counsel. She also focuses her practice in the areas of business litigation and contract disputes as well as estate planning, including wills, trusts, powers of attorney, health care directives and probate and estate administration. The firm is located at 2025 Robson Place NE, Atlanta, GA 30317; 404-386-9950; Fax 404-378-6486; www.stanleylawoffice.com.

- >  **Womble Carlyle Sandridge & Rice, PLLC**, announced that commercial real estate and finance attorney **Guinevere Christmann** joined the firm's Atlanta office. Christmann brings to Womble Carlyle more than 10 years of experience in commercial mortgage finance, acquisitions and dispositions, leasing and related corporate and contracting matters. The office is located at 271 17th St. NW, Suite 2400, Atlanta, GA 30363; 404-872-7000; Fax 404-888-7490; www.wcsr.com.


- > **Thorpe & Tyde, LLC**, announced the addition of **Jonathan D. Goins** as a **partner** with the firm. Goins has extensive experience handling various intellectual property-related matters, including trademarks, copyrights, trade secrets, franchising, licensing, litigation and e-commerce/cyberlaw. The firm is located

at 931 Monroe Drive, Suite A-102-153, Atlanta, GA 30309; 866-621-3873; www.thorpetyde.com.

- >   **Noah S. Rosner**, formerly of the Rosner Law Group, and **Jim Langlais**, formerly a partner at Alston & Bird, LLP, announced the formation of **Rosner & Langlais, LLC**. The firm practices in the areas of personal injury, toxic torts, product liability, environmental law, energy law, real estate law, land use law, corporate law, criminal law, family law and estate planning. The firm is located at 5 Concourse Parkway, Suite 1425, Atlanta, GA 30328; 770-408-1221; www.roslang.com.

- >     **Morris, Manning & Martin, LLP**, elected four attorneys to become **partners**: associates **Jeff Douglass**, **Brian Harris** and **Seth Weiner** and of counsel **Jason Wright**. Respectively they represent the firm's litigation, employment, corporate and government practices. The office is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

- > **C. Jephson Bendinger** joined **The Finley Firm, P.C.**, as an **associate**. His practice areas focus on civil litigation and workers' compensation. The office is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; www.thefinleyfirm.com.

- >  The **LoRusso Law Firm** announced that **Rebecca L. Sample** was hired as the firm's first **associate**. Sample will focus her practice on medical malpractice and general liability defense for corporations and hospital systems, health care law and business litigation. The firm is located at 1827 Powers Ferry Road, Building 8, Suite 200, Atlanta, GA 30339; 770-644-2378; Fax 770-644-2379; www.lorussolawfirm.com.

- > **William H. "Bill" Boling** joined **Smith Moore Leatherwood LLP**. Boling brings more than 20 years of health care experience in transactional, liti-

gation and compliance matters. The office is located at 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.

- > **W. Winston Briggs** left Decker, Hallman, Barber & Briggs to open his own firm, the **W. Winston Briggs Law Firm**. Brigg's new practice focuses on plaintiff's personal injury and wrongful death. Joining Briggs in his new firm is associate **Robert F. Glass** from Balch & Bingham LLP's Atlanta office. The firm is located at 1005C Howell Mill Road, Atlanta, GA 30318; 404-522-1500; Fax 404-574-2967; www.winstonbriggslaw.com.

- > **McKenna Long & Aldridge LLP** announced that **J. Stephen Berry** and **Bill "Trey" Wainwright III** were named **partners**. Berry focuses on insurance coverage and insurance bad-faith issues, with particular emphasis on construction defect and catastrophic property damage claims. Wainwright has extensive experience in a variety of corporate transactions, including representation of both strategic and financial buyers in merger and acquisition transactions. The firm is located at 303 Peachtree St. NE, Suite 5300, Atlanta, GA 30308; 404-527-4000; Fax 404-527-4198; www.mckennalong.com.

- > **Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC**, announced that **Mark R. Johnson** and **Claire C. Murray** were promoted to the **partnership**. Johnson's practice focuses on product liability, transportation litigation, toxic torts, construction litigation and premises liability. Murray's practice focuses on professional liability, product liability, pharmaceuticals, medical device liability and premises liability. The office is located at 950 E. Paces Ferry Road NE, Suite 3000, Atlanta, GA 30326; 404-876-2700; Fax 404-875-9433; www.wwhgd.com.



- > **Barnes & Thornburg LLP** added bankruptcy attorney **John W. Mills III** to the firm. Mills, formerly a partner at Atlanta's Kilpatrick Stockton LLP, joins the firm's Finance, Insolvency and Restructuring Department as a **partner**. He concentrates his practice on bankruptcy, debtor/creditor rights, bankruptcy acquisitions and insolvency related litigation. The firm is located at 3343 Peachtree Road NE, Suite 1150, Atlanta, GA 30326; 404-846-1693; Fax 404-264-4033; www.btlaw.com.



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> **Ford & Harrison LLP** welcomed **Matthew Blake Martin** as an **associate**. Martin concentrates his practice on representing management in labor and employment matters related to the counseling, training and representation of clients in federal and state courts, as well as before state and local agencies. The office is located at 271 17th St. NW, Suite 1900, Atlanta, GA 30363; 404-888-3800; Fax 404-888-3863; www.fordharrison.com.

>   **Jones Day** named **John M. Walker**, a member of the product liability practice, as **partner** and corporate lawyer **Neil M. Simon** as **of counsel**. Walker's practice focuses on defending national clients in high-stakes product liability litigation. Simon practices primarily in the capital markets arena. The office is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.

In Augusta

>  **Hull, Towill, Norman, Barrett & Salley, P.C.**, announced that the name of the firm changed to **Hull Barrett, PC**. Hull Barrett is a full-service law firm with a long successful history in Georgia and South Carolina, proudly serving the Central Savannah River Area.

Augusta attorney **Davis A. Dunaway** was elected to join the firm as a **shareholder**. Davis joined the firm in 2003 and practices in general civil litigation practice, with an emphasis in real estate and construction litigation and insurance defense. The firm is located at 801 Broad St., Augusta, GA 30901; 706-722-4481; Fax 706-722-9779; www.hullbarrett.com.

In Columbus

> **J. Philip Day** and **Bradford C. Dodds**, formerly of Funderburk, Day and Lane, announced the formation of **Day & Dodds, LLC**. The firm will continue its practice of law in the areas of commercial and residential real property law, loan closings, landlord/tenant matters, wills, estates, trusts and probates, zoning and general civil litigation. The firm remains located at 3 Bradley Park Court, Suite A, Columbus, GA 31904; 706-324-2531; Fax 706-324-2737.

In Macon


>  **James Bates Pope & Spivey, LLP**, announced that **Thomas M. Green** was named **partner**. Green practices in the area of commercial real estate and financial institutions. The firm is located at 231 Riverside Drive, Suite 100, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; www.jbpslaw.com.


In Marietta

>    
Wise Arena-Camarillo Manning McKamey

Stearns-Montgomery & Associates announced that **Daria French Wise**, **Erica Arena-Camarillo**, **S. Alexandra Manning** and **Janné Y. McKamey** joined the firm as **associates**. Stearns-Montgomery focuses on family law and other matters throughout the metro-Atlanta area. The office is located at 291 Alexander St., Marietta, GA 30060; 770-426-1148; Fax 770-426-1809; www.stearns-law.com.

In Savannah

>  **Steve Monnier** joined **HunterMaclean** as an **associate** in the firm's business litigation group. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

>  **Mari C. Chambers** announced the opening of the **Chambers Law Firm**. Chambers focuses her practice in Social Security disability. The firm can be reached at P.O. Box 10224, Savannah, GA 31412; 912-912-414-1114; Fax 912-525-3153; chamberslawfirm.org.

In Thomasville

> **Whelchel & Carlton, LLP**, announced the opening of an office in Thomasville. The firm's practice areas include real estate, corporate and business, commercial, health care, banking, education, probate, governmental law and general civil practice. The office is located at 203 E. Washington St., Thomasville, GA 31792; 229-228-4333.

In Whigham



Joshua C. Bell announced the opening of **The Law Office of Joshua C. Bell, LLC**. He was previously a partner at Kirbo, Kendrick & Bell, LLC. Bell practices in the areas of domestic relations, general litigation and personal injury.

The firm is located at 102 W. Broad Ave., Whigham, GA 39897; 229-762-4000; Fax 229-762-4010; www.joshuabell.net.

In Winston-Salem, N.C.



L. Patrick Auld was appointed as a **U.S. magistrate judge of the U.S. District Court for the Middle District of North Carolina**. He previously served as the deputy chief of the Criminal Division in the U.S. Attorney's Office for the Middle District of North Carolina. The court is located at 224 Hiram H. Ward Federal Building, 251 N. Main St., Winston-Salem, NC 27101; 336-734-2520; Fax 336-734-2516; www.ncmd.uscourts.gov.

\$998,111 Grant to Boost Georgia Legal Services

In this time of economic hardship, the state's largest non-profit law firm for the poor—Georgia Legal Services Program (GLSP)—has received a three-year grant of \$998,111 from The Goizueta Foundation to bolster the organization's work to address the impact of the economy on the civil legal problems of low-income Latinos outside metro-Atlanta. "We are excited about this opportunity to better serve the Latino community," said Phyllis Holmen, executive director of GLSP.

