



# Georgia Bar Journal

June 2010 • Volume 15 • Number 7

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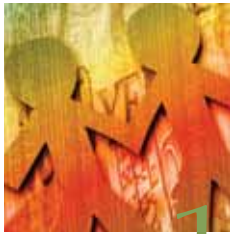


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The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole,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

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by Bryan M. Cavan

# Public Trust: The Battle Continues

**D**uring the recent State Bar elections, candidates were asked in an open-ended question to name the main issues facing the

Bar and state their positions on

those issues. A tally of the responses from the 36 candidates in contested races for the Board of Governors identified judicial funding as the No. 1 issue, with 15 responses. That should come as no surprise, considering the impact that severe budget cuts have had on

Georgia courts over the past two years.

Finishing a close second, with 14 responses, was the “public image of lawyers.” That, too, is to be expected, for it’s a battle our profession has had to fight for gen-

erations. At least since the time that Shakespeare’s “Dick the Butcher” uttered his infamous and oft-repeated suggestion in *King Henry VI*, lawyers have had to withstand a widespread perception that we are good for little besides shuffling papers and stirring up trouble. And how often have we heard the old adage, “nobody likes a lawyer until they need one.”

It is true, of course, that a few bad apples have had a hand in spoiling things for the other 99.99 percent of our profession. Otherwise, we would not need to have a lawyer discipline system. In that regard, I suppose we are like every other profession and walk of life in human society.

While we have all endured a bellyful of lawyer jokes, insults and general scorn, at the end of the day, it is not that important whether we are universally loved. We accept the fact that every time we take on a case that pits a plaintiff versus a defendant or a victim versus an accused, we are going

to automatically make 50 percent of those involved mad at us.

The real problem is that too large a percentage of the public has little or no understanding of the vital role that lawyers fulfill in our justice system and in upholding the

**“The real problem is that too large a percentage of the public has little or no understanding of the vital role that lawyers fulfill in our justice system and in upholding the U.S. Constitution.”**

U.S. Constitution. Where there is no understanding, there is no trust. And that lack of trust undermines the entire justice system at its very foundation.

Actually, it is not a coincidence that judicial funding and the public perception of lawyers are considered the Bar's top two issues. There is almost a cause-and-effect relationship between the two. A lack of understanding of the functions of our court system has likely contributed to the judicial branch's low position among state budget priorities. As the consequences of an underfunded judiciary continue to emerge, as criminal cases go untried and civil disputes go unresolved, the court system and the legal profession will suffer more public disdain.

This is why it is so critical for the Bar to continue our public education efforts. I realize this might sound like a broken record, but it truly is an ongoing battle. Fortunately, we have in place two

programs that are effectively communicating the message of the importance of a strong and impartial judiciary and the role of lawyers in protecting our justice system.

At the classroom level, our Law-Related Education (LRE) Program works actively with public, private and home school teachers and students to help educate them about the judicial system and to instill in our young people a respect for the rule of law through early, positive experiences with lawyers and judges. The LRE Program's teacher workshops have been very successful, and the number of school groups taking the "Journey Through Justice" tour at the Bar Center has grown astronomically, with literally thousands of young Georgians receiving an up-close legal education experience each year.

The LRE Program also coordinates the Georgia Law Society of Secondary Schools, involving students who are recognized for their strong academic achievement and

their active involvement in law-related activities such as the High School Mock Trial Competition and law-related community service. For the Georgia Department of Education and many other organizations, the LRE Program is the chief resource for law-related education in our state.

I wish to thank the local bar associations, including the DeKalb Bar Association and the Henry County Bar Association, for providing financial support to send school groups from their communities to the Bar Center for the "Journey Through Justice" tour. I also wish to recognize and thank the Dougherty Circuit Bar, for providing box lunches to students from Early County High School, who traveled to the Bar Center for the program. Because of education budget cuts, there is limited or no funding for field trips in many of our public school systems. I urge all local bar associations to consider doing the same

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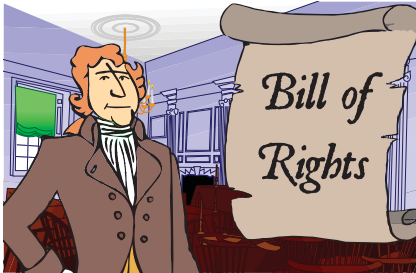
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# Trial By Jury: What's the Big Deal?

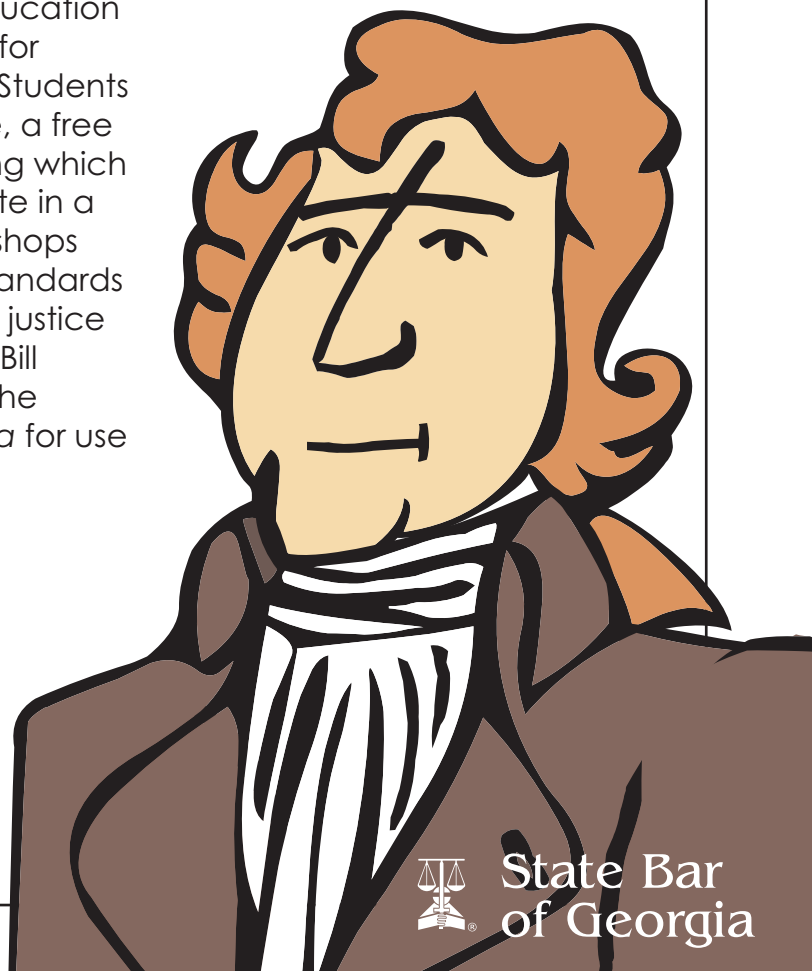


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics and Government performance standards.

This animated presentation reviews the history and importance of trial by jury through a discussion of the Magna Carta, the Star Chamber, the trial of William Penn, the Constitutional Convention in 1787, the Constitution and the Bill of Rights. Also covered in the presentation are how citizens are selected for jury duty, the role of a juror, and the importance of an impartial and diverse jury.

The State Bar of Georgia's Law-Related Education Program offers several other opportunities for students and teachers to explore the law. Students can participate in Journey Through Justice, a free class tour program at the Bar Center, during which they learn a law lesson and then participate in a mock trial. Teachers can attend free workshops correlated to the Georgia Performance Standards on such topics as the juvenile and criminal justice systems, federal and state courts, and the Bill of Rights. The LRE program also produces the textbook *An Introduction to Law in Georgia* for use in middle and high school classrooms.

**You may view "Trial By Jury: What's the Big Deal?" at [www.gabar.org/cornerstones\\_of\\_freedom/civics\\_video/](http://www.gabar.org/cornerstones_of_freedom/civics_video/). For a free DVD copy, e-mail [stephaniew@gabar.org](mailto:stephaniew@gabar.org) or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at [deborahcc@gabar.org](mailto:deborahcc@gabar.org) or 404-527-8785.**



for student groups from your hometowns. It's another way we can make a difference on the public education front.

For more information on the LRE program, visit [www.gabar.org/law-related\\_education](http://www.gabar.org/law-related_education) or contact Deborah Craytor at 404-527-8785 or [deborahcc@gabar.org](mailto:deborahcc@gabar.org).

In addition, our Cornerstones of Freedom®/Communications initiative continues to be successful in spreading our message across the state, largely through the mass media. As you know, the judicial funding issue was our top priority during the recently completed session of the General Assembly. In addition to the televised public service announcements the Bar sponsored last fall and earlier this year on the issue, Chief Justice Carol W. Hunstein of the Supreme Court of Georgia and I visited with the editorial boards of several of the state's largest newspapers during the closing weeks of the session.

Those meetings resulted in favorable editorials, news coverage and the placement of op-ed columns on the judicial funding issue in a number of leading papers, including the *Atlanta Journal-Constitution*, *Macon Telegraph*, *Marietta Daily Journal*, *Savannah Morning News* and *Brunswick News*. Several other leading dailies published the op-ed column and republished the outstanding editorials from the Macon and Marietta papers.


While the judicial branch, along with the rest of state government, did take a significant hit in the fiscal year 2011 budget approved by the Legislature and sent to Gov. Perdue for his signature, I can tell you things

could have been much worse. For example, we were pleased that at least a partial amount of funding for Superior Court senior judges was restored. I am convinced that our public education efforts—along with the thousands of calls and e-mails from Georgia lawyers to their legislators through the Legislative Action Network—had a positive impact.

As I reported here in April, the Cornerstones of Freedom® program is having continued success in recognizing the good works of Georgia lawyers and judges in their local communities through news releases and letters to the editor of their hometown newspapers. Please keep up those good works, and let us know about them. These kinds of articles go a long way toward sending a different message about lawyers than folks are accustomed to reading or hearing. For more information on Cornerstones of Freedom®, visit [www.gabar.org/cornerstones\\_of\\_freedom/](http://www.gabar.org/cornerstones_of_freedom/).

Finally, in the effort to increase public awareness of the value of our justice system and legal profession, I know that many of you are often invited to speak to local classrooms, civic clubs and other organizations. I urge you to accept these opportunities. Our Communications Department has a wealth of public education resources to assist your presentation, including a PowerPoint presentation and sample speech on the American court system, our highly acclaimed juror education video, "Ensuring Fairplay the American Way," and the civics video "Trial By Jury: What's the Big Deal?" Please contact Sarah Coole at 404-

527-8791 or [sarahc@gabar.org](mailto:sarahc@gabar.org) to obtain these or other resources.

The centuries-old public attitude toward lawyers will not be changed overnight. It might indeed be a never-ending battle. But for the good of our justice system and the future of our country, it is a battle worth fighting. Our strongest weapons are education, awareness and understanding. 

**Bryan M. Cavan** is the president of the State Bar of Georgia and can be reached at [bcavan@millermartin.com](mailto:bcavan@millermartin.com).

*POST SCRIPT: While my final review of the 2009-10 Bar year will be published in the August edition, I do want to take this opportunity to thank you for the tremendous honor and pleasure of serving as your president this year. I am more amazed than ever by the tireless dedication, extraordinary leadership and exemplary service displayed by my fellow lawyers across this great state. Thank you again for all you do, and I hope to see you at Amelia Island for the Annual Meeting later this month.*

*If I triggered your curiosity at the beginning of this article, here is the complete list of main issues faced by the State Bar, according to the 2010 candidates for the Board of Governors: judicial funding (15 responses), public image of lawyers (14), member services (11), Bar governance/representation (10), access to justice (5), fiscal management (4), legislative issues (4), professionalism concerns (4), pro bono opportunities (3), member communications (2), disciplinary system (1), diversity issues (1), electronic requirements (1), involving new members (1).*



Are you attracting the right audience for your services? If you have something to communicate to the lawyers in the state, be sure that it is published in the *Georgia Bar Journal*.