GLSP will employ four bilingual staff attorneys and two bilingual paralegals to provide legal services and outreach to low-income Latinos in 60 counties in the regions of Albany, Dalton, Gainesville and Savannah. In addition, the grant will support a statewide centralized phone intake system for Latino callers who have legal aid inquiries and needs for services.

"Our partnership with The Goizueta Foundation promises enormous benefits for the state in making access to our civil justice system and opportunities out of poverty more available for low-income Latinos," said Holmen. "With the problems in our economy, we've seen an increase of 111 percent in cases for Latino clients this year compared to last year, especially in the areas of health care, employment, public benefits, education and consumer issues. A majority of our clients are working poor people trying to stay afloat. Our advocacy makes a difference in helping them keep their homes, keep food on the table, obtain medical care or obtain payment for wages earned—life's basic needs."

Holmen continued, "The civil legal needs of low-income Latinos are a high priority for us, especially given the cultural and language barriers experienced by many Latinos in Georgia. Our vision is to build a community in Georgia committed to fairness and access to justice for low-income Georgians. We want to increase our visibility in the Latino community and our services to Latino clients, so they will not be left out of that vision."

GLSP was awarded an initial grant from The Goizueta Foundation in 2003 to address the socio-cultural and informational barriers that prevent full access to justice and opportunities out of poverty for low-income Latinos in the Dalton and Gainesville regions. Latino clients learned about their rights to receive services in Spanish.

Outside metro Atlanta, GLSP is the primary source of free legal services for low-income Georgians in 154 counties. "Last year, we closed more than 9,000 cases for clients, and more than 5,000 individuals were assisted through our Landlord/Tenant Helpline," said Holmen.

A 2009 study of the civil legal needs of low- and moderate-income households in Georgia sponsored by the Committee on Civil Justice—Supreme Court of Georgia Equal Justice Commission found that more than 60 percent of these households in Georgia experience one or more civil legal needs per year. The most prevalent needs involved consumer issues, housing, health, employment, public benefits, education and family problems.

GLSP provides legal services in 154 counties outside the metro-Atlanta area. Services include advice and counsel, brief service, representation in administrative hearings and court, educational programs, and referrals to private attorneys and to other services. They offer legal help for non-criminal problems involving family/domestic violence, housing, public benefits, consumer, health care, education and employment. Callers are also referred to www.legalaid-GA.org for information and resources.

The Goizueta Foundation was established by Roberto C. Goizueta in 1992 to provide financial assistance to educational and charitable institutions. The Foundation is a private, general-purpose grant-making foundation. Goizueta was chairman of the board of directors and chief executive officer of The Coca-Cola Company until his death in 1997.

For more information on GLSP, log onto www.glsp.org or contact the GLSP office in your area.

Why Not Write it Down?

by Paula Frederick

“I can’t believe it!” your partner exclaims as she hangs up the telephone. “This is the umpteenth time I’ve tried to explain to Adelaide Greer why she’s getting dunned by her chiropractor. She calls every month when she gets a bill. How many times do I have to remind her that we only paid the hospital and her M.D. at the time we settled her case?”

“She’s probably getting bills from all of her providers, plus duplicate statements from the insurance company,” you speculate. “It’s easy to get confused when you’re dealing with medical bills—give her a break!”

“I’ve tried to be patient with her, but now she says she’s filing a grievance with the Bar because she’s not satisfied with my explanations about where her settlement money went!”

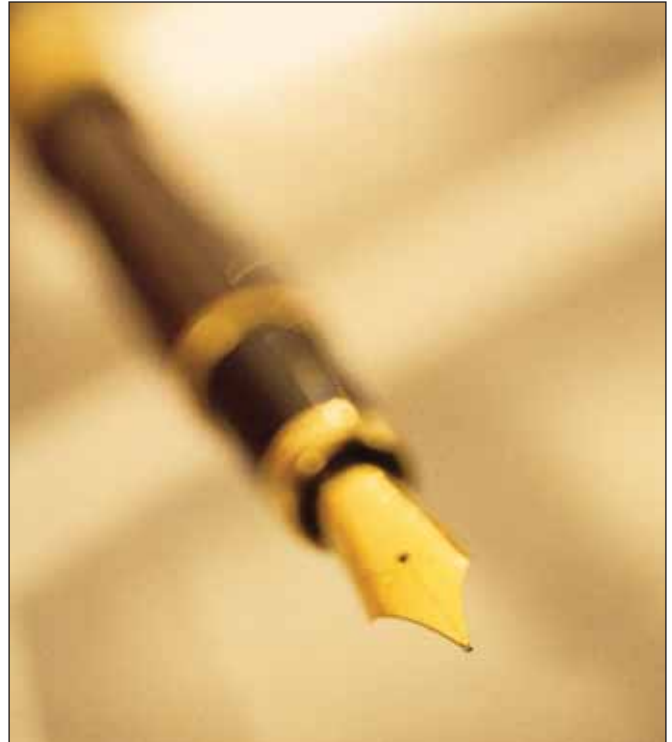
“Well, you ought to be able to get the grievance dismissed pretty quickly,” you advise. “Just send the Bar a copy of your fee agreement with her, and your settlement statement showing you didn’t withhold money for the chiro.”

“That’s just it—I didn’t put it in writing,” your partner confesses.


“I see,” you respond. “Well, that puts the threat of a grievance in a whole new light. . . .”

The Georgia Rules of Professional Conduct require that contingency fee agreements be in writing. Rule 1.5(c) provides that the written agreement must state the percentage of the lawyer’s fee; it must also specify what expenses will be deducted from the recovery. Rule 1.5 (c)(2) requires a lawyer to provide the client with an additional written statement at the end of a contingency case to inform the client of the outcome of the matter and to account for disbursement of any recovery.

So, your partner should not only have a written contingency fee agreement with Ms. Greer, but also a settlement statement that does the math on the recovery.



The settlement statement would go a long way towards making Ms. Greer understand where every penny of her settlement went. Without it, your partner may have difficulty providing the Bar with the information it needs to investigate Ms. Greer’s grievance. Even if she has only committed a technical violation of Rule 1.5, your partner may end up spending valuable time finding copies of settlement and disbursement checks, and copying records from her trust account.

Confusion about money is a major cause of client dissatisfaction. Even though the Georgia Rules do not require written fee agreements for every case, why not write it down? 



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

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Discipline Summaries

(Oct. 17, 2009 through Dec. 11, 2009)

by Connie P. Henry

Voluntary Surrender/Disbarments

Sami Omar Malas

Dunwoody, Ga.

Admitted to Bar in 1995

On Oct. 19, 2009, the Supreme Court of Georgia disbarred attorney Sami Omar Malas (State Bar No. 466975). The facts, deemed admitted by default, show that in January 2008, a client paid Malas \$10,640 to file two patent applications on his behalf and perform other legal work. Malas told the client that the applications had been filed but the client was not able to confirm that they had been filed. Since May 2008, the client has been unable to contact Malas, as Malas would not return phone calls, e-mails or respond to a note the client left at Malas's office. Malas apparently withdrew from representing his client but took no action to protect the client's interests and did not return any unearned fees. Although Malas initially responded to a grievance the client filed with the State Bar and said he would submit proof that he had filed the applications, he never provided such proof and did not respond to the Notice of Investigation or the Notice of Discipline.

In aggravation of discipline, the Court noted that Malas abandoned his law practice and clients.

Coleman C. Eaton

Jonesboro, Ga.

Admitted to Bar in 1984

On Oct. 19, 2009, the Supreme Court of Georgia disbarred attorney Coleman C. Eaton (State Bar No. 237850). The admitted facts show that in State Disciplinary Board (SDB) Docket No. 5591, Eaton represented a client in an automobile collision, but did not engage in negotiations or send a settlement offer to the opposing party. Nor did he file suit on the

client's behalf. Eaton did not act with reasonable diligence and promptness in representing the client, did not make reasonable efforts to expedite litigation consistent with the client's interests, did not explain matters to the client, did not keep the client reasonably informed and did not comply with the client's requests for information. Eaton informed the opposing party and a third party that he was no longer representing the client, but denied making such statements to the client and incorrectly informed her that a settlement demand was pending. His initial response to the State Bar included the false statements that he had met with the client regarding her concerns and that they had resolved all issues. Upon termination of the representation, Eaton did not take steps to protect his client's interests.

In SDB Docket No. 5592, Eaton represented a client in a divorce case. The client paid legal costs and fees to Eaton and Eaton filed a complaint for divorce on his behalf. Although the client provided Eaton with information and proposed discovery responses, Eaton altered the client's responses without consulting him, such that Eaton submitted misleading and inaccurate discovery responses. Eaton did not provide the client with financial information submitted by the opposing party. Eaton signed the client's name to a financial affidavit, which included misleading and inaccurate information, without authorization and without noting on the face of the affidavit that Eaton had so signed. Eaton presented this financial affidavit to the court but did not provide a copy to the client. After the client terminated the representation and requested his file, Eaton did not provide a complete client file and Eaton did not refund unearned fees to the client. Eaton's initial response to the State Bar included the false statement that the client had signed the financial affidavit. Eaton

did not explain matters to the client, keep the client reasonably informed, promptly comply with the client's requests for information or protect the client's interests upon termination of representation.

James M. Kimbrough III
Senoia, Ga.