Contact Jennifer Mason at 404-527-8761 or [jenniferm@gabar.org](mailto:jenniferm@gabar.org).

by Cliff Brashier



# State Bar's New Membership Database FAQ

In December 2009, after many months of research, the State Bar of Georgia implemented its new membership database. In doing so, this affected the way our members gain access to and interact with the Bar's website. With the new Members Only area of the website, we are able to provide our members with more control over their information and access to more Bar services in a secure environment.

You may have noticed that the way you log in to our site has changed slightly, along with some of our pages. These changes in our website were necessary because we were using a membership database system that was more than 15 years old, and the manufacturer

had stopped supporting it. Because some of the information on our website is taken from the membership records, we had to "marry" the new database with our existing website.

The following are questions that we receive quite often, and I thought it might be helpful to address them.

"With the new Members Only area of the website, we are able to provide our members with more control over their information and access to more Bar services in a secure environment."

**Why does the password have to be so complicated?**

The simple answer to this question is many members have expressed identity theft concerns. We want to provide more security for everyone. The password requirement is an industry standard and set by the software we utilize (eight or more characters in length using upper and lowercase letters and at least one number). The majority of bar associations use this standard.

**Can I reset my username and password?**

Yes, you may reset your username and/or password at any time by logging in to the Members Only area of our website and choosing "My Account" and then "ID & Password." On this screen, you may modify your user-

name or your password; you do not have to do both, although you may if you wish.

### **I used to be able to retrieve my CLE hours by entering my bar number. Why do I have to log in first before I can see that information now?**

We've had many requests from members over the past several years asking that CLE information be protected utilizing a username and password. Previously, CLE information was available to anyone that had access to your bar number. Your CLE information is now protected within the Members Only area of our website.

### **What search criteria can I use when searching the online Member Directory?**

To search the online Member Directory, you may use any of the following pieces of information: first name, last name, section, company, law school, city, state or zip. For example, if you type "Jones" into the last name field and "30303" into the zip field and click "Search Directory," you will see a list of all members with the last name of Jones whose official address lists 30303 as their zip code.

If you would like a list of all attorneys living in Valdosta, enter "Valdosta" into the city field and click "Search Directory." This city search is one that many members use to locate lawyers when they know where they live, but they cannot recall their name. Looking for all members who belong to the Real Property Law Section? Choose "Real Property Law" from the drop-down Section field and click "Search Directory." Your search results will contain all current members of the Real Property Law Section.

If you are searching for a particular member rather than a list of possible members and you don't get the results you expect, check your spelling or try using less criteria. In some cases, less information will provide better search results. Also be careful not to put extra

spaces in the search fields, as this may prevent the system from returning results.

### **What if I don't want my information to be available in the online Member Directory?**

If you don't want your information included in the online Member Directory, contact the Bar's Membership Department at [membership@gabar.org](mailto:membership@gabar.org). They can restrict your information. If you would like to remove only your e-mail address, once you are logged in, go to "My Account" and then "Personal." By checking the box that says "Do not publish e-mail address," your e-mail address will be removed from public view, but not from your Bar record. Your changes will be reflected immediately in the online Member Directory.

### **What if my information is incorrect in the online Member Directory?**

If your information is incorrect, choose the "My Account" tab in the Members Only area. Your contact information can be changed in the "Personal" and "Address" links. Your changes will be reflected immediately in the online Member Directory.

### **How do I order a letter of good standing online?**

You can order a letter of good standing by logging in to the Members Only area, clicking on "Store" and then "Membership," and choosing "Letter of Good Standing." For your convenience, there are four delivery options available, including picking it up the same day you have ordered it. If you would prefer to order with a check by mail or courier, contact the State Bar's Membership Department.

### **Why do I have to access Casemaker through the new Members Only area?**

As a free service to our members, our terms with Casemaker require a login process that

ensures those who are using Casemaker are members of the Bar. That is why a login is not new to Casemaker. The only change is how the login is done.


Prior to the new system, Bar members had multiple logins to access information on the Bar's website, including changing your address, accessing Casemaker, checking CLE hours and buying items in the store. With our new system, we have incorporated all member information under one login. This change was made to simplify the login process and to place all pertinent member information in one area.

### **Can I choose what publication(s) to receive from the Bar?**

Yes. In the Members Only area, choose "My Account" and "Personal." From there, you have the option to choose whether or not to receive the *Georgia Bar Journal*, *YLD Newsletter* or mailings from ICLE. You can also order a replacement Bar card in this area.

### **Can I register for section events online?**

After repeated requests from section members over the years, we are now pleased to have the technology to be able to accept online credit card payments to register for section events. After logging in, choose "Events" for a list of upcoming section meetings.

We appreciate your patience as we continue to work on this project. We hope you will find it helpful after the new navigation becomes more familiar. 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](mailto:cliffb@gabar.org).



by Amy V. Howell

# YLD Completes a Successful Year of Helping Others

**A** year ago this month, upon being sworn in as president of the Young Lawyers Division, I challenged our members to do all we could,

in the midst of the most difficult economic conditions we have known, to do all we could to help our colleagues and our neighbors across the state and throughout the year. As State Bar Executive Director Cliff Brashier reported in the April *Georgia Bar Journal*, the young

lawyers in this state have responded to that challenge and continue to serve their communities.

During the past year, the YLD has been focused on achieving three goals: supporting children and fami-

lies, promoting the leadership of young lawyers and creating innovative programs and projects. Each member of the executive council was charged with developing and implementing a service project in the district they represent, supporting the “children and families” theme.

**“During the past year, the YLD has been focused on achieving three goals: supporting children and families, promoting the leadership of young lawyers and creating innovative programs and projects.”**

In terms of sheer numbers and geographic reach into all parts of the state, the list of service projects carried out this year is nothing short of amazing. Atlanta, Canton, Dunwoody, Hall County, Dawson County, Forsyth County, Greene County, Putnam County, Thomasville, Cairo, Colquitt County, Dublin, Clarkston, Macon and Savannah were among the communities touched. The YLD has even been able to perform service when we travel to other states like our teddy bear drive for the

Children’s Hospital in Asheville, N.C. I am proud that in the majority of circumstances when young lawyers came together over the past year, we did so to benefit others.

Within Georgia, countless citizens have benefited from various collection drives initiated by YLD mem-

bers. Among the items collected and donated to worthy programs were:

- School supplies
- Toiletries
- Canned foods
- Suits and cell phones
- Conference tote bags
- Children's clothes
- Luggage
- Books
- Money for bicycle helmets
- Teddy bears
- Toys and furniture
- Computers
- Youth sports equipment

While the YLD has been successful in our collection of donations, young lawyers have also donated their time. In late September 2009, heavy rains swept through several counties in Georgia causing significant flooding and hundreds of homes were damaged. The YLD Disaster Legal Services (DLS) Hotline was set up to help victims. The hotline received more than 75 calls, each generating a response by one of our many attorney volunteers.

The Community Service Projects Committee got together in December and organized more than 30 volunteers to help the Fulton County Department of Family and Children Services sort and wrap hundreds of toys for children in the program. Committee members also gave time and resources this year to children hospitalized at Children's Healthcare of Atlanta. Committee members played Wii games and basketball and made arts and crafts with the kids in "the Zone," a fun area that was created to help children, teenagers and their families forget—at least for a little while—they are in the hospital.

In addition to the statewide innovation of the service projects, the YLD was innovative in creating new programs. The Law-Related Education Committee sponsored its first essay contest aimed at 6-8 graders with the topic "Democracy and the American Family." More than 185 essays were submitted from all across the state, and the top three winners received cash awards of \$500, \$250 and \$100.

Toward meeting the goal of promoting the leadership of young lawyers, the YLD Leadership Academy has been strengthened by the development of an alumni network which gathered in December for a luncheon with the then newly selected 2010 class. The first class-wide Leadership Academy service project, which provided money, computers, sports equipment and other much-needed supplies to the West Broad Street YMCA in Savannah, was a huge success. The Leadership Academy is helping produce a new generation of "Big Bar" leaders, with more graduates seeking election to the Board of Governors. The YLD also



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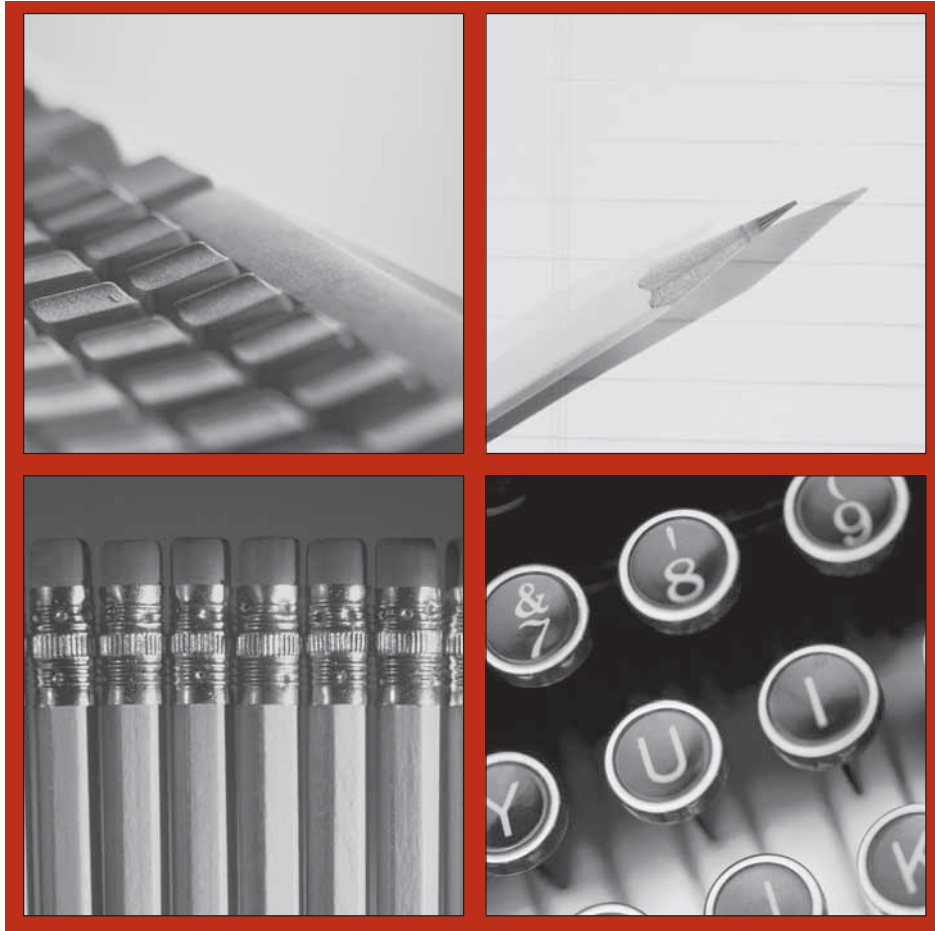
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held panel discussions with young lawyers who were candidates for office and lawyers who were candidates for Attorney General. I look forward to our first gathering of YLD presidents at the Annual Meeting as an opportunity for the YLD leadership to share about our present and learn from our past.

In terms of reaching out to the underemployed, we held a leadership roundtable in October and invited all the affiliate bars and YLD presidents to join in a discussion regarding the challenges facing young lawyers. Presidents of affiliate bars including Savannah, Gwinnett and Marietta joined us via videoconference in the Coastal Georgia and South Georgia offices. We were able to create programming such as a CLE "Get a Job: Tips for the Unemployed and Underemployed Lawyer" and improving the information sharing and promotion of events within the YLD. Natalie Kelley also authored a series in the *YLD Newsletter* offering Law Practice Management tips for readers. Finally, President-Elect Michael Geoffroy organized and participated in a series of panel discussions at Georgia law schools concerning solo practice.

In addition to supporting children and families and promoting the leadership of young lawyers, our goals for this year included creating innovative programs and projects—including the Family Festival and Leadership Academy Service Project, as well as the Minorities in the Profession Pathways series. Toward this end, I am proud to

report the YLD's Summer Public Interest Internship Program (PIIP) is enjoying a most successful launch, exceeding all expectations we had for the inaugural effort.

The goal of this program is to provide \$5,000 stipends to support summer internships for work in public service areas including the judiciary, prosecution, defense, other governmental agencies and not-for-profit organizations. PIIP is one of several new and ongoing programs that honor the YLD's mission of serving both the legal profession and the public. The program exemplifies YLD service throughout Georgia.


Our original objective was to provide at least one internship in each of Georgia's three federal judicial districts by pairing each intern with a preselected, participating public interest, governmental and/or non-profit organization. Thanks to the hard work of YLD leaders and the generous support of the Georgia legal community, we have been able to start this program at a level that exceeds even our most optimistic hopes for this year.

In January, the YLD held its 4th annual Signature Fundraiser, "Black Tie & Blackjack," at the Atlanta office of King & Spalding LLP to benefit the PIIP. Despite the economic crisis facing individuals and businesses alike, this year's event raised more than expected. We were able to raise \$50,000 in net proceeds from that event, which is enough to fund 10 stipends at \$5,000 each for the inaugural class of PIIP interns and enable them to help meet the legal needs of

Georgia's growing indigent and underserved populations, while gaining the hands-on experience that will serve them throughout their careers as lawyers.

In his inaugural address, President Barack Obama reminded us of what can be achieved "when imagination is joined to common purpose, and necessity to courage." I believe that phrase captures the inspiration behind the YLD's accomplishments this year.

Especially with regard to the PIIP, I believe it is necessary for the Bar to continue to support and invest in the career development of young lawyers, as it has through the years with "Bridge the Gap" and now with the TILPP Mentoring Program, I believe the success of the YLD of the past year demonstrates the return of that investment both for the practice and Georgia. The early success of the PIIP is evidence of its merit and presents an opportunity for the Bar to continue to invest in the future of the practice and our fellow lawyers.

I am extremely proud of the work of the YLD this past year and grateful for the dedication and hard work of each of the members of the board, executive council, committee chairs and Bar staff. I end this year with great satisfaction that we have met our goals to help our profession and Georgia. 

**Amy V. Howell** is president of the Young Lawyers Division of the State Bar of Georgia and can be reached at [amyvhowell@gmail.com](mailto:amyvhowell@gmail.com).



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# Going Private Through Stock Reclassification

by Whalen J. Kuller

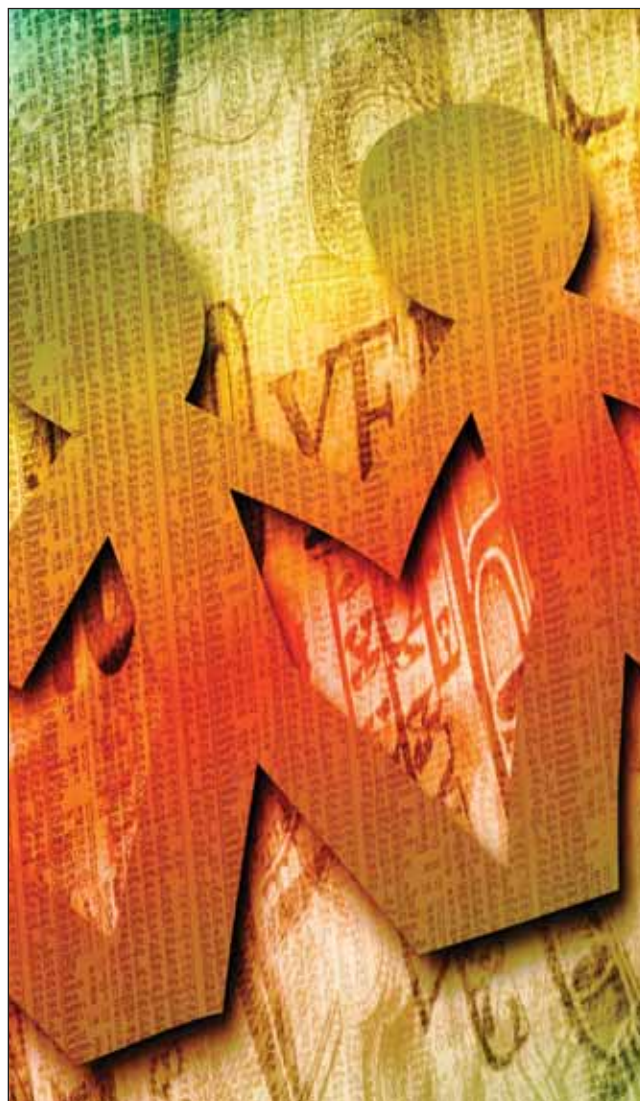
**S**maller public companies have increasingly considered going private, and have gone private, since passage of the Sarbanes-Oxley Act of 2002. Georgia corporations can go private through a stock reclassification transaction, a transaction structure that has several advantages over traditional going-private transaction structures.

## Why Companies Go Private

The Sarbanes-Oxley Act, enacted in July 2002 in response to several high-profile corporate and accounting scandals, established costly new or enhanced standards for all U.S. public companies and public accounting firms.<sup>1</sup> A company can save thousands of dollars in compliance costs each year by going private. For example, SouthCrest Financial Group, Inc., a Georgia bank holding company that went private in December 2009, estimated that by going private it would save approximately \$186,000 per year in direct and indirect costs.<sup>2</sup> The SEC's Advisory Committee on Smaller Public Companies reported that, during the second year of compliance with section 404 of the Sarbanes-Oxley Act, compliance costs equaled, on average, approximately \$900,000 for public companies with a market capitalization between \$75 million and \$700 million.<sup>3</sup>

Yet high Sarbanes-Oxley compliance costs are just one reason that small public companies decide to go private. Other factors include:

- Eliminating the other significant costs of being a public company, including the cost of maintaining public filings and shareholder communications;



- Eliminating public company disclosure requirements, which make potentially sensitive company information available to competitors and customers;

- Allowing management to focus on long-term goals and objectives, rather than on the quarterly imperative of short-term market expectations; and
- Reducing the potential liability for the acts of directors and officers.

Although not all of the exposure, risk and other potential liability associated with being a public company can be eliminated through a going-private transaction—for example, directors and officers of private companies still face the possibility of shareholders' breach of fiduciary duty claims—those that continue after privatization can be practically reduced.

## Getting Below 300 Record Holders

A company can "go private" in many ways. Often, corporations do so through a merger, reverse stock split, tender offer or similarly structured transaction. An alternative structure, which is the focus of this article, is going private through reclassification of a corporation's stock.

Regardless of the transaction structure, in order to go private, a public company must reduce the number of record holders of its registered securities, usually its common stock, to below 300.<sup>4</sup> Once the company's shareholder base is below 300, the company makes a filing with the Securities and Exchange Commission (SEC) to deregister the company's securities and suspend the company's periodic reporting requirements. In addition to the fewer-than-300-shareholders requirement, in order to go private in this manner the company must not have had a registration statement with respect to securities being deregistered become effective (or have been updated as required under section 10(a)(3) of the Securities Act of 1933) during the current fiscal year, and the company must have filed all required periodic reports for the current and

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previous three fiscal years (or such shorter time that the company has been subject to such reporting obligation).<sup>5</sup> Once a company has completed the going-private transaction, resulting in fewer than 300 record holders of its registered securities, the company is allowed to deregister such securities<sup>6</sup> and suspend the company's periodic reporting requirements under the Securities Exchange Act of 1934.<sup>7</sup>

## The Difficulty of Funding Going-Private Transactions

A traditional going-private transaction, usually structured as a merger, reverse stock split or tender offer, requires a company to cash out a sufficient number of its smallest shareholders so that the number of record holders is reduced below 300. Today's capital markets, however, have reduced the availability of funds for companies and have increased the cost and adversely affected the terms of such funds. As a result, most small reporting companies cannot afford, or are reluctant, to reduce their capital by cashing out shareholders in a going-private transaction. As an alternative to the traditional going-private transaction, which can cost a company millions of dollars to cash out a sufficient number of shareholders, companies are increasingly going private through stock reclassification transactions.

## Structuring the Stock Reclassification Transaction

In a going-private transaction structured as a stock reclassification, a corporation exchanges common stock held by certain of its shareholders for a newly created class of preferred stock. Following the stock reclassification transaction, the corporation's common stock is held by fewer than 300 record holders, and a new class of preferred stock of the corporation is held by fewer than 500 record holders.<sup>8</sup> By converting

shareholders' common stock to preferred stock instead of purchasing it, the corporation eliminates the need to have available millions of dollars in transaction consideration. A corporation's expenses (legal, accounting, etc.) incurred in connection with a stock reclassification going-private transaction can also be quite modest when compared to the costs of going private using other transaction structures.

It is important that the number of record holders of the newly created preferred stock remains below 500, so that the corporation is not required to register the newly created preferred stock under section 12(g)(1)(B) of the Securities Exchange Act of 1934.<sup>9</sup> Therefore, this type of stock reclassification going-private transaction is only possible if the corporation has fewer than 800 holders of record. If the corporation has more than 800 holders of record, then the stock reclassification can be structured to cash out the smallest number of shareholders needed to reduce the corporation's overall shareholder base to below 800 holders of record, with the relevant portion of the remaining shareholders having their common stock exchanged for preferred stock. Alternatively, it may be possible for a corporation with over 800 shareholders to go private through creation of two separate classes of preferred stock. For example, when CB Financial Corporation, a North Carolina bank holding company, went private in March 2008, it used a combination of cashing out shareholders and creating two separate classes of preferred stock to reduce the number of record holders of its common stock from approximately 1,359<sup>10</sup> to 252.<sup>11</sup>

A Georgia corporation accomplishes going private through stock reclassification by amending its articles of incorporation.<sup>12</sup> The amendment establishes the terms of the new class of preferred stock and describes how the new reclassification will be implemented, including the exchange ratio and share ownership threshold that

will determine which shareholders will have their common stock exchanged for preferred stock.

A corporation's shareholders must approve the amendment to the corporation's articles of incorporation.<sup>13</sup> Even if a corporation's articles of incorporation provide for "blank check" preferred stock,<sup>14</sup> such "blank check" provisions do not allow the board to reclassify all or some of the corporation's outstanding common stock without shareholder approval. If approved by the shareholders, the reclassification becomes effective when the corporation files the approved amendment with the Georgia Secretary of State.<sup>15</sup> After the amendment is filed, the corporation will exchange common stock certificates of affected shareholders for certificates representing shares of the newly created preferred stock.

In conducting any going-private transaction the corporation's directors must ensure that the transaction is fair to all of its shareholders, whether they retain their common stock, receive shares of the newly created preferred stock or are cashed out.<sup>16</sup> Often, this includes obtaining a fairness opinion from an investment bank or other independent analyst. The corporation will also need to comply with SEC Rule 13e-3, a stringent rule that requires extensive disclosure of going-private transactions.<sup>17</sup> Such disclosure is subject to SEC review and comment. The entire stock reclassification transaction will typically take from four to six months to complete.

## Advantages of the Stock Reclassification Structure

Structuring a going-private transaction as a stock reclassification transaction, rather than as a merger or reverse stock split, has advantages. First, as previously discussed, the overall cost of completing a stock reclassification going-private transaction is modest compared to other types of going-private transaction structures.



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Second, the stock reclassification going-private transaction is attractive to a corporation considering going private because, unlike in other going-private transactions, all of the corporation's shareholders have the opportunity for continued participation in the corporation's results as shareholders. Small corporations in particular may be concerned about forcing out and alienating shareholders who are often also customers or loyal members of the community. The stock reclassification structure allows all of the corporation's shareholders to retain an equity interest in the corporation.

## Structuring Considerations

A corporation must take several considerations into account when structuring a stock reclassification going-private transaction. The terms of the newly created preferred stock must be sufficiently different from the terms of the corporation's common stock in order to avoid a claim by the SEC that the two types of stock are really of the same class.

A stock reclassification transaction may also trigger change-of-control provisions in leases or other agreements to which the corporation is a party. Because some of a corporation's shareholders, as part of the stock reclassification transaction, will have their voting common stock exchanged for preferred stock, the ownership percentages of those shareholders continuing to hold common stock will increase. For example, if 50 percent of a corporation's outstanding shares of common stock are exchanged for preferred stock in a stock reclassification transaction, a shareholder that held 20 percent of the corporation's common stock prior to the transaction and did not have his stock exchanged would own 40 percent of the corporation's common stock after the reclassification, even though such shareholder's holdings did not change.