Admitted to Bar in 1969

On Oct. 19, 2009, the Supreme Court of Georgia disbarred attorney James M. Kimbrough III (State Bar No. 418900). The State Bar filed Formal Complaints on three disciplinary matters against Kimbrough. The following facts are admitted by default:

In February 2002, a client paid Kimbrough \$900 to represent her in the adoption of a relative's child. The client provided Kimbrough with all the information needed to complete the adoption including surrenders of parental rights executed by the biological parents. Kimbrough failed to file the petition for adoption. He initially did not respond truthfully to the client's inquiries about the status of her legal matter and in 2006 stopped responding to her calls altogether. In December 2006, Kimbrough sent the client a letter suggesting that she retain another attorney and promised to return her retainer, but the letter was addressed incorrectly and thus the client never received it. Kimbrough also misrepresented facts in his response to the Investigative Panel.

In another matter, in March 2006, a client paid Kimbrough \$500 to represent her in incorporating a business. Kimbrough provided the client with articles of incorporation and a taxpayer ID number but never completed the incorporation process by ensuring that the proper documents were registered with the Secretary of State. The client learned that the incorporation had not been registered when she attempted to transfer ownership of her business in May 2007. The client then unsuccessfully attempted to contact Kimbrough but learned that he had moved from his office and discon-

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

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nected his phone. Kimbrough did not respond to inquiries from the Investigative Panel.

In a third matter, in January 2006 a client paid Kimbrough \$1,500 to represent her in a child support case. The representation agreement provided that the client would be reimbursed for her retainer if fees were obtained from the opposing party. In May 2007, the parties entered into a consent order and the opposing party paid \$1,500 in fees to Kimbrough. Kimbrough did not reimburse the client's retainer or provide her with any copies of the child support order or any other documents from her case. Upon repeated inquiry from the client, Kimbrough twice told her that he would provide her the reimbursement and the copies of her documents, but did not do so. He eventually stopped responding to the client's inquiries and in August 2007, during these disciplinary proceedings, Kimbrough sent the client a check for \$1,000 (with no explanation as to the remaining \$500), but never provided her with her file or with copies of court documents related to her case.

The Court found in aggravation of discipline that Kimbrough had a prior disciplinary history; that this case involved multiple offenses and multiple clients; that Kimbrough either failed to participate in the disciplinary process or submitted false statements during that process; and that Kimbrough seemed indifferent to making restitution.

Marshall Dewey Bain

Cumming, Ga.

Admitted to Bar in 2003

On Oct. 19, 2009, the Supreme Court of Georgia accepted the Voluntary Surrender of License of attorney Marshall Dewey Bain (State Bar No. 032454). Bain represented a client in a probate proceeding in Texas concerning the estate of her deceased father and, as a result of that proceeding, certain estate property, including cash, was distributed to the client. While still acting as the client's counsel, Bain

agreed to act as her financial advisor in which capacity he advised her as to the investment of her money, including the funds she inherited from her father. Bain also created several trusts for the client and her daughters to serve as vehicles for the investment of their money. Bain served as trustee for those trusts. At the same time, Bain owned certain promissory notes from third parties and he advised his client to accept assignment of those notes from him, assuring her they were secured by real estate or other valuable property. Bain also borrowed money from the client to provide funds for a company for which Bain served as chief executive officer. As of December 2008, Bain reported to the client that the various trusts he had created for her and her daughters had a total value of approximately \$600,000, but by February 2009, those same trusts had no value because of the default and subsequent bankruptcy of the makers of the notes. In July 2009, Bain filed a voluntary bankruptcy petition listing the client as an unsecured creditor with a claim valued at \$1,000,000. Bain admits his own financial interests materially and adversely affected his representation of the client.

Charles A. Thomas Jr.

Temple, Ga.

Admitted to Bar in 1973

On Nov. 9, 2009, the Supreme Court of Georgia accepted the Voluntary Surrender of License of attorney Charles A. Thomas Jr. (State Bar No. 704750). On Sept. 16, 2009, Thomas pleaded guilty to 55 counts of theft by taking and forgery in the Superior Court of Carroll County.

Suspensions

Gregory C. Menefee

Louisville, Ky.

Admitted to Bar in 1986

As reciprocal discipline, on Oct. 19, 2009, the Supreme Court of Georgia ordered that attorney Gregory C. Menefee (State Bar No. 502020) be suspended from the practice of law in Georgia indefinitely.

Reinstatement shall be conditioned upon his providing satisfactory proof to the Review Panel that he has been reinstated in Kentucky. The Supreme Court of Kentucky temporarily suspended Menefee on June 19, 2008, concluding that probable cause existed to believe that he had misappropriated or improperly dealt with funds held on behalf of his clients and ordered that disciplinary proceedings be initiated against him. The Kentucky court outlined seven complaints alleging that Menefee misappropriated thousands of dollars from eight clients in estate, residential mortgage and bankruptcy matters. It further stated that Menefee's response to the petition for temporary suspension indicated that he had no objection, that he began winding up his law practice in 2007, that he is now employed outside the field of law and that he has no plans to resume practicing law.


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 Oct. 16, 2009, five lawyers have been suspended for violating this Rule and three have been reinstated.

Reinstatement Granted

Lisa Paige Lenn

Orlando, Fla.

On Nov. 23, 2009, the Supreme Court granted the Petition for Reinstatement of attorney Lisa Paige Lenn, State Bar No. 446520, and ordered that she be reinstated as an attorney licensed to practice law in the state of Georgia. 



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

A Day in the Life of LPM:

Meeting Day-to-Day Challenges

by Natalie R. Kelly

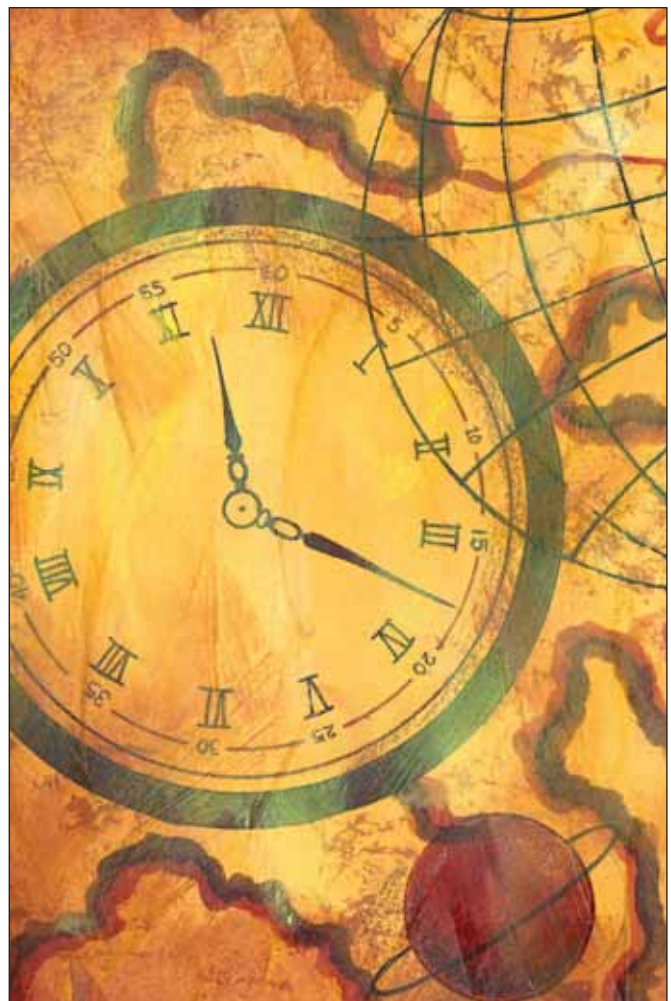
To commemorate 15 years of service to State Bar of Georgia members, the Law Practice Management Program is pleased to dedicate this and all of the LPM columns in 2010 to all State Bar members. In 2010, you will find reprints of some of the best and most popular articles coming out of our program in years past. For more information and any current practice management concerns you may have, please feel free to contact us directly via the Director, Natalie Kelly, at 404-527-8770 or nataliek@gabar.org. This article is reprinted from the February 2001, Vol. 6, No. 4 issue of the Georgia Bar Journal.

In 1995, the State Bar of Georgia's Law Practice Management Program was developed from the efforts of the Solo and Small Firm Task Force. Since that time, the program has grown and continues to provide services that help Georgia law firms properly set up and run their law offices. In an effort to introduce some to and reacquaint others with the popular work of this program and its low-cost services for Bar members, I have decided to discuss some of the most popular resources available from the program.

While it is not likely that our program will ever experience a day like the one outlined below, I must tell you that we have, on certain occasions, come close.

8:30 a.m.

Phone rings. Third-year law student is looking for information on starting his own practice. He asks what do I need to get started? Do I have to have a



business license? What about a trust account and malpractice insurance? LPM responds by sending him an Office Startup kit.

8:35 a.m.

Phone rings again. A second-year associate indicates he is about to go solo. Is there some way we can help? Sure there is. He is directed to the resources of the checkout library and a publication called *Flying Solo*. A startup kit is thrown in to help him get his office started.

9 a.m.

Lawyer stops by the LPM department to take a look at the resources we have in the checkout library. After perusing the 500+ items, she decides she wants to check out two items. LPM informs her she is only allowed to check out one item at a time for two weeks, but after she is done with the first item, she can mail it back and be mailed her second choice in return. She doesn't have to fight traffic and find parking again. Attorney smiles and checks out volume.

LPM gives her full list of materials to take with her.

9:25 a.m.

Attorney faxes over quotes from three vendors who are bidding to

network his computers. LPM compares the quotes to industry standards for the attorney's location and faxes back its analysis of which company would probably be best to work with on the networking project.

9:45 a.m.

Local bar association member calls to ask if LPM will participate in a meeting of her bar association by presenting on *Financial Management for Small Law Firms*. LPM agrees and sends outline for presentation to member. LPM will discuss general and trust accounting, time and billing techniques and alternative billing methods.

10 a.m.

LPM receives e-mail of library checkout request. It seems a lawyer visiting the State Bar's website found the LPM page at www.gabar.org/programs/law_practice_management/ and discovered sample forms and the list of library materials. Seeing how easy it was to get a book on the list, the lawyer submitted a checkout request. He also noticed past articles and a list of software library items on the site as well. Upon moving on, he also saw an announcement of future discussion boards and departmental newsletters for the site.

10:15 a.m.

Phone rings. Lawyer looking for used law books wants to know if LPM can help. LPM gives list of companies and their contact information.

10:30 a.m.

LPM meets with General Practice and Trial Section to set schedule for the next wave of Law Staff seminars to be held around the state. It was decided that the seminars would be re-evaluated. The seminar series (based on popular demand) that had been given in the past were on these topics: Law Office Confidentiality and Ethics; General Administrative Systems for Law Offices; Time and Billing and Accounting; How to Deal with Difficult Clients, Bosses and Co-Workers (with panels of local lawyers); and Organization and Stress Management.

10:50 a.m.

LPM submits material to local law firm for upcoming in-house CLE program to be delivered by LPM.

11 a.m.

Attorney looking for technology solutions calls to ask LPM if they are familiar with any systems that might help his non-techie practice. LPM discussed with the attorney: networking his computers; the cur-

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Cumming	770-888-8220
Decatur / Emory	404-321-3220
Douglasville	770-949-4465
Duluth	770-497-4910
Dunwoody	770-391-1100
Evans	706-434-1587
Fayetteville	770-716-6680
Ft Benning	706-687-0468
Gainesville	770-531-4465

Johns Creek	770-232-9990
Kennesaw	678-354-0997
Lawrenceville	770-995-4465
Lilburn	770-925-4465
Lithonia	770-484-4651
Mall of GA	770-271-4770
Newnan	770-252-5255
Norcross	770-825-8125
Roswell	770-594-1991
Snellville	770-736-6670
Suwanee	678-482-4822
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Law Practice Management Program

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

Consumer Assistance Program

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

Lawyer Assistance Program

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

Fee Arbitration

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

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rent systems in place in his office; the case management systems that are most popular and the number of features in these programs that could help in his practice; automating his time and billing and accounting procedures; adding in litigation support; and an implementation plan for getting the programs installed in his office and having him and his staff properly trained. LPM invited the attorney to set an appointment to come by the LPM software library to compare the software packages he seemed most interested in before purchasing. (Follow up to this story: The attorney visited the library and chose an appropriate package. He ordered the software at a discount through LPM and requested they come to his office and implement the program.)

11:30 a.m.

New attorney visits with LPM to go over business and marketing plans for her new firm. LPM advises on techniques that can help grow her new practice.

11:55 a.m.

Phone rings. Lawyer wants to know if we have a sample partnership agreement. LPM faxes several samples, lets lawyer know that there are several good ABA publications that may help him with drafting his own agreement and tells him these books are available for checkout from the resource library.

Noon

Lunch

1 p.m.


LPM visits nearby law school to present short program to students on *How to Start and Build a Successful Law Practice*.

1:30 p.m.

LPM spends the rest of the day performing an on-site consulting visit with a local firm having several management issues. The staff is out of control, the accounting procedures are called into question after account errors are found, the firm is having trouble with locating files, clients have expressed concerns

over unreturned calls and the firm does not know how to handle the 12 new cases it just acquired. LPM investigates the issues by meeting with the partners to map out a plan of action for the visit. LPM then interviews all of the attorneys and the staff asking questions about the systems and procedures used in the firm. LPM informs the firm that recommendations will be put in writing and sent to them. The firm pays a low consulting fee based on the amount of time spent in the firm (half-day) and the number of attorneys in the firm.

5:30 p.m.

LPM goes home to rest and looks forward to another day to help Bar members with their management needs. 



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



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305 Union Street Joins Lawyers Past and Present

by Bonne D. Cella

The 1907 Neoclassical Revival located at 305 Union St. in Vienna, Ga., is a head-turner that stands majestically on a hill inviting speculation from passersby about the history and significance of those who have lived there. The Stovall-Woodward-Gregory House, as it is known on the National Register of Historic Places, has much to be proud of for within its walls have lived several distinguished personalities that share something in common with one another—the profession of law.

The home was originally constructed for Dr. and Mrs. C. T. Stovall. Unfortunately, the couple did not get to enjoy living there very long because of Mrs. Stovall's declining health. They reluctantly sold their home to a young Vienna attorney and his wife—Walter and Lucy George.

George, the son of sharecroppers, was born in Webster County. He earned his law degree from Mercer University in 1901 and then came to Vienna where he met and married Lucy Heard in 1903.

Walter F. George became a powerful and influential man, serving as a U.S. senator for 34 years (1922-57). Mercer University honored him in 1947 by naming the law school the Walter F. George School of Law.

Before his illustrious senate career, he served as the superior court judge of Dooly County, on the Court of Appeals of Georgia and as a justice of the Supreme Court of Georgia. Vienna attorney John Davis recounts that his grandfather, Hon. Thomas Hoyt Davis, federal judge on the U.S. District Court for the Middle



Photos by Bonne D. Cella


305 Union Street, Vienna, Georgia

District of Georgia from 1945-69 and Charlie Knowles, general counsel for the Federal Land Bank of Columbia, S.C., read the law with George at this home on Union Street. Years later, after Mercer named its law school in honor of their friend and mentor, they amusingly claimed to be the “first graduates” of the Walter F. George School of Law.

In 1916, George sold the home to his law partner, Lucius Lamar Woodward. Woodward, who had only received an 8th grade education, passed the bar at age 18 by studying and reading the law with his father, Hon. John Hartwell Woodward. For a period of time, Judge Woodward lived with his son and family at the home on Union Street. Judge Woodward was a Civil War veteran who helped organize the Bibb County

Militia (later named the Whittle Guard). He was admitted to the bar in 1873 and served in the state Legislature as a senator and was the judge of Dooly County. The Woodward descendants occupied the residence for the next 63 years.

The home was uninhabited for a time following the Woodward occupancy and fell into disrepair. The next owners, Tifton accountant Richard Kitchens and his wife Becky, made heroic efforts to rescue and restore it to its original grandeur. "We were so glad we could save the house—our three children have fond memories of living in the grand old place," said Kitchens.

In 1992, Vienna attorney Hardy Gregory and his wife Carolyn acquired ownership and continued restoration. Gregory is a former superior court judge of Dooly County and Supreme Court justice (1981-89). Their niece, Macon attorney Jeanna Gregory Fennell, held her wedding reception on the grounds adding a female to the mix of male attorneys with strong ties to the home. In 2008, the Gregorys made the move to a smaller home but wanted to keep 305 Union St. within the family so they sold it to their nephew, Americus attorney Bert Gregory. He continues the tradition of respect and restoration for the structure and is proud of the "legal history" collected within the walls of his home. He is on the board of the Alumni Association for the Walter F. George School of Law and recently hosted an elegant reception at his home for area alumni. It was a most fitting setting for these attorneys to gather, network and socialize—305 Union St., Vienna, Ga.—epicenter of law! 



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.



U.S. Senator and Mercer Law School namesake Walter F. George as pictured on the cover of the April 25, 1955, issue of *Time Magazine*.



(Left to right) Daisy Floyd, Dean of the Walter F. George School of Law, and Hardy Gregory during the reception for Mercer Law School Alumni.



(Left to right) Bert Gregory, current owner of 305 Union St.; David Forehand, Cordele attorney; and Melanie Cross, superior court judge, Tift Circuit, at the Mercer Law School Alumni Reception held at Gregory's home.

The Law-Related Education Program of the State Bar of Georgia

wishes to recognize the Henry County Bar Association for its financial support of Henry County High School's Journey Through Justice on Nov. 10, 2009.



Sections Roll into the 21st Century

by Derrick W. Stanley

As the first full decade of the 21st century came to a close, the State Bar of Georgia was silently implementing a new database that would allow enhancements to the website. You will notice as you go to different parts of www.gabar.org that things look and behave differently. In regard to sections, members are now able to join sections online. In the past, members had to mail in an application to the Bar and wait for it to be processed and loaded to the website. Now, as soon as payment is submitted, you will immediately be a member of the section.

The process for joining a section is easy once you have established your account at www.gabar.org. The most important step is to ensure that the Bar has your valid e-mail address and you have access to that inbox so that a password can be sent to you. If you do not have an e-mail on file, please send an e-mail with your bar number to membership@gabar.org and your record will be updated.

If you have *not* yet established your login identification, you will need to go to www.gabar.org and click on the "Member Login" button in the upper right hand corner of the page. The next step would be to click on the link that says "Create Your New Account." You will need to follow the instructions for creating the new account. Once the account is created, you are ready to go.


To join a section, simply follow the steps below and you will be added to the section of your choice. For a

description of each section, please visit the section web pages at www.gabar.org/sections.