Therefore, in connection with any stock reclassification transaction, a corporation, with the aid of its legal counsel, must review the corporation's shareholder composition and legal agreements to ensure that no change-of-control provisions are triggered by the transaction.

Finally, when structuring the going-private transaction, a corporation needs to consider ways to be able to restrict the number of post-transaction record holders of its common stock and preferred stock. If, after the going-private transaction, the number of record holders of common stock increases to 300 or more, or the number of record holders of the newly created preferred stock increases to 500 or more, the corporation will once again be subject to the periodic reporting requirements of the Securities Exchange Act of 1934. Although trading of the corporation's stock will be limited after going private, it is possible that sales and other transfers of the corporation's common stock and preferred stock will require the corporation to take action at some point in the future to keep the number of shareholders below the 300-shareholder and 500-shareholder thresholds—for example, through a voluntary stock repurchase program or a cash-out reverse stock split. Also, stock option grants to employees who are not already shareholders of a corporation will increase the corporation's shareholder base when these options are exercised. A corporation will need to consider the steps that it can take at the time of the going-private transaction to prevent or delay the need for further action.

## Dissenters' Rights

In a stock reclassification going-private transaction, a Georgia corporation is not required to provide its shareholders with dissenters' rights in connection with the transaction. If a going-private transaction is structured as a merger<sup>18</sup> or reverse stock split,<sup>19</sup> under Georgia law shareholders may have the


statutory right to "dissent" and demand payment of "fair value" for their shares.<sup>20</sup> Threatened or actual dissent by shareholders increases the expense of the going-private transaction, as the company will need to respond to dissenters' rights actions, including responding to payment demands and sometimes even litigation. Because the Georgia Business Corporation Code does not provide shareholders the ability to dissent in connection with a stock reclassification,<sup>21</sup> a company can avoid the uncertainty and expense that come with dissenters' rights.<sup>22</sup> Companies, however, going private through a stock reclassification often provide dissenters' rights to their shareholders, even though not required, for two reasons: (1) Georgia's dissenters' rights statute provides that dissenters' rights are an exclusive remedy prohibiting shareholders granted dissenters' rights from suing to stop the transaction;<sup>23</sup> and (2) in reviewing a going-private transaction, the SEC weighs the existence of dissenters' rights in determining whether the transaction is fair to the company's shareholders. A company should discuss the issue of granting dissenters' rights with its legal counsel prior to conducting a going-private transaction.

## Disadvantages of Going Private

Going private does have some disadvantages. The most significant disadvantage of going private for most companies is the reduction in the liquidity of their stock. Because there will be no trading market for the company's stock after the going-private transaction, shareholders may find it difficult to sell their stock. Similarly, because the company's stock will be illiquid, the company's ability to raise capital in the future may be impaired. As a result of the 300-shareholder threshold, the company will also be limited in its ability to use its stock as consideration in future acquisitions.

Unlike companies that go private by cashing out certain shareholders, companies that go private by reclassifying their stock are unable subsequently to elect to be taxed as S corporations.<sup>24</sup> Having an existing class of preferred stock outstanding may also discourage or limit the structure of future private equity investments, which often include non-voting preferred stock.

## Conclusion

A going-private transaction may be attractive to Georgia corporations that want to avoid the increased costs and other issues that come with being a public company. Going private through a stock reclassification transaction allows a company to go private without having to expend large amounts of capital to cash out shareholders, which is an important factor in today's market. 



**Whalen J. Kuller** is the managing member of Kuller Law Group, LLC. He represents both startup and

established companies in transactional business matters. Previously, Kuller worked for several major Atlanta law firms, including most recently Jones Day. He can be reached at 770-837-2619 or by visiting [www.kuller-law.com](http://www.kuller-law.com).

## Endnotes

1. See Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 11, 15, 18, 28 and 29 U.S.C.).
2. SouthCrest Fin. Group, Definitive Proxy Statement (Schedule 14A) (Nov. 10, 2009).
3. Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Sec. Exch. Comm'n, at 32-33 (Apr. 23, 2006), available at <http://www.sec.gov/info/smallbus/acspc/acspc-final-report.pdf>.
4. Securities Exchange Act of 1934, 15 U.S.C. § 78l(g)(4) (2009).
5. 17 C.F.R. § 240.12h-3 (2009).
6. 15 U.S.C. § 78l(g)(4).
7. *Id.* § 78l(d).
8. Under the Securities Exchange Act, a corporation engaged in interstate commerce must register a class of equity securities if the securities are held of record by 500 or more shareholders and the corporation has more than \$10 million in assets. 15 U.S.C. § 78l(g)(1)(B); 17 C.F.R. § 240.12g-1 (2009). This article assumes that the \$10 million threshold has been exceeded.
9. See 15 U.S.C. § 78l(g)(1)(B).
10. CB Fin. Corp., Definitive Proxy Statement (Schedule 14A) (Jan, 25, 2008).
11. CB Fin. Corp., Securities Registration Termination (Form 15-12G) (Mar. 3, 2008).
12. The procedure for amending a corporation's articles of incorporation is set forth in O.C.G.A. §§ 14-2-1001 to -1009 (2003 & Supp. 2009).
13. O.C.G.A. § 14-2-1003 (Supp. 2009). Unless the corporation's articles of incorporation or its board of directors require a greater vote or a vote by voting groups, the amendment must be approved by a majority of votes entitled to be cast on the amendment by each voting group entitled to vote on the amendment. *Id.*
14. "Blank check" preferred stock allows a corporation's board of directors to create and issue a series of preferred stock without shareholder approval.
15. O.C.G.A. § 14-2-123 (2003). A corporation may, however, specify a later effective date in the amendment. *Id.*
16. 17 C.F.R. § 229.1014 (2009).
17. *Id.* § 240.13e-3(a)(3)(i)(C) (2009).
18. O.C.G.A. § 14-2-1302(a)(1)(A) (Supp. 2009).
19. *Id.* § 14-2-1302(a)(4).
20. *Id.* §§ 14-2-1301 to -1332 (2003 & Supp. 2009).
21. See *id.*
22. Disgruntled shareholders who are not granted dissenters' rights could, however, still challenge the transaction on fairness or other grounds.
23. See O.C.G.A. § 14-2-1302(b) (Supp. 2009).
24. To qualify as an S corporation, a corporation must not have more than one class of stock. 26 U.S.C. § 1361(b)(1)(D) (2009).

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# 2009 Annual Review of Case Law Developments:

## Georgia Corporation and Business Organization Law

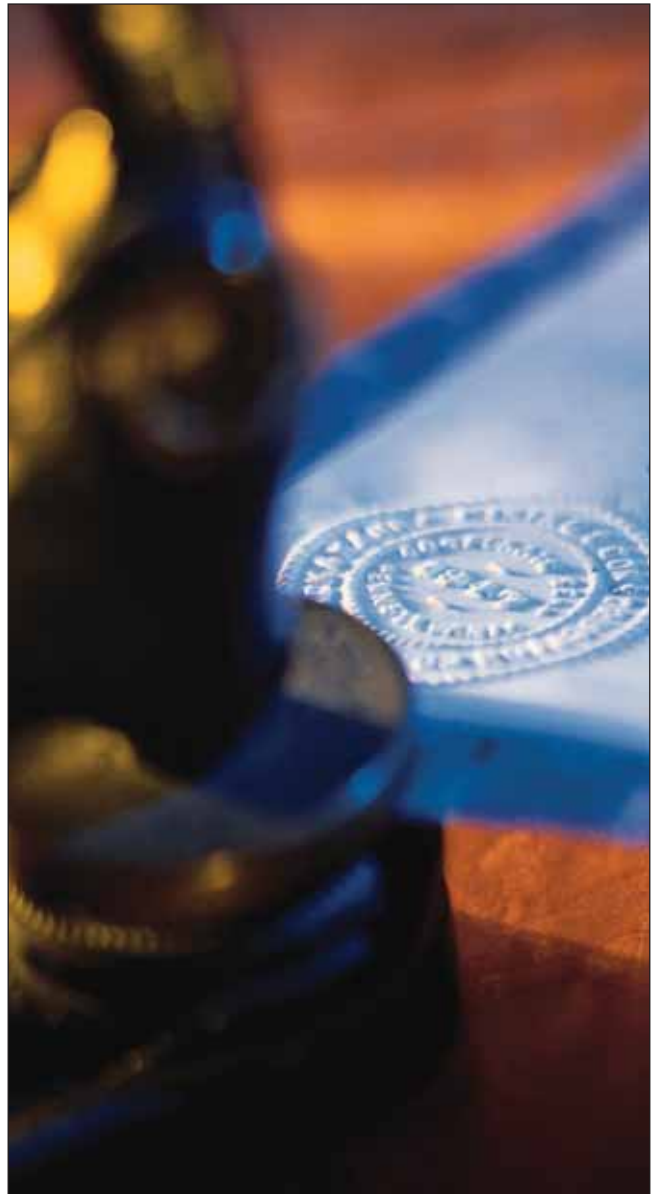
by Thomas S. Richey

**T**his article surveys the decisions addressing corporate and business organization law issues handed down by the Georgia state and federal courts during 2009. Although few of the cases decide matters of first impression, several discuss important points of law on which there is little Georgia authority. The article includes many other decisions because they confirm the continued validity of established principles governing Georgia business organizations and reflect the way in which the courts view and apply those principles.

This article is organized, first, by entity type—corporations, partnerships, limited liability companies and other forms of business ventures. The rest of the article is grouped by subject matter with cases divided into (a) decisions primarily concerning transactional issues that should apply to all forms of business organizations and (b) decisions dealing with litigation issues characteristic of business organization disputes. Following is a brief summary of these developments.

### **Duties and Liabilities of Corporate Directors, Officers and Employees**

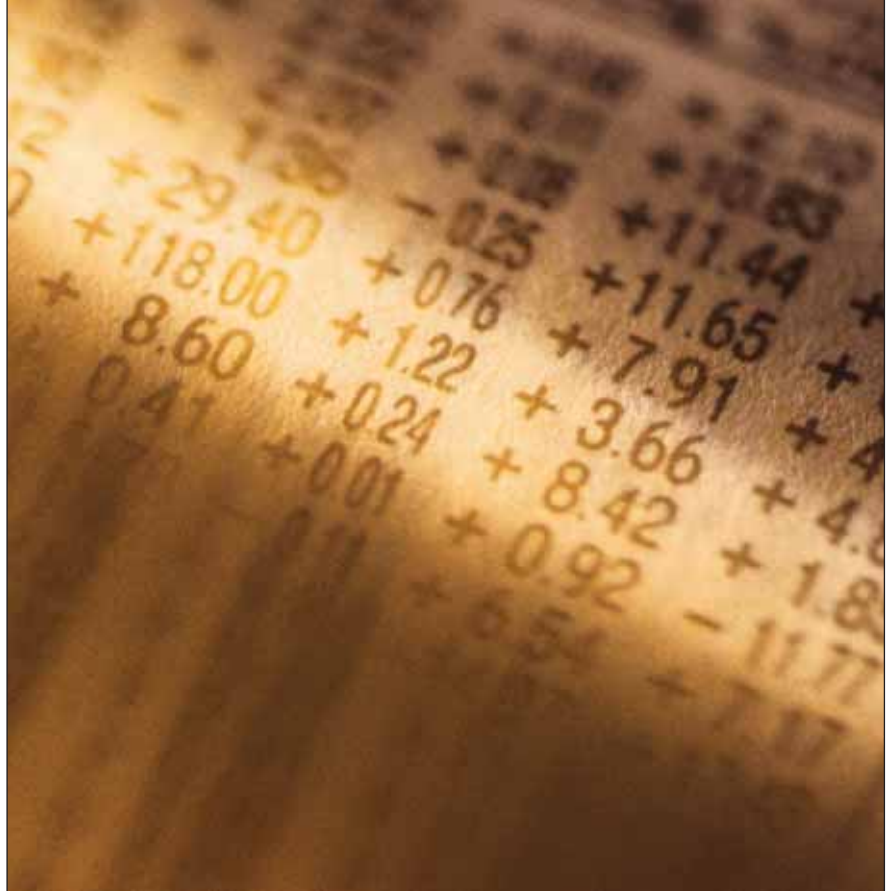
One of the potentially most important decisions of the year, *Brock Built, LLC v. Blake*, 300 Ga. App. 816, 686



S.E.2d 425 (2009) confirms that officers and directors of Georgia corporations cannot be held liable for ordinary negligence in the performance of their corporate duties under O.C.G.A. § 14-2-830 and appears to be the Georgia appellate courts' first recognition of a business judgment rule presumption. The Court of Appeals of Georgia applies these principles to a limited liability company without explanation and without mention of the corresponding provisions of the Georgia Limited Liability Company Act. In an order following trial, the court in *In re: Maxxis Group, Inc.: Hays v. Curry*, Adv. Case No. 06-06554-MGD, (N.D. Ga., Bankr. September 29, 2009) (unpublished), rejected a bankruptcy trustee's claims against directors of a corporate debtor under § 14-2-830, upholding the directors' rights to rely on management statements regarding corporate performance and finding insufficient evidence of their knowledge of the corporation's insolvency.