- Once logged in, click on the link that reads "Join a section" (see fig. 1) and it will open up a new screen where you will be able to make your selections.
- Simply click on the section(s) you would like to join (see fig. 2). If a section is grayed out, it means you are already a member of that section. You can select as many sections as you like. Once you select the section(s) you would like to join, click the "Add to Cart" button to proceed to the shopping cart (see fig. 2).
- You are now in the shopping cart and will need to click "Next" to enter your credit card information (see fig. 3). Once the form is completed, you click the "Next" button and the credit card will be authorized and charged for the section(s) membership (see fig. 4). You will then receive an e-mail at the address listed on this page with your receipt for the section(s). Once the process is complete, you will automatically be listed in the section(s).

This new interface will make it easy to join a section and start receiving the benefits of membership.

Should you have any questions regarding your login information, please send an e-mail to membership@gabar.org. This e-mail box is monitored from 8:30 a.m. – 5:30 p.m.

As always, should you require assistance in joining a section that is not covered in this article, please visit www.gabar.org/sections or contact Derrick Stanley at 404-524-8774 or derricks@gabar.org. 



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



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MultiBook and MultiState Case Law Searching in Casemaker 2.1

by Sheila Baldwin

Since January 2005, the State Bar of Georgia has offered its members unlimited access to legal research. From case law to codes to federal materials, Casemaker has become a valuable member benefit. If you have not spent time in Casemaker, make a point to access it today. Sign up for training to increase your legal research skills while earning CLE credits.

This month's article will cover MultiBook searching in both federal and state libraries and MultiState Case Law searching. Casemaker 2.1 has added these features to enable broad searches with the ease of entering terms only once and finding results in a variety of databases.

MultiBook searching in Georgia includes all databases found on the state home page, including Attorney General Opinions, Case Law, Codes and Acts, Constitution, Federal Court Rules, *Georgia Bar Journal*, GSU Law Review, Rules and Regulations and State Court Rules.


To access this feature, select the MultiBook search link on the right side of the screen (see fig. 1). You will notice that searching in this area is different than searching in the individual state and federal library. Search terms are entered in only one field and to begin the process the user hits "enter" on the keyboard. A scrolling icon will appear above the search box to indicate that the search is in process. Numbers appear beside each database where you can click to see the listed results (see fig. 2).

Notice that the CASEcheck feature is located at the bottom left side of the page as opposed to the left side in the Full Document Search (see fig. 3.)

Check boxes make the MultiBook feature easier to use. When entering a search term, MultiBook automatically includes all books in that search. To limit a search to selected books, click the book box at the top of the list to uncheck it and then select the relevant books. Otherwise, look at the list and uncheck books that do not need to be included in the search (see fig. 4).

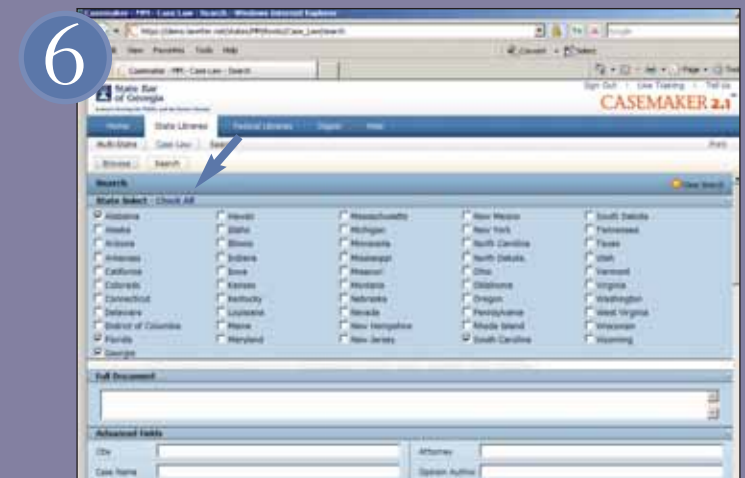
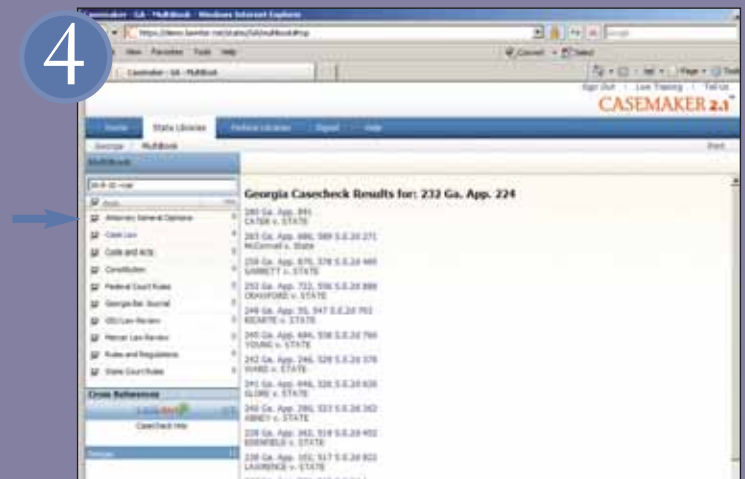
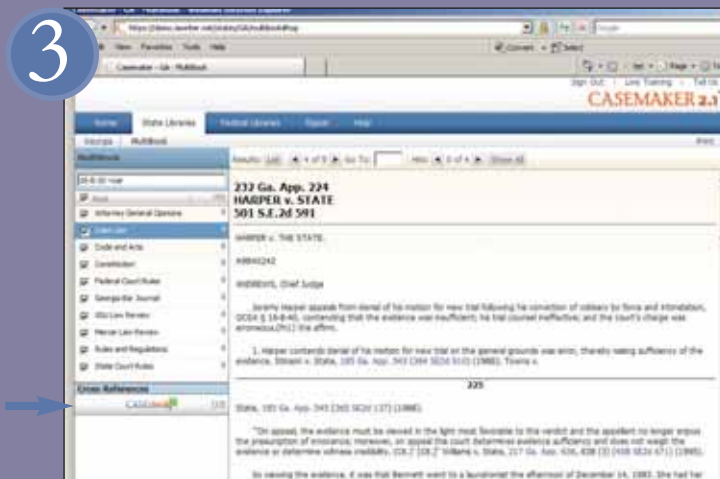
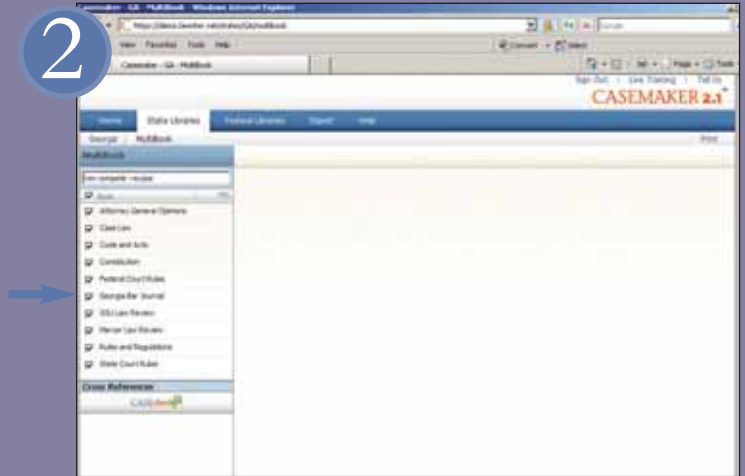
You can follow these same procedures to conduct MultiBook searching in the federal library with all associated databases (see fig. 5). These include Bankruptcy Opinions, Board of Immigration Appeals, Circuit Opinions, Code of Federal Regulations, the U.S. Constitution, Court of Appeals—Armed Forces, Court of Appeals—Veterans Claims, Court of Claims, Court of International Trade, District Court Opinions, Federal Court Rules, Internal Revenue Service, NTSB Decisions, Supreme Court Opinions, Tax Court and the U.S. Code.

MultiState searching uses the same check boxes to enable easy case searching in all or selected states. To search cases in the 11th Circuit, select Georgia, Alabama and Florida (see fig. 6). The search screen in this area includes the Full Document Search area as well as advanced fields.

For more assistance with Casemaker, please call 800-334-6865/404-526-8618 or e-mail sheilab@gabar.org. You can sign up for free training at www.gabar.org. 



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.

Don't Misquote Me

by Karen J. Sneddon and David Hricik

A skim of any newspaper or flip through the television news channels reveals lots of quotation marks. This installment shares some thoughts on the “why” and “how” of quotation marks.

Why Quote?

Quotation marks signal the reader that the quoted language is directly stated by another source or authority. This is called a direct quotation. Take care to ensure that the quote is accurate. Citation to the quoted authority is required. Although authority must still be cited,¹ where a writer incorporates an indirect quotation—language that is paraphrased from another source but not quoted exactly—quotation marks should not be used and are, in fact, improper.

In part, we quote to give credit to the source of the words, so as not to plagiarize. But we also quote to showcase a relevant turn of phrase and strengthen the authority of argument or analysis. As one court recently stated:

Brevity may be the soul of wit, but it is sometimes not conducive to *legal proof*. Law is, after all, only language. (Exceptions to that last sentence can be debated in jurisprudence class.) 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 quo-



tation of source materials. That only makes more work for those readers who may not necessarily want to take the writer's word for it.²

The words a court actually used, and not a characterization of it, are the most accurate and persuasive support. This applies equally to parenthetical explanations to cases: credibility is enhanced by quoting a case, rather than characterizing or paraphrasing it. It applies with its greatest force, of course, to statutes, where every word and comma can be important.

Quotations serve valuable purposes, in other words. Yet, quotation marks can be overused. Too many quotation marks can clutter the page. Similarly, too much language can be included in the quote, losing the benefit gained by quoting the authority's actual words. Both using too many quotations and using too long of quotations can be seen by a reader as a sign that the author cannot distinguish critical language (that should be quoted) from less critical language (that should be paraphrased). Thus, quotes have the greatest impact when used sparingly to highlight critical language.³

How to Quote

To Block or Not to Block

The Bluebook states that when a quote exceeds 50 words, it should be single spaced and indented from the side margins.⁴ The *ALWD Citation Manual* states the same, but also adds that a quote longer than four lines of text, even if not more than 50 words, should also be indented and offset in similar fashion.

Block quotes do not use quotation marks. When offsetting the quoted language in the block format, no quotation marks are used. The source for the material is placed at the left margin, a line after the block quote.⁵ It *does not* belong at the end of the block quote in the indented portion,

where many lawyers seem want to place it. For example:

The Georgia Constitution provides that:

The General Assembly may provide by law that venue is proper in a county other than the county of residence of a person or entity impleaded into a pending civil case by a defending party who contends that such person or entity is or may be liable to said defending party for all or part of the claim against said defending party.

GA. CONST. Art. 6, § 2, ¶ VII.

Although block quotes are often necessary for statutory material and sometimes useful in quoting cases, for at least two reasons, they should be used sparingly. First, they can be visually difficult for the reader to absorb. Second, some readers skip block quotes, assuming that the material following the block quote will provide the needed analysis.

When the quote has less than 50 words, it should simply be enclosed by quotation marks, but not otherwise indented or offset. *The Georgia Constitution* authorizes the legislature to permit venue to lie over impleader claims "in a county other than the county of residence of a person or entity . . ." GA. CONST. Art. 6, § 2, ¶ VII. With quotes of less than 50 words, the citation simply follows the closing quotation mark.

Double v. Single

Double quotation marks surround a direct quotation. "Put your hands up," shrieked the bank robber. Single quotation marks surround a quote that appears within a direct quotation.⁶ When I returned to the office, I told the partner, "The judge said she thought the brief 'was an analytically rigorous and well-written' document."

Inside v. Outside

Does any closing punctuation belong inside or outside the closing

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quote mark? That question has stumped many.⁷ Some of the confusion arises from differing style in American English and Commonwealth English (the form of English used in the United Kingdom, India, Australia, Canada and so on).

In American English, commas and periods always belong inside the quotation marks, regardless of whether the comma or period was part of the original quote or not. *Although Margaret said she was "greatly dismayed," she was subsequently seen attending a party.* In contrast, semicolons and colons always belong outside the quotation marks, regardless of whether the semicolon or colon was part of the original quote or not. For the question mark and the exclamation mark, it depends. If the mark is part of the original quote, then it appears inside the quotation mark. If the mark is not part of the original quote, then it appears outside the quotation mark. *The attorney asked his client, "Do you consider the agreement ready to sign?"*

To Capitalize or Not

If the quote is a complete sentence, capitalize the first letter in the sentence. *The student asked, "Please repeat the question."* If the quote is fragment, do not capitalize the first letter of the quote. *The student remarked that the exam was "tough but fair."* When the quotation is interrupted, don't capitalize the second part of the quotation. *"Therefore, my client's damages are \$12,500," remarked the attorney, "but he will accept \$9,000."*

Ellipses and Brackets


Sometimes a quote needs customizing, either because it is too long or, if directly quoted, it leaves out a word or two necessary for effective use as a quote.⁸

When words are omitted from the quote, this omission is marked with ellipses. Ellipses are simply three periods, each separated by spaces. (So it is "space-period-

space-period-space-period-space.") Ellipses should not be used at the beginning of the quotation. Ellipses are appropriate, however, when material is omitted from the middle of a quote. Moreover, ellipses are used at the end of the quoted language where the quoted language continues in the source material but is used as a complete sentence in the writing. A period is still used to end the sentence. *The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech . . ."*

If a word or phrase is needed to clarify language in the quote, the word or phrase is enclosed in brackets. So, if a useful case had held, "The Smiths' claim is barred by limitations," it would likely be better to quote it as "The [plaintiffs'] claim is barred by limitations." In addition to using brackets to include additional information, use brackets to indicate when a letter or word has been altered. So, "considering" would become "consider[]" to indicate an omission of the "ing."

Finally, brackets can be used to blame the original quote for any errors. If the quoted language contains either a spelling or grammatical error, brackets indicate that the error was so in the original with "[sic]." *Anthony announced, "Each winner should pick up their [sic] prize."*

Hopefully, this installment shared some points about quotations and the use of quotation marks, so that you quote confidently. 



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.

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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 purposes of this installment, not all of the examples include the relevant citation to authority.
2. *Griffin Dewatering Corp. v. N. Ins. Co. of N.Y.*, 97 Cal. Rptr. 3d 568 n.7 (Ct. App. 2009) (emphasis in original).
3. The ALWD Citation Manual also makes this recommendation. ALWD 47.1. For an examination of the ALWD Citation Manual, see *Writing Matters: That Other Citation Manual*, 14 GA. B.J. Dec. 2008, at 70.
4. BB R. 5.1; ALWD R. 47.5.
5. If the citation is not placed in the text, any footnote or endnote number should be placed at the end of the block quote or outside the closing quotation mark of an unblocked quote.
6. Confusingly, newspaper and blog headlines use single quotation marks, even for a direct quotation. For example: *Judge Orders Lawyers to Stop Using Capitalization 'With Abandon.'* Debra Cassens Weiss, ABA J., available at: http://www.abajournal.com/news/article/bankruptcy_judge_orders_lawyers_to_stop_using_capitalization_with_abandon.
7. With regard to these rules, *Bluebook* and *ALWD* do not follow standard grammatical conventions. This installment highlights the standard grammatical conventions. These rules are also considered in the following sources: ANNE ENQUIST & LAUREL CURRIE Oates, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER 265 (2d 2005); C. EDWARD GOOD, A GRAMMAR BOOK FOR YOU AND I . . . OOPS, ME: ALL THE GRAMMAR YOU NEED TO SUCCEED IN LIFE 411-13 (2002); LYN QUITMAN TROYKA, SIMON & SCHUSTER HANDBOOK FOR WRITERS 454 (5th ed. 1999). Gerald Lebovits, *Do's, Don'ts, and Maybes: Usage Controversies Part II*, 80 N.Y. ST. B.J. 64 (July/Aug. 2008); Scott Moise, *Quotation Marks*, 15 S.C. LAW. 47 (Jan. 2004).
8. Of course, if the quotation requires a great deal of altering, it is better to paraphrase than quote.

Congratulations

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Law Student Closing
Argument Competition



Pictured clockwise from top left: Michael Lyles, II, Mercer (1st); M. Gino Brogdon, Jr., UGA (2nd); Matthew Ramsey, GSU (3rd); Rhani Morris Lott, Emory (4th); and Don C. Keenan, Foundation Founder and Chairman.



Founded in 1993, the Keenan's Kids Foundation works to help raise awareness on child safety issues and to prepare a future generation of attorneys for child advocacy litigation.

Now celebrating its 16th year, the foundation sponsors this annual law student competition as a way to help introduce students to areas of the law protecting children's rights. This year's event took place on Nov. 7, with 20 participants from all five of the Georgia law schools.

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Living Traditions:

Teaching Professionalism Through the Lives of Georgia Lawyers and Judges

by Prof. Patrick E. Longan

I teach professionalism to law students. That is not something that any professor or practitioner could have said a generation ago. But times change and over the last 25 years or so the need to promote professionalism has become apparent. The State Bar of Georgia and the Chief Justice's Commission on Professionalism are integral parts of that. So are the efforts of those of us in law schools.

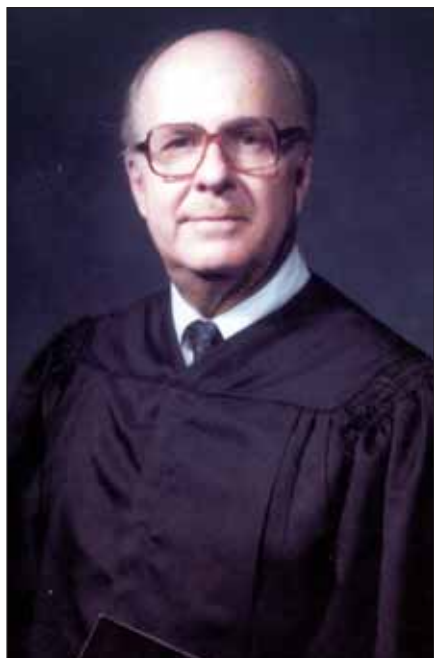
I use every method I can think of to help law students understand what professionalism means for lawyers, why it is so important and how the profession can best ensure that lawyers behave accordingly. My students have sat through lectures, by me and by guests. They have participated in small discussion groups and even blogged with each other about case studies on professionalism. All of these methods have their uses.

I have come to believe that these techniques are not enough. Students need more than an intellectual understanding of professionalism and its importance. They need to hear directly from lawyers and judges who have lived their lives and conducted their practices with professionalism, to understand how it can be done in the real world and what effects it has on the meaning and joy of a life in the law. They need comfort and inspiration that cannot come from a professor—we actually have very little credibility with students when it comes to such matters—but instead can only come from those who live the life rather than just teach about it.