Two decisions dealt with claims for misappropriation of corporate opportunities—*Professional Energy Management, Inc. v. Necaise*, 300 Ga. App. 223, 684 S.E.2d 374 (2009), in which the court held that employees with authority to bind corporations have fiduciary duties, but not as to corporate opportunities, and *Brewer v. Insight Technology, Inc.*, 301 Ga. App. 694, 689 S.E.2d 330, (2009), holding that a "beachhead" by the corporation is not required for misappropriation of opportunities during a corporate officer's tenure and finding that punitive damages were not capped because of the officer's specific intent to harm the corporation.

*Wachovia Insurance Services, Inc. v. Fallon*, 299 Ga. App. 440, 682 S.E.2d 657 (2009) confirms that a former officer of a Georgia corporation does not owe fiduciary duties not to compete after his departure and after a close review of the evidence holds that the former officer had not violated any of his duties to the corporation before or after he left. The court in *Eayrs v. Absolute Roofing,*



*Inc.*, 300 Ga. App. 825, 686 S.E.2d 432, (2009) ruled that a defendant, who was clearly acting as an agent of a disclosed principal, could not be held personally liable on a contract merely because the contract did not disclose the corporate status of the business. *HRH Architects, Inc. v. Lansing*, 2009 WL 1421217 (N.D. Ga. Apr. 2, 2009) discusses and applies the tests to determine when corporate officers can be held directly or vicariously personally liable for copyright infringement.

## Corporate Stock Ownership and Rights

In 2009 there were several decisions addressing contractual issues involving purchases or option rights to receive stock or other equity-based investments. Two decisions involved applications of Georgia's blue sky law. *Fernandez v. WebSingularity, Inc.*, 299 Ga. App. 11, 681 S.E.2d 717 (2009) dealt with a subscription agreement for an amount of shares inconsistent

with oral representations. The court held that there were issues of fact regarding whether the corporation had accepted the subscription before the purchaser rescinded it, but found his Georgia Securities Act of 1973 claims were barred because he was held to know of the alleged misrepresentations when he executed the subscription agreement. In *Golden Atlanta Site Development, Inc. v. Nahai*, 299 Ga. App. 646, 683 S.E.2d 166 (2009), the court used the blue sky law test for an "investment contract" to determine whether a transaction was a loan or investment for purposes of a usury law claim.

The court in *BDI Laguna Holdings, Inc. v. Marsh*, 301 Ga. App. 656, 689 S.E.2d 39, (2009) addressed an employee's claims against a corporation and one of its officers to enforce oral promises to award certain percentages of the corporation's stock for his service. The court found the pre-employment promises too uncertain to be enforced and also barred by a

merger clause in the employment agreement and the subsequent promises were not supported by additional consideration over and above the services required under the employment agreement.

*Capital Health Mgt. Group, Inc. v. Hartley*, 301 Ga. App. 812, 689 S.E.2d 107 (2009) represents the first decision in the Georgia state appellate courts dealing with a stock appreciation rights agreement. The court applied the standards for discretionary corporate decisions, finding that the corporation failed to act in good faith and exercise honest judgment in its refusal to award the plaintiff any stock appreciation rights. *Clark v. Chapman*, 301 Ga. App. 117, 687 S.E.2d 146 (2009) affirmed an injunction against a transfer of corporate assets by an officer after a judgment creditor's levy on his stock, rejecting in sweeping language the defendant's arguments based on the distinction between ownership of corporate stock and the corporation's ownership of its assets. In *Kelley Manufacturing Company v. Martin*, 296 Ga. App. 236, 674 S.E.2d 92 (2009), the Court of Appeals of Georgia held as a matter of first impression that ESOP participants are entitled to exercise the rights of shareholders to inspect corporate books and records.

## Nonprofit Corporations

*The Victory Drive Deliverance Temple, Inc. v. Jackson*, 298 Ga. App. 563, 680 S.E.2d 588 (2009) affirmed the dismissal of a suit by a church to remove its pastor because it was filed by an improperly constituted board of directors purporting to act for the church.

## Partnership Law Developments

*J.T. Turner Construction Co. v. Summerour*, 301 Ga. App. 323, 687 S.E.2d 612 (2009) held that general partners who were not included as defendants in a suit against the

partnership, while they were entitled to their day in court, did not have the right to contest the partnership's liability to the plaintiff on a default judgment and were thus held personally liable for the judgment. The court in *Asgharneya v. Hadavi*, 298 Ga. App. 693, 680 S.E.2d 866 (2009) affirmed a judgment against a partner for wrongfully terminating an oral partnership and misappropriation of the partnership's business, including the award of lost profits to the partner frozen out of the business. *Morris v. Nexus Real Estate Mortgage and Investment Company*, 296 Ga. App. 477, 675 S.E.2d 511 (2009) addresses the procedures under O.C.G.A. § 14-8-28 for "charging orders" that enable judgment creditors to reach a judgment debtor's interest in a partnership under O.C.G.A. § 14-8-28. The court held among other things that the judgment creditor was not barred by a four-year statute of limitations from reaching a partnership interest assigned by executors of the deceased judgment debtor's estate.

## Limited Liability Company Developments

In *Murphy v. McMaster*, 285 Ga. 622, 680 S.E.2d 848 (2009), the plaintiff was a member of LLCs that were serving as general partners for several real estate limited partnerships. He sued to enforce his rights under the LLC operating agreements to provide property management services to the partnerships. The Supreme Court of Georgia held that an interlocutory injunction was properly denied, since equity does not generally compel performance of personal service contracts and since the member could recover damages and had an adequate remedy at law.

*Ledford v. Peebles*, 568 F.3d 1258 (11th Cir. 2009) concerns an alleged breach of disclosure obligations when management members of an LLC purchased the membership interests of the financial members of the LLC pursuant to a buy-sell

agreement where one could name a price and force the other parties to decide whether to buy or sell. The 11th Circuit Court of Appeals held that the plaintiffs could not prove reliance or causation because they were admittedly unable to run the business or to replace management and thus had no choice but to sell at the named price.

## Other Forms of Business Organization

*Techbios, Inc. v. Champagne*, 301 Ga. App. 592, 688 S.E.2d 378 (2009) is the first Georgia appellate court case involving a "teaming agreement"—an arrangement through which parties can coordinate business activities without necessarily forming a joint venture or partnership. The court reversed dismissal of the plaintiff's claims for breach of the teaming agreement for failing to disclose and share business opportunities, where the defendants allegedly misappropriated opportunities for themselves which resulted from the plaintiffs' efforts under the teaming agreement and in which the plaintiffs could have profitably participated.

## Transactional Cases

In *A&B Blind & Drapery Company, Inc. v. B&B Glass And Storefronts, Inc.*, 298 Ga. App. 210, 679 S.E.2d 782 (2009), the Court of Appeals of Georgia affirmed a trial court ruling that enforced the purchaser's contractual set-off rights for the sellers' breach of warranties under an asset purchase agreement, but denied any other remedy because the purchaser was sophisticated and failed to conduct sufficient due diligence before entering into the transaction. The Court of Appeals in *Corey v. Clear Channel Outdoor, Inc.*, 299 Ga. App. 487, 683 S.E.2d 27 (2009) enforced a covenant not to compete in an asset purchase agreement where the seller attempted to circumvent the covenant using a straw owner. In *McKesson Corporation v. Green*, 299 Ga. App. 91, 683 S.E.2d 336 (2009), the court

# unsafe playgrounds

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More than 1/3 of playground injuries are severe with children incurring fractures, internal injuries, concussions, dislocations and other long-term injuries.



On average, at least one child **DIES** every month from injuries sustained on a playground. More than 75 percent happen on public playgrounds while 23 percent happen on home playgrounds right in your own backyard.

The National Program for Playground Safety recently gave an average national grade of **C+** on the safety of playgrounds across the country.

Don Keenan reveals how local Georgia playgrounds fare in reviews on public safety—see the new 2010 Report Cards & photos from the Foundation's research of more than two-dozen playgrounds with tips and information for ALL parents, caregivers, educators, and concerned citizens.

PLAYGROUND SAFETY REPORT CARD

NAME OF PLAYGROUND: \_\_\_\_\_

Subject: \_\_\_\_\_

Grade (P/F): \_\_\_\_\_

	Grade (P/F)
1. CONDITION of equipment	_____
2. SURFACES must be smooth	_____
3. TRIP hazards eliminated	_____
4. TIPPING of equipment prevented	_____
5. FALL ZONES adequate	_____
6. GAPS or SPACES absent	_____
7. ELECTRICAL WIRES secured	_____
8. DANGEROUS TREE LIMBS removed	_____
9. SURFACE AREAS safe and uniform	_____
10. HAZARDS REMOVED	_____

**What can YOU do to help?**

Visit [www.keenanskidsplaygroundsafety.com](http://www.keenanskidsplaygroundsafety.com) to print off the Playground Safety Handbook & Report Card. Also download the Playground Safety Podcast for even more examples!



Keenan is a renowned child advocate attorney, founder of the Foundation, author of *365 Ways to Keep Kids Safe*, one of Oprah Winfrey's "People of Courage" and an Emory University Lifetime Child Advocate Award. Special thanks to our Foundation volunteer who helped with this project!

rejected claims by selling shareholders in a stock-for-stock merger based on misrepresentations regarding their own company. The plaintiffs argued that they would have sold their stock rather than accept shares of the merged company, but the court held that the misrepresentations overvalued their shares and did not cause their losses. The decision in *Summit Automotive Group, LLC v. Clark*, 298 Ga. App. 875, 681 S.E.2d 681 (2009) reaffirms the rule that the Georgia Bulk Sales Act does not permit an action in tort against the transferee.

## Litigation Issues

### Director and Officer Liability Litigation

The U.S. District Court for the Northern District of Georgia in *Lubin v. Skow*, 2009 WL 4641761 (N.D. Ga. Nov. 30, 2009) dismissed claims for mismanagement by a Chapter 7 bankruptcy trustee for a Georgia bank holding company against directors of its failed banking subsidiary, holding that the claims belong exclusively to the Federal Deposit Insurance Corporation as receiver, not the bankruptcy trustee. In *Goldstein v. Wells*, 295 Ga. App. 870, 673 S.E.2d 325 (2009), the Court of Appeals of Georgia, applying Maryland law, affirmed dismissal of a derivative action after rejection of the shareholders' demand by an independent committee of directors.