Frank Jones, past president, State Bar of Georgia

In my class, the students for many years have conducted interviews in small groups with experienced lawyers and judges. Through the cooperation of the



Former Chief Justice and past president of the State Bar of Georgia, Harold Clarke

Masters and Barristers of the Bootle Inn of Court in Macon, they have heard directly the stories of lives and careers lived with professionalism. The students have often reported that these interviews are their favorite part of my course.


At Mercer, we have undertaken a broader project to collect and preserve the life stories of distinguished Georgia lawyers and judges. With a grant from the Foundation of the American College of Trial Lawyers, we are conducting a series of oral histories. The videos of these interviews will be available both on Mercer's website and on DVD. The *Journal of Southern Legal History* will be publishing transcripts of the interviews. We hope that the results of this project will help us and future teachers of professionalism to help law students and lawyers see and understand what it means to be a professional and the personal fulfillment that comes from a career and a life conducted in such a manner.

The first two of our interviews have more than fulfilled our expectations. In March 2009, I interviewed Frank Jones for two hours in front of a live audience of Mercer law students and faculty.¹ Jones shared stories about his interesting

and varied career, including many years of practice in Macon with Jones, Cork & Miller LLP and over two decades at King & Spalding LLP in Atlanta. He described his appearances before the U.S. Supreme Court and his service as president of the State Bar of Georgia, of the American College of Trial Lawyers and of the Supreme Court Historical Society. Most importantly, Jones took the opportunity to talk about what professionalism in the practice has meant to him and why he believes it is so important.

In November and December of last year, Stuart Walker, Martin Snow, LLP, and I spent most of two days interviewing former Chief Justice Harold Clarke about his remarkable life and career.² We had these conversations just off the square in Forsyth, in the house where Justice Clarke was born and where years later he practiced law. More perhaps than any other person, Justice Clarke is responsible for the fact that Georgia is widely recognized as the nation's leader in the promotion of professionalism. We were privileged to be able to hear directly from him why he thought that cause was so important and to learn how he led the Supreme Court and the Bar to take the lead. It was an inspiring experience, and it is one that I am glad will be shared by future students and lawyers.

Our oral history project is only just underway. In the next few years, we hope to be able to preserve the stories of many of Georgia's finest lawyers and judges. If you have suggestions for people we should interview, I hope you will feel free to contact me at longan_p@law.mercer.edu or 478-301-2639. As this project goes forward, this generation of law students and young lawyers will have increasing opportunities to see and understand what it means to live a life in the law in accordance with the best traditions of the profession. With each

story we collect, my job, and the jobs of everyone who teaches professionalism, will get much easier. To those who share their stories, and to those who day-to-day are good examples for the next generation of lawyers, I extend my deep appreciation. 



Prof. Patrick E. Longan holds the William Augustus Bootle Chair in Ethics and Professionalism in the Practice of Law at

the Walter F. George School of Law of Mercer University. He has been a member of the Chief Justice's Commission on Professionalism since 2000. He can be reached at longan_p@law.mercer.edu.

Endnotes

1. 17 J.S. LEGAL HIST. 153 (2009).
2. Excerpts of the interview will appear in a future volume of the *Journal of Southern Legal History*.

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Hon. Anthony A. Alaimo

Brunswick, Ga.
Emory University School of Law
(1948)
Admitted 1948
Died December 2009

Thomas E. Baynes Jr.

Lake Wales, Fla.
Emory University School of Law
(1967)
Admitted 1968
Died December 2009

Bruce P. Cohen

Belleair Beach, Fla.
Northwestern University Law
School (1965)
Admitted 1966
Died November 2009

Ronald Theodore Gold

Atlanta, Ga.
Washington & Lee University
School of Law (1973)
Admitted 1976
Died November 2009

Joe David Jackson

Atlanta, Ga.
Mercer University Walter F.
George School of Law (1980)
Admitted 1980
Died November 2009

Marshall H. Jaffe

Macon, Ga.
Atlanta Law School (1977)
Admitted 1977
Died August 2009

Hon. Arthur M. Kaplan

Dunwoody, Ga.
John Marshall Law School (1952)
Admitted 1952
Died January 2010

Hon. W. D. "Jack" Knight

Nashville, Ga.
University of Georgia School
of Law (1958)
Admitted 1958
Died November 2009

Frank H. Loomis

Miami, Fla.
Emory University School of Law
(1967)
Admitted 1967
Died November 2009

Fred Willard Minter

Decatur, Ga.
Atlanta Law School (1949)
Admitted 1949
Died November 2009

Jerrell P. Rosenbluth

Atlanta, Ga.
University of Michigan Law
School (1966)
Admitted 1966
Died November 2009

Oscar M. Smith

Rome, Ga.
University of Georgia School
of Law (1948)
Admitted 1947
Died January 2010

Mary Kathryn Williams

Hilton Head, S.C.
University of Georgia School
of Law (1980)
Admitted 1980
Died June 2009



Senior U.S. District Court Judge **Anthony Alaimo** — credited with turning around what was at one time the nation's most dan-

gerous and deadly prison—died in December 2009. Alaimo was born in Termini Imerese Sicily, Italy, and immigrated to the United States with his parents. He studied at Ohio Northern University and then served in the Army Air Corps. After World War II, he attended Emory University School of Law, graduating in 1948. Alaimo, a B-26 bomber pilot, was the only member of the 11-person crew to survive a crash on a flight bombing a target in the Netherlands. He was thrown from the plane and was left pondering the terrible feelings of the vagaries of luck—who dies and who survives.

Alaimo was guided by his experience as a prisoner in a German camp during World War II in many of his decisions, but especially in a 25-year-long lawsuit that focused on conditions at the Georgia State Prison at Reidsville. After taking the 1972 suit, Alaimo found racial violence and almost routine stab-bings, rats in the prison's hallways, standing waste water in the cell blocks and sewer lines hooked into the drinking water. More than 3,000 inmates were crammed into a prison that should have held only 1,000. Twenty-five years later and after taxpayers spent more than \$100 million to renovate the south Georgia prison, he closed the case, saying the state was then ready to operate a safe prison.

In the years since President Richard Nixon appointed him late in 1971, Alaimo presided over cases that changed the state's system for electing judges,

rescued farmers from foreclosure, sent Atlanta officials to prison for corruption and sentenced a 60-year-old cocaine kingpin to 357 years in prison.



Joe D. Jackson was born in Lithonia in December 1953 and spent his childhood in Clarkston. Jackson attended Indian Creek


Elementary School and Clarkston High School, where his father was the principal. He graduated from the University of Georgia in 1975 with a degree in accounting. He then worked at M R & R Trucking Company for two years.

Jackson attended the Walter F. George School of Law at Mercer University in Macon, Ga., during

which he interned at the District Attorney's Office. He graduated cum laude in 1980 and began his professional career at the Office of the General Counsel of the State Bar of Georgia. From 1990-92 he served as an administrative law judge for the State Board of Workers' Compensation, then returned to practicing law as a partner at Goodman, McGuffey, Aust & Lindsey, LLP. He retired from Goodman McGuffey in 2007 but remained of counsel until his death.

During his professional career, Jackson served as chair of the Election Committee of the State Bar of Georgia and was a member of the Workers' Compensation Section. He was also involved with the Atlanta Bar Association,

National Organization of Bar Counsel, The Lawyers Club of Atlanta and was associate director of the Georgia Self Insurer's Association from 2004-05. He was also recognized by *Atlanta Magazine* as a Super Lawyer.

Jackson enjoyed golf, University of Georgia football, the Atlanta Braves, church choir, softball, vacationing with family, coaching soccer, fantasy baseball league, Brookwood wrestling, cross country and band booster clubs and practical jokes. He was active with Habitat for Humanity, Kid's Chance, the Boy Scouts of America and as an Emmaus servant. He was an active member at Clarkston, St. Timothy and Cannon United Methodist churches where he served on numerous committees. 