### Insurance and Indemnification

In *Four Seasons Healthcare, Inc. v. Willis Insurance Services of Georgia, Inc.*, 299 Ga. App. 183, 682 S.E.2d 316 (2009), the Court of Appeals of Georgia sitting *en banc* affirmed dismissal of professional liability claims against an insurance broker engaged to obtain director and officer liability coverage for a pending transaction where the insurers, invoking different exclusions, denied coverage under both the existing and new D&O policies—a majority shareholder exclusion

under the existing policy and a prior acts exclusion under the new policy. Over a strong dissent, the court held the insureds barred by their knowledge and negligence in failing to discover the exclusions. *Jansky v. SunTrust Banks, Inc.*, 2009 WL 33055200 (N.D. Ga. Sept. 18, 2009) enforced a corporate officer's rights to mandatory indemnification for successful defense of a counterclaim by the corporation, holding that even in the absence of a retainer agreement or payment of fees, the officer's liability to her counsel in quantum meruit would support the award.

### Arbitration

In *Hansen & Hansen Enterprises, Inc. v. SCSJ Enterprises, Inc.*, 299 Ga. App. 469, 682 S.E.2d 652 (2009) an arbitration award was vacated in a sale of business dispute because the arbitrator failed to decide counterclaims on promissory notes given in the transaction. While the notes themselves did not contain arbitration clauses, they were an integral part of a transaction governed by agreements requiring arbitration.

## Corporate Separateness and Piercing the Corporate Veil

In an unusual case, *EnduraCare Therapy Management, Inc. v. Drake*, 298 Ga. App. 809, 681 S.E.2d 168 (2009), the Court of Appeals of Georgia reversed a default judgment against a corporate parent that held it liable for its subsidiary's tortious conduct. The court held that under O.C.G.A. § 9-11-55, the failure to answer a complaint admits only well-pleaded facts, and the complaint failed to allege any facts that would justify disregarding the legal separateness of parent and subsidiary and imposing liability for the subsidiary's acts. In two decisions, *Anthony v. Gator Cochran Construction, Inc.*, 299 Ga. App. 126, 682 S.E.2d 140 (2009) (*certiorari* granted) and *Renee Unlimited, Inc. v. City of Atlanta*, 301 Ga. App. 254,

687 S.E.2d 233 (2009), the Court of Appeals upheld jury verdicts piercing the corporate veil as supported by the evidence. In *Otero v. Vito*, 2009 WL 3063426 (M.D. Ga. Sept. 22, 2009), the U.S. District Court for the Middle District of Georgia held that Georgia does not recognize reverse piercing of the corporate veil and permitting a corporation to be held liable for its owner's debts.

## Evidence Issues

In *Ross v. State*, 298 Ga. App. 525, 680 S.E.2d 435 (2009), the Court of Appeals of Georgia addressed the admissibility under the business records exception to the hearsay rule of documents that a business obtains from third parties. In this case, copies of checks dishonored by third party banks were held admissible as part of the depository bank's business records. The court in *Standard Building Company, Inc. v. Wallen Concept Glazing, Inc.*, 298 Ga. App. 443, 680 S.E.2d 527 (2009) held that an unauthenticated printout of search results from the website of a foreign state's secretary of state were inadmissible in a proceeding to domesticate a default judgment to establish that the defendant was doing business in the foreign jurisdiction.

## Service of Process


*Pallman Maschinenfabrik GmbH & Co. v. Evergreen Composite Technology, LLC*, 2009 WL 112683 (M.D. Ga. Jan. 16, 2009); *Tunstall v. Deutsche Bank Trust Company America*, 2009 WL 274153 (M.D. Ga. Feb. 4, 2009) addressed provisions of the Georgia Business Corporation Act and the Georgia Limited Liability Company Act regarding the appointment and maintenance of agents for service of process. The Court of Appeals of Georgia in *Anthony Hill Grading, Inc. v. SBS Investments, LLC*, 297 Ga. App. 728, 678 S.E.2d 174 (2009) held that substituted service on the Georgia Secretary of State under O.C.G.A. § 14-11-209(f) was ineffective because the plaintiff failed to comply with the

technical statutory requirements regarding the number of copies that must be served on the Secretary of State and ineffective under O.C.G.A. § 9-11-4(e)(1) for the plaintiff's failure to make use of known alternative means of service.

## Venue

The decision in *HD Supply, Inc. v. Garger*, 299 Ga. App. 683 S.E.2d 671 (2009), a case involving allegedly jointly liable tortfeasors, addresses the issue of when venue is determined under O.C.G.A. § 14-2-510(b)(3) as to a corporate defendant added by amendment to the litigation. The court held that venue as to the added defendant "relates back," i.e., is determined as of the date of filing suit, and thus venue was proper even though the original codefendant did not maintain an office or transact business in the county and the added defendant had closed its office by the time it was joined.

## Representation of a Corporation in Court

*Heath v. Beech*, 300 Ga. App. 756, 686 S.E.2d 283 (2009), applies the long-established rule that corporations may only appear in a court of record through duly licensed counsel, holding that where a corporate stockholder filed an answer on behalf of himself and the corporation, the trial court acted properly in striking the answer as to the corporation and entering a default judgment against it. 



**Thomas S. Richey** concentrates his practice in securities, banking and corporate litigation and conducts an advisory practice in director and officer liability insurance coverage at Bryan Cave LLP. He founded and led Georgia ICLE's Annual Business Organization Litigation

Seminar for 14 years. He also serves on the State Bar's Corporate Code Revision Committee. Richey has published annual surveys of Georgia corporate and business organization case law developments for the years 2005-08, copies of which are available on request to [tom.richey@bryancave.com](mailto:tom.richey@bryancave.com).

*This is an overview of the 2009 survey of Georgia corporate and business organization decisions. For the full survey, including an extended discussion of each of these cases, you may download or print the document at the following link: [www.bryancave.com/2009-GA-Survey](http://www.bryancave.com/2009-GA-Survey).*

*This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the author only and not Bryan Cave LLP. The author would like to acknowledge and thank Ann Ferebee and Vjolca Prroni for their assistance with the article.*



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# Budget Plays a Prominent Role in the Historic 2010 General Assembly

by Tom Boller

**I**n the midst of a historically challenging budget cycle and shifting politics, the State Bar navigated the 2010 General Assembly and made progress on many issues of importance to the practice of law. Numerous members of the Legislature, especially the attorneys, are to be commended for their efforts to support the State Bar and the judicial branch. 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. (See accompanying list on page 27.)

We are grateful to these members and the numerous others that supported the legal profession in the 2010 General Assembly.



Photo by Johanna Price

## State Bar 2010 Legislative Agenda

The following State Bar agenda bills passed during the 2010 General Assembly:

- **SB 131 – Trust Code Revisions:** This bill by Sen. Bill Hamrick (R-Carrollton) is a substantial revision of the Trust Code and was initiated by the Georgia Trust Code Revision Committee that was sponsored by the State Bar in 2003. The bill was passed out of the Senate in 2009 and achieved final legislative passage in the House this year.
- **SB 491 – Long-arm Statute:** This bill, requested by the Family Law Section and authored by Sen. Bill Cowsert (R-Athens), provides jurisdiction over non-residents of Georgia who are involved in a contempt action involving custody.
- **SB 461 – Federal Estate Taxes:** This bill by Sen. Seth Harp (R-Midland), requested by the Fiduciary Law Section, was filed in response to the fact that the estate tax is not in effect for 2010, and the bill provides additional flexibility to executors and trustees in circumstances where will directives reference the tax code.

While the state budget problems continued to be a challenge for the judicial branch, a number of key judicial budget categories were resolved favorably:

- **Ga. Appellate Practice Resource Center Funding Request:** The Judicial Council requested \$551,000 for the amended FY'10 budget (\$580,000 less \$29,000 for one vacant position) and \$556,800 for the FY'11 budget for the Resource Center. The final AFY '10 budget includes \$551,000, and the final FY '11 budget includes \$565,000 for the Resource Center.
- **Office of Dispute Resolution:** The Judicial Council requested

## Lawyers in the Georgia General Assembly

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Rep. Stacey Abrams (D-Atlanta)  
Rep. Stephen Allison (R-Blairsville)  
Rep. Stephanie Stuckey Benfield (D-Atlanta)  
Rep. Doug Collins (R-Gainesville)  
Rep. Rick Crawford (D-Cedartown)  
Rep. Elly Dobbs (D-Atlanta)  
Rep. Rich Golick (R-Smyrna)  
Rep. Mark Hatfield (R-Waycross)  
Rep. Mike Jacobs (R-Atlanta)  
Rep. Tom Knox (R-Cumming)  
Rep. Roger Lane (R-Darien)  
Rep. Kevin Levitas (D-Atlanta)  
Rep. Edward Lindsey (R-Atlanta)  
Rep. Billy Maddox (R-Zebulon)  
Rep. Randal Mangham (D-Decatur)  
Rep. Doug McKillip (D-Athens)  
Rep. Mary Margaret Oliver (D-Decatur)  
Rep. Larry O'Neal (R-Bonaire)  
Rep. DuBose Porter (D-Dublin)

Rep. Jay Powell (R-Camilla)  
Speaker David Ralston (R-Blue Ridge)  
Rep. Matt Ramsey (R-Peachtree City)  
Rep. Pam Stephenson (D-Decatur)  
Rep. Rob Teilhet (D-Smyrna)  
Rep. Lee Thompson (D-Lawrenceville)  
Rep. Tom Weldon (R-Ringgold)  
Rep. Wendell Willard (R-Sandy Springs)

### Senate

Sen. David Adelman (D-Decatur)  
Sen. Bill Cowsert (R-Athens)  
Sen. John Crosby (R-Tifton)  
Sen. Bill Hamrick (R-Carrollton)  
Sen. Seth Harp (R-Midland)  
Sen. Judson Hill (R-Marietta)  
Sen. Ronald Ramsey (D-Decatur)  
Sen. Preston Smith (R-Rome)  
Sen. Curt Thompson (D-Tucker)  
Sen. Dan Weber (R-Dunwoody)  
Sen. John Wiles (R-Marietta)

\$64,256 and \$70,276, respectively, in the AFY '10 and FY '11 budgets. The final budgets for AFY'10 and FY'11 appropriated \$61,913 and \$65,013, respectively.

- **Victims of Domestic Violence Funding:** The Administrative Office of the Courts requested \$1,887,158 for the AFY '10 budget, and that was the amount in the House and Senate-passed versions of AFY '10. They requested \$1,907,023 for the FY '11 budget, and that final budget appropriated \$1,887,159 and confirmed administration of this program by the AOC.
- **Ga. Public Defender Standards Council:** The governor's recommended budget for the GPDSC is \$40,135,359 (of which \$38,935,359 are state funds) in the FY '11

budget. The final version of the AFY '10 budget includes \$37,503,926. The final version of the FY'11 budget includes state funds of \$38,438,945.

- **Funding for Senior Judges:** The FY '11 budget included over \$600,000 to fund senior judges.

Two State Bar approved bills did not pass this session:

- **HB 24 – Rules of Evidence:** The comprehensive revision of the rules of evidence, essentially conforming the Georgia rules to Federal rules, bogged down last year due to issues raised by the Prosecuting Attorneys Council. After a heroic effort led by Chairman Wendell Willard (R-Sandy Springs), those concerns were resolved and HB 24



**State Bar of Georgia  
Committee on Professionalism**



**Chief Justice's Commission  
on Professionalism**

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Two (2.0) hours of CLE credit, including 1.0 hour of Ethics and 1.0 hour of Professionalism

Demonstrating that professionalism is the hallmark of the practice of law, the Law School Orientations have become a central feature of the orientation process for entering students at each of the state's law schools over the past 16 years. The Professionalism Committee is now seeking lawyers and judges to volunteer to return to your alma maters or to any of the schools to help give back part of what the profession has given you by dedicating a half day of your time this August. You will be paired with a co-leader and will lead students in a discussion of hypothetical professionalism and ethics issues. Minimal preparation is necessary for the leaders. Review the provided hypos, which include annotations and suggested questions, and arrive at the school 15 minutes prior to the program. Pair up with a friend or classmate to co-lead a group (Please note, if you are both recent graduates we will pair you with a more experienced co-leader).

Please consider participation in this project and encourage your colleagues to volunteer. You may respond by completing the form below or calling the Chief Justice's Commission on Professionalism at (404) 225-5040; fax: (404) 225-5041. Thank you.

**ATTORNEY VOLUNTEER FORM  
2010 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM**

Full Name

(Mr./Ms./Judge) \_\_\_\_\_

Address: (where we will send your group leader materials via USPS):  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Area(s) of Practice: \_\_\_\_\_

Year Admitted to the Georgia Bar: \_\_\_\_\_

Bar#: \_\_\_\_\_

Please pair me with: (optional) \_\_\_\_\_

**(Please check appropriate box)**

<u>LAW SCHOOL</u>	<u>DATE</u>	<u>TIME</u>	<u>RECEPTION/LUNCH</u>	<u>SPEAKER</u>
Emory	Fri., August 20	Emory does not need anymore volunteers*		TBD
<input type="checkbox"/> Georgia State	Tues., August 10	3:45 - 5:45 p.m.	5:45 - 6:45	Ms. Alison Burleson
<input type="checkbox"/> John Marshall	Sat., August 14	9:00-11:30 a.m.	11:30 - 12:30	TBD
<input type="checkbox"/> Mercer	Fri., August 13	1:30 - 3:30 p.m.	3:30-4:30 p.m.	Mr. Virgil Adams
<input type="checkbox"/> UGA	Fri., August 13	2:00 - 4:30 p.m.		TBD

**Please return to:** State Bar Committee on Professionalism; Attn: Nneka Harris-Daniel • Suite 620  
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Photo by Tyna Duckett

passed the House late in the 2010 session. It subsequently passed the Senate Judiciary committee. However, the final bill was not taken up by the full Senate and therefore died. While the bill failed, we want to thank and acknowledge the tremendous effort made by Speaker David Ralston (R-Blue Ridge), Chairman Willard, Rep. Ed Lindsey (R-Atlanta), Rep. Mary Margaret Oliver (D-Decatur), Sen. Seth Harp (R-Midland), Sen. Bill Hamrick (R-Carrollton), Sen. Ron Ramsey (D-Decatur), Brian Fortner and Gary Moss with the prosecuting attorneys, and Tom Byrne and Paul Milich representing the State Bar.

- **HB 917—Foreign Deposition Act:** This bill, introduced by Rep. Mike Jacobs (R-Atlanta) and pro-posed by the Uniform Law Commissioners revising the foreign deposition act, also passed the House but failed to reach the Senate floor for debate.

A number of bills were opposed by the State Bar. None of those bills passed, however, SB 42 deserves further comment:

- **SB 42—Ga. Public Defenders Standards Council (GPDSC):** SB 42, which reduced the council to an advisory board passed the Senate in 2009 and was opposed by the State Bar. SB 42 did not pass the House, but as part of the effort to review the authority of the GPDSC, Chairman Rich Golick (R-Smyrna) asked the State Bar, ACCG, the GPDSC and CPD's to develop a plan to handle conflict cases and to address other issues involving the governance and operation of the council, prior to next legislative session. This effort is underway and the State Bar appreciates Chairman Golick's encouragement to develop a plan for consideration by his committee.

Finally, as part of the revenue enhancement plan designed to fill the deep budget deficit, a provision of HB 1055, the massive "fee bill," raised the cost of copying the record of cases on appeal from \$1.50 per page to \$10 per page. This provision escaped the notice of most if not all interested parties, including several legislators. Unfortunately, the State Bar did not learn of the provision

until after the governor had signed the legislation into law on May 12. This one change will increase the cost of every civil and criminal appeal in the state by thousands, and in many cases tens of thousands, of dollars. The State Bar is meeting with interested parties from all aspects of the judicial process to explore ways to address this provision, until such time as the General Assembly can review and fix the matter.

As always, the State Bar is appreciative of the support of local bar associations and members of our Legislative Action Network. The communications from attorneys to their local legislators had a very positive effect on the final judicial budget and several other important matters. In this election year that will bring numerous new faces to the political leadership of our state, it will remain vitally important for State Bar members to remain active in the process. GBJ

**Tom Boller, Mark Middleton, Rusty Sewell, Charlie Tanksley and Hunter Towns** serve as the State Bar's lobbyists. They can be reached at [tom@gacapitolpartners.com](mailto:tom@gacapitolpartners.com) or at 404-872-0335.

# Want to Multiply the Georgia Tax Dollar? Fund Domestic Violence Programs

by Adrienne Hunter-Strothers

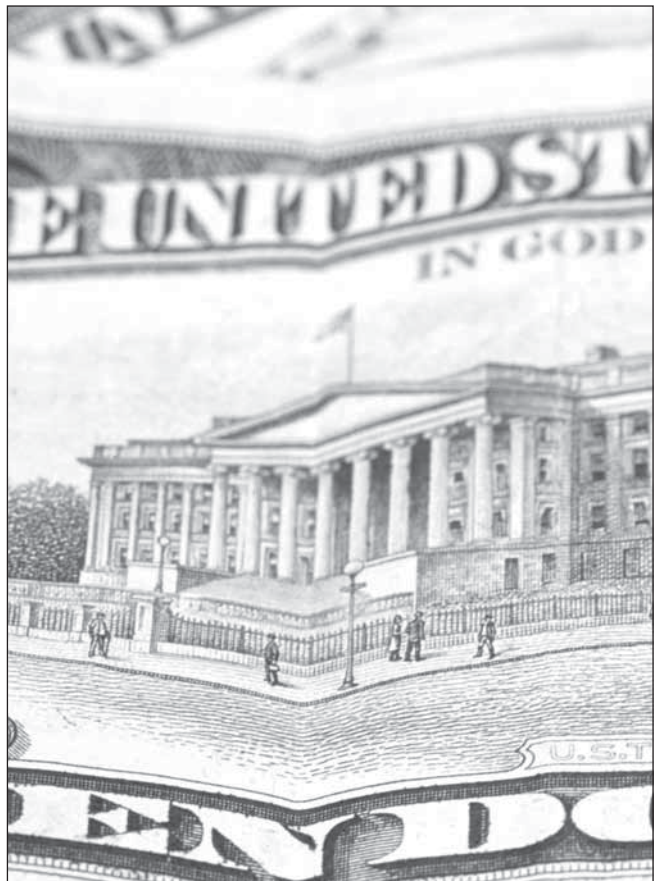
*TO THE MEMBERS OF THE GENERAL ASSEMBLY: The past year has confronted Georgia, and our nation, with severe economic challenges that we have not experienced in decades. Just as every Georgia family must make decisions on how to allocate available income and prioritize needs, the state must do the same . . .*

*Sonny Perdue, governor of the state of Georgia*  
The Governor's Budget Report, Amended Fiscal Year 2010

**A**cross the country, state governments are facing tremendous tax revenue shortfalls. Georgia is no exception. In order to balance state budgets, governors and legislators profess their task as “prioritizing needs,” leading constituent groups to argue that the needs served by their particular interest group are greater or more important than the needs served by another. This zero sum process then pits certain groups against others in the quest for state funding.

## The Multiplier Effect

A better approach to the current state budget crisis would be for the state to evaluate funding by the multiplier effect. The state should 1) direct dollars to those budget items that reduce financial burdens on a multitude of disparate state priorities and services. In this manner, state dollars multiply into many more *impact*



During the economic downturn, demand for services at Georgia's domestic violence shelters has increased by as much as 50 percent. Most shelters report that victims are staying in shelters for longer periods of time—at least double—because it has become harder for victims to become financially independent in the current economic environment.

dollars; and 2) focus on those budget items that receive significant private sector funding, resulting in further multiplication of the Georgia tax dollar. I propose that this two-fold approach heeding the multiplier effect is a good way to manage state funds at a time of declining state revenue. Domestic violence programs illustrate how this approach would benefit the state of Georgia.

### **Multiplier #1 — Reduction in Burdens on Other State Priorities**

In order to understand how Georgia's domestic violence programs heed part one of the multiplier effect, one must understand the relationships between domestic violence and disparate state burdens, for example, state burdens in the areas of public assistance and homelessness, health care costs, education, law enforcement and the judiciary.

Regarding public assistance and homelessness, domestic or intimate partner violence significantly increases the rates at which individuals become dependent on the state. Studies consistently show that at least 50 to 60 percent (some studies indicate rates as high as 80 percent) of women receiving public benefits have experienced physical abuse by an intimate partner at some point during their adult lives, compared to 22 percent of the general population.<sup>1</sup> Further, intimate partner violence is a leading cause of homelessness among women and children. A recent survey of U.S. cities shows that 44 percent of

homeless women and children are fleeing domestic abuse.<sup>2</sup>

Regarding health care costs, domestic or intimate partner violence significantly increases the costs to state health care providers, particularly in the area of emergency room services. Studies have shown that 37 percent of all women who seek care in hospital emergency rooms for injuries receive those injuries as the result of attacks from current or former spouses or boyfriends.<sup>3</sup> It should be noted further that the health effects of domestic violence are not limited to the trauma injuries experienced by the actual victims of the violence. Studies show children who have witnessed domestic violence suffer symptoms of post-traumatic stress disorder and are at greater risk than their peers of having allergies, asthma, gastrointestinal problems, headaches and flu.<sup>4</sup>

Even state education resources are affected by incidents of domestic violence. Teacher furloughs and increases in class size have been instituted by the state in order to deal with declines in state revenue. School districts and teachers are being asked to teach with fewer days of instruction and more students. Student behavioral problems make this task nearly impossible. Studies show children exposed to maternal intimate partner violence, without experiencing any child maltreatment, are 40 percent more likely to have a total behavioral problem score within the borderline to clinical range than other children.<sup>5</sup> These children are more likely to disrupt classrooms and behave violently in school, draining teacher attention

and school resources that should be focused on student learning. When considering children and the impact of domestic violence on both child health care and education, as described above, it is important to note that children witnessed 18 percent of the domestic violence murders in Georgia between 2004 and 2009.<sup>6</sup>

Finally, of great interest to lawyers, law enforcement and judicial resources are drained by high rates of domestic or intimate partner violence. In the punishment of offenders, a significant number of the criminal cases before our nation's courts relate to domestic violence. On average, nationally, intimate partner violence makes up 22 percent of all nonfatal violent crime experienced by women.<sup>7</sup> The national statistics for fatal violent crimes are worse. Studies show that intimate partners commit 30 percent of the homicides of women.<sup>8</sup> The number of women shot and killed by their husbands or intimate partners is more than three times higher than the total number murdered by any method by male strangers.<sup>9</sup> Georgia currently is ranked 15th in the nation for the rate at which men kill women in single-victim homicides, most of which are domestic violence murders.<sup>10</sup>

Domestic violence criminal matters come before our state courts over and over again. The judiciary admirably manages the disposition of these cases and metes out punishment for the offenders. However, we must stop to consider that these crimes do not involve organized crime or drug or gang activity; these crimes instead

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involve two individuals in some form of an intimate relationship. What an unfortunate use of precious judicial resources.

The judiciary also admirably addresses domestic violence in the civil setting in an important role that cannot be underestimated. Our county courts have established systems for issuing temporary and permanent protective orders to victims of domestic violence who desire legally-mandated physical barriers from their offenders. Through orders of protection, judges may order offenders to leave the marital residence and provide spousal and child support to the victim. Judicial response to domestic violence is critical and, when paired with a strong community response, highly effective. Even though orders of protection alone are not enough to save many victims of domestic violence ultimately from further violence and death, one study based in a community known to coordinate efforts against domestic violence found that 86 percent of the women who received protective orders reported that the abuse subsided or ceased as a result.<sup>11</sup>

However again, efforts to combat domestic violence come at a tremendous cost to the judiciary. If we are really serious about alleviating the burden on our state superior court judges, whose budgets may be cut by the Legislature, we must focus on reducing the incidents of domestic violence.

## Georgia's Domestic Violence Programs

Georgia's domestic violence programs support and reduce burdens on the state in the areas described above—public assistance and homelessness, health care, education, law enforcement and the judiciary—by helping to reduce the number of Georgia families mired in domestic violence. Georgia's domestic violence programs thereby multiply the value of Georgia's tax dollars.