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FEB 10	NBI, Inc. <i>Real Property Foreclosure – A Step-by-Step Workshop</i> Atlanta, Ga. 6 CLE Hours	FEB 18	ICLE <i>Residential Real Estate</i> Statewide Satellite Rebroadcast See www.iclega.org for locations 6 CLE Hours
FEB 11-12	ICLE <i>Social Security Law</i> Atlanta, Ga. See www.iclega.org for location 9 CLE Hours	FEB 18	ICLE <i>Soft Tissue Injury</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 11	ICLE <i>License Revocation & Suspension</i> Statewide Satellite Rebroadcast See www.iclega.org for locations 6 CLE Hours	FEB 18	ICLE <i>Elder Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 11	ICLE <i>Jury Trial</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	FEB 19	ICLE <i>Banking Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 12	ICLE <i>Residential Real Estate</i> Statewide Satellite Broadcast – Live See www.iclega.org for location 6 CLE Hours	FEB 19	ICLE <i>Advanced Debt Collection</i> Statewide Satellite Broadcast – Live See www.iclega.org for locations 6 CLE Hours
FEB 12-13	ICLE <i>Estate Planning Institute</i> Athens, Ga. See www.iclega.org for location 9 CLE Hours	FEB 19	ICLE <i>Criminal Practice</i> Kennesaw, Ga. See www.iclega.org for location 6 CLE Hours

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FEB 23-24	ICLE <i>Collaborative Law Institute of Georgia (CLIG) Training</i> Atlanta, Ga. See www.iclega.org for location 12 CLE Hours	MAR 4	ICLE <i>Fundamentals of Health Care</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 25	ICLE <i>Advanced Debt Collection</i> Statewide Satellite Rebroadcast See www.iclega.org for locations 6 CLE Hours	MAR 4	ICLE <i>Product Liability Institute</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 25	ICLE <i>Advanced Patent Cooperation Treaty (PCT) Law</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	MAR 5	ICLE <i>Premises Liability</i> Statewide Satellite Broadcast—Live See www.iclega.org for location 6 CLE Hours
FEB 25	ICLE <i>Legal Technology Show & Tell</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	MAR 5	ICLE <i>Effective Jury Selection</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 26	ICLE <i>Employers' Duties & Problems</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	MAR 5	ICLE <i>Proving Damages</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours
FEB 26	ICLE <i>Georgia Appellate Practice</i> Atlanta, Ga. See www.iclega.org for location 6 CLE Hours	MAR 9	ICLE <i>Workouts, Turnarounds & Restructurings</i> Atlanta, Ga. See www.iclega.org for location 4 CLE Hours

February-March

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Amelia Island, Fla.
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12 CLE Hours
- MAR 11** ICLE
Premises Liability
Statewide Satellite Rebroadcast
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6 CLE Hours
- MAR 11** ICLE
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Atlanta, Ga.
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Mediation Advocacy
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Professionalism & Ethics Update
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6 CLE Hours

MAR 23 ICLE
Beginning Lawyers
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 25 ICLE
Basic Fiduciary Practice
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Consumer Law
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First Publication of Amended Proposed Formal Advisory Opinion No. 07-R1

Pursuant to Rule 4-403(c) of the Rules and Regulations of the State Bar of Georgia, on Aug. 28, 2008, the Formal Advisory Opinion Board made a preliminary determination that Proposed Formal Advisory Opinion No. 07-R1 should be issued. Proposed Formal Advisory Opinion No. 07-R1 appeared in the October 2008 issue of the *Georgia Bar Journal* for 1st publication. State Bar members were invited to file comments to the proposed opinion with the Formal Advisory Opinion Board. Several comments regarding the proposed opinion were received from members of the Bar.

After reviewing the proposed opinion in light of the comments received, the Formal Advisory Opinion Board has amended the proposed opinion and determined that the amended proposed opinion should be issued. *State Bar members only* are invited to file comments regarding the amended proposed opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta St. NW
Suite 100
Atlanta, GA 30303
Attention: John J. Shiptenko

An original and one (1) copy of any comment to the amended proposed opinion must be filed with the Formal Advisory Opinion Board by March 15, 2010, in order for the comment to be considered by the Board. Any comment to the proposed opinion should make reference to the number of the proposed opinion. Any comment submitted to the Board pursuant to Rule 4-403(c) is for the Board's internal use in assessing proposed opinions and shall not be released unless the comment has been submitted to the Supreme Court of Georgia in compliance with Bar Rule 4-403(d). After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, a final draft of the opinion will be published and the opinion will be filed with the Supreme Court of Georgia.

PROPOSED FORMAL ADVISORY OPINION NO. 07-R1

QUESTION PRESENTED:

May different lawyers employed in the circuit public defender office in the same judicial circuit represent co-

defendants when a single lawyer would have an impermissible conflict of interest in doing so?

SUMMARY ANSWER:

Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so.

OPINION:

In Georgia, a substantial majority of criminal defendants are indigent. Many of these defendants receive representation through the offices of the circuit public defenders. More than 40 judicial circuit public defender offices operate across the state.

Issues concerning conflicts of interest often arise in the area of criminal defense. For example, a single lawyer may be asked to represent co-defendants who have antagonistic or otherwise conflicting interests. The lawyer's obligation to one such client would materially and adversely affect the lawyer's ability to represent the other co-defendant, and therefore there would be a conflict of interest under Georgia Rule of Professional Conduct 1.7(a). See also Comment [7] to Georgia Rule of Professional Conduct 1.7 ("...The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant"). Each such client would also be entitled to the protection of Rule 1.6, which requires a lawyer to maintain the confidentiality of information gained in the professional relationship with the client. One lawyer representing co-defendants with conflicting interests certainly could not effectively represent both while keeping one client's information confidential from the other. See Georgia Rule of Professional Conduct 1.4 ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation...").

Some conflicts of interest are imputed from one lawyer to another within an organization. Under Georgia Rule of Professional Conduct 1.10(a), "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so...." Therefore, the answer to the question presented depends in part upon whether a circuit public defender office constitutes a "firm" within the meaning of Rule 1.10.

Neither the text nor the comments of the Georgia Rules of Professional Conduct explicitly answers the question. The terminology section of the Georgia Rules of Professional Conduct defines “firm” as a “lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See Comment, Rule 1.10: Imputed Disqualification.” Comment [1] to Rule 1.10 states that the term “firm” includes lawyers “in a legal services organization,” without defining a legal services organization. Comment [3], however, provides that:

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

That is the extent of the guidance in the Georgia Rules of Professional Conduct and the comments thereto. In the terms used in this Comment, the answer to the question presented is determined by whether lawyers in a circuit public defender’s office are in the same “unit” of a legal services organization.

The Supreme Court of Georgia has not answered the question presented. The closest it has come to doing so

was in the case of Burns v. State, 281 Ga. 338 (2006). In that case, two lawyers from the same circuit public defender’s office represented separate defendants who were tried together for burglary and other crimes. The Court held that such representation was permissible because there was no conflict between the two defendants. Presumably, therefore, the same assistant public defender could have represented both defendants. The Court recognized that its conclusion left open “the issue whether public defenders should be automatically disqualified or be treated differently from private law firm lawyers when actual or possible conflicts arise in multiple defendant representation cases.” Id. at 341.

Other states, in case law and ethics opinions, have decided the question presented in disparate ways. Some impute conflicts within particular local defender offices. See Commonwealth v. Westbrook, 400 A2d 160, 162 (Pa. 1979); Turner v. State, 340 So.2d 132, 133 (Fla. App. 2nd Dist. 1976); Tex. Ethics Op. 579 (November 2007); Va. Legal Ethics Op. No. 1776 (May 2003); Ct. Informal Op. 92-23 (July 1992); S.C. Bar Advisory Op. 92-21 (July 1992). Some courts and committees have allowed for the possibility that there can be sufficient separation of lawyers even within the same office that imputation should not be automatic. Graves v. State, 619 A.2d 123, 133-134 (Md. Ct. of Special Appeals 1993); Cal. Formal Op. No. 2002-158 (Sept. 2002); Montana Ethics Op. 960924. Others have decided more generally



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against a per se rule of imputation of conflicts. *See Bolin v. State*, 137 P.3d 136, 145 (Wyo. 2006); *State v. Bell*, 447 A.2d 525, 529 (N.J. 1982); *People v. Robinson*, 402 N.E.2d 157, 162 (Ill. 1979); *State v. Cook*, 171 P.3d 1282, 1292 (Idaho App. 2007).

The Eleventh Circuit Court of Appeals looked at an imputed conflict situation in a Georgia public defender office. The Court noted that “[t]he current disciplinary rules of the State Bar in Georgia preclude an attorney from representing a client if one of his or her law partners cannot represent that client due to a conflict of interest.” *Reynolds v. Chapman*, 253 F.3d 1337, 1344 (2001). The Court further stated that “[w]hile public defender’s offices have certain characteristics that distinguish them from typical law firms, our cases have not drawn a distinction between the two.” *Reynolds*, supra, p. 1343.

The general rule on imputing conflicts within a law firm reflects two concerns. One is the common economic interest among lawyers in a firm. All lawyers in a firm might benefit if one lawyer sacrifices the interests of one client to serve the interests of a different, more lucrative client. The firm, as a unified economic entity, might be tempted to serve this common interest, just as a single lawyer representing both clients would be tempted. Second, it is routine for lawyers in a firm to have access to confidential information of clients. A lawyer could access the confidential information of one of the firm’s clients to benefit a different client. For at least these two reasons, a conflict of one lawyer in a private firm is routinely imputed to all the lawyers in the firm. *See RESTATEMENT OF THE LAW GOVERNING LAWYERS* Third, Sec. 123, Comment b.

The first of these concerns is not relevant to a circuit public defender office. “The salaried government employee does not have the financial interest in the success of departmental representation that is inherent in private practice.” *Frazier v. State*, 257 Ga. 690, 695 (1987) citing ABA Formal Opinion 342.

The concerns about confidentiality, however, are another matter. The chance that a lawyer for one defendant might learn the confidential information of another defendant, even inadvertently, is too great to overlook.

Other concerns include the independence of the assistant public defender and the allocation of office resources. If one supervisor oversees the representation by two assistants of two clients whose interests conflict, the potential exists for an assistant to feel pressured to represent his or her client in a particular way, one that might not be in the client’s best interest. Furthermore, conflicts could arise within the office over the allocation of investigatory or other resources between clients with conflicting interests.

The ethical rules of the State Bar of Georgia should not be relaxed because clients in criminal cases are indigent. Lawyers must maintain the same level of ethical responsibilities whether their clients are poor or rich.

Lawyers employed in the circuit public defender’s office are members of the same “unit” of a legal services organization and therefore constitute a “firm” within the meaning of Rule 1.10. Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so.

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