Georgia's domestic violence shelters reduce state burdens first and foremost by providing a safe haven for victims and their children to escape violence. In 2009, Georgia domestic violence shelters provided safe housing for 7,756 victims and their children.<sup>12</sup> These shelters also support victims from afar, counseling victims in how to escape violence through 24-hour crisis lines. In 2009, Georgia domestic violence shelters answered 72,185 crisis calls.<sup>13</sup>

These shelters also provide economic tools for victims to become independent and financially self-sufficient, providing victims job search assistance, transportation to work, job-readiness training and budgeting classes. Georgia's domestic violence shelters aid victims in progressing to healthy and productive lives, after leaving unhealthy and dependent relationships that tend to make them unable to care for themselves and their children. These people are often physically injured and sick and are repeatedly seeking assistance from our police officers and our courts.

Georgia's domestic violence programs also perform necessary community outreach to reduce the commission of violent assaults against intimate partners. Once exclusively operated by women, these programs now engage men to be agents in the effort to reduce incidents of domestic violence in our communities. These men go out into the community and talk about appropriate conflict resolution and respect for intimate partners. The YWCA of Northwest Georgia's "Y's Guys" Men's Committee is an example. Decatur-based "Men Stopping Violence" is another. Advocates involved with the issue of domestic violence believe profound cultural shifts in the ways many men view themselves and their intimate relationships are needed to reduce incidents of domestic violence. Men of all ages and backgrounds speaking out against domestic violence powerfully moves our Georgia communities toward that goal.

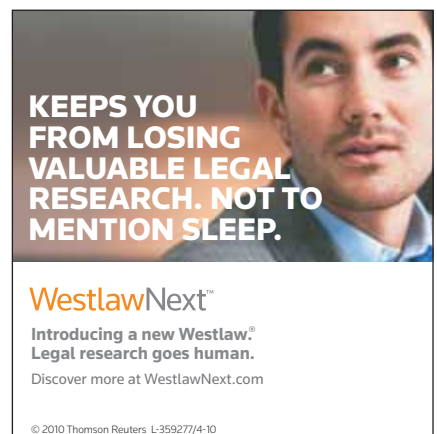
## Multiplier #2 — Funding from Private Sector

Even with the tremendous benefits offered to the state, Georgia's domestic violence shelters have never relied solely or even primarily on state funds. Georgia's 45 state-certified domestic violence shelters raise three-fifths of their funding to operate through the private sector, thus multiplying each dollar of state funding they receive.

Historically, domestic violence shelters have leveraged *every* state dollar received to create *four* additional dollars from the private sector. In Georgia, each domestic violence shelter receives only \$89,942 in state funding.<sup>14</sup> The average cost of operating a single domestic violence shelter in Georgia exceeds \$500,000 per year, not including the outreach and community-based services described above.<sup>15</sup> That is a 1:5 ratio, vividly demonstrating part two of the multiplier effect. Georgia's domestic violence shelters multiply Georgia's tax dollars by actively seeking private sector participation in solving serious state problems.

## Current Risks

The multiplier effect works both ways. In turn, cuts in domestic violence shelter and program funding have an equally multiplied negative effect. It is important that Georgians realize that cuts to domestic programs tangibly increase the burdens on other



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important state functions, including the judiciary.

In 2009, Georgia's domestic violence shelters turned away 2,483 victims and their children due to a lack of available space.<sup>16</sup> These victims presumably returned to their abusive homes, likely seeking assistance from hospitals, law enforcement and the judiciary.

Unfortunately, the connections have not been made by state leadership. Instead of redirecting state resources in a manner that would alleviate pressures on the state, the Georgia Legislature cut \$615,000 from all domestic violence shelters and sexual assault programs for the fiscal year 2010 budget in response to the economic downturn and the resulting decline in state tax revenue. Indeed, state domestic violence funding was slashed by 14 percent, even though Gov. Perdue advanced an across-

the-board cut of only 6 percent.

Gov. Perdue recently proposed an *additional* cut of \$300,000 from all domestic violence shelters and sexual assault centers in both the amended 2010 fiscal year budget and also in the 2011 fiscal year budget. In response to the outcry from the community, \$300,000 of funding for domestic violence shelters and sexual assault centers were restored in the 2010 amended budget.

However, the 2011 budget approved by the Legislature at the end of April again cut funding for domestic violence and sexual assault programs by \$300,000. The Legislature recommended using certain available federal stimulus dollars to provide short-term, non-recurring benefits to clients eligible for Temporary Assistance for Needy Families; however, these restricted monies must be spent by

Sept. 30, 2010 (unless Congress extends the deadline).

During the economic downturn, demand for services at Georgia's domestic violence shelters has increased by as much as 50 percent. Most shelters report that victims are staying in shelters for longer periods of time—at least double—because it has become harder for victims to become financially independent in the current economic environment.


These recent spikes in demand for shelter services have not been met by increased state resources and even with a record of private sector leveraging, shelters are also facing up to 60 percent reductions in private donations and community giving. Individual shelters, having previously maintained reserve funds to cover hard times, now have depleted those reserves and currently are facing budget deficits of up to \$200,000, amounting to as much as 25 percent of their total budgets.

## Conclusion

Georgia legislators must think critically about domestic violence funding. Restoring funding to Georgia's domestic violence programs is indeed the fiscally *resourceful* action by the Legislature. Funding domestic violence programs heeds the multiplier effect.

How better to stretch the Georgia tax dollar than to apply that dollar where it will have the broadest benefit in the reduction of other state burdens? Applying the dollar where it can be put into operation through the dedicated efforts of domestic violence shelter staff workers and community volunteers who raise private sector monies will more than quadruple the value of that one dollar.

Alternatively, how best to detract from important state priorities, making it even more difficult for judges to clear their dockets, for hospitals to treat all visitors in their emergency rooms, even for teachers to teach their students, than to take away domestic violence program funding?

Lawyers and others concerned about cuts in funding for domestic violence programs should contact their state representatives and senators to make their concerns known. Visit [www.votesmart.org](http://www.votesmart.org) and [www.legis.state.ga.us](http://www.legis.state.ga.us) for contact information. Timing is critical. The governor may or may not sign the 2011 state budget prior to publication of this article. Debate will begin soon on the 2012 state budget. 



**Adrienne Hunter-Strothers** is counsel at Warner Mayoue Bates & McGough. Hunter-Strothers earned her A.B. with honors in

political science from Brown University and later earned her J.D. from Harvard Law School, where she served as an editor of the *Harvard Civil Rights-Civil Liberties Law Review*. Prior to her association with Warner, Mayoue, Bates & McGough, Hunter-Strothers practiced business and tort litigation at the corporate law offices of Simpson Thacher & Bartlett LLP in New York City and King & Spalding LLP in Atlanta. She also practiced matrimonial law at the law offices of Sheresky Aronson Mayefsky & Sloan LLP in New York City. You can reach Hunter-Strothers at [astrothers@wmbmlaw.com](mailto:astrothers@wmbmlaw.com).

*The author credits the American Bar Association's Commission on Domestic Violence for annotations to most of the national statistical data communicated in this article. The author also states profound gratitude to Shelley Senterfitt of the Georgia Coalition Against Domestic Violence, who provided annotations to the Georgia statistical data and certain national statistical data and co-authored many parts of this article. Georgia victims of domestic violence are fortunate to have her advocacy.*

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# Effingham County Courthouse at Springfield

## The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

**B**uilt at the close of the first decade of the 20th century, Savannah architect Hyman C. Whitcover's Effingham County Courthouse offers convincing testament to the lingering myth of the New South. It also demonstrates the fact that, even as late as 1909, new rails still had the power to create the kind of railroad-inspired civic and economic euphoria that had been so common in rural Georgia at the end of the previous century.

One of Georgia's original counties, Effingham is situated in the low coastal plane between the Ogeechee and Savannah Rivers. Like so many Pine Barrens counties, Effingham never enjoyed the prosperity that her Old Cotton Belt neighbors to the north and west knew. Throughout the 19th century, times remained tough in these dense piney woods and populations remained relatively small. The construction of The Central of Georgia Railroad along the county's western border in 1839 began the slow exploitation of area timber resources, but according to the great traveler, George White, in 1849 all of Effingham County counted only 3,457 inhabitants. Even as late as 1880, the U.S. Census listed Effingham's population at a mere 5,979. Countywide population was down to 5,599 10 years later.

In revolutionary times, the county seat was established at Tuckseeking. It was later moved to Elberton. Both of these villages disappeared long ago. The seat of county government was then placed at Ebenezer and still later established at the village of Effingham before finally moving to Springfield, which was incorporated in 1833. Before the construction of a frame court house at Springfield, we know little of court buildings in any of these places, but in the early period court was probably held in private homes. The reliable George White informs us that a frame courthouse stood on the square in Springfield in 1849, but in a rare unflattering remark he describes the village as a "place of little note." White was undoubtedly right, for a review of various Sholes' *Gazeteers of Georgia* reveals little growth in Springfield as the century wore on. Sholes relates that the town contained about 40 citizens in 1879, about 100 in 1887 and less than 200 in 1896.

A 1901 photograph of a portion of the old wooden court building depicts a crude, two-story, Carpenter Greek design. Although the simple building stood on Springfield's square for more than half a century, it witnessed little change. Meanwhile, just to the west, the town of Guyton had sprung up on The Central's mainline. By 1900, Guyton boasted an astonishing 2,379 residents according to the U.S. Census. Like so many county towns adjacent to The Central's early line from Savannah to Macon, Springfield was bypassed by the railroad, and progress was focused in the newly created depot towns on the county's western border. But in the end of the first decade of the new century, all of this appeared to be about to change.




Effingham County Courthouse at Springfield, built 1909, Hyman C. Whitcover, architect.

The promise for change came with the inspiration George Mills Brinson, who in 1906 chartered a railroad to run from Savannah westward to Springfield and beyond. Brinson was a railroad promoter and timber baron of considerable note. He had been key in promoting The Wadley Southern Railroad and later of The Brewton and Pineora Railroad. Along the way he had acquired tens of thousands of acres of timber land and had played a notable hand in the founding of the town of Stilmore and in the extraordinary boom that occurred there in the decades surrounding the turn of the century. So when the first train steamed into Springfield in August of 1907, expectations were high. By early 1909, Brinson's railroad was complete from Savannah all the way to Sylvania in Screven County, and plans were underway to build on to Waynesboro and a connection with The Central's Augusta line. To celebrate all of this, Effingham built a new courthouse.

There can be little doubt that Hyman Whitcover's grand Neoclassical palace of justice owes a debt to the designs of Thomas Jefferson as well as to the flamboyant American Neoclassical Revival

that had swept the country a decade or more earlier. It is equally clear that the building symbolized the progress that everyone knew the shiny new rails would bring to Springfield. According to The Springfield *Herald* of Feb. 19, 1909, the new courthouse was "the harbinger of a new day," "the herald of a new civilization" and the "pacesetter for a forward march." The *Herald* also sang the usual New South songs of progress, crooning about "fifty new buildings in Springfield since the railroad arrived—many of brick," and applauding entrepreneur Brinson as "far-sighted" and "broad minded." Just three weeks before the cornerstone was laid for Whitcover's grand symbol for progress, The *Herald* published an article entitled "Hurrah for Springfield" in which the editor painted a glowing picture of a town that was suddenly "climbing to the top of the latter."

But as usual, real progress was a long distance away. Although George Brinson's railroad would continue its westward expansion over the next decade, its history would remain checkered, and financial difficulties lay ahead for the celebrated entrepreneur. Reorganized first as The Brinson

Railway Company and later as The Savannah and Western Railroad, the line was completed as The Atlanta and Savannah Railroad all the way through Warrenton to Camak on The Georgia Railroad in 1918. Three years later, The Atlanta and Savannah declared bankruptcy. By this time, most dreams of New South resurgence in Springfield were long-forgotten. 

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](http://www.mupress.org) or call the Mercer Press at 800-342-0841 inside Georgia or 800-637-2378 outside Georgia.

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# Out From Silence

## 19th Annual Fiction Writing Competition Winner

by Cynthia L. Tolbert

### 19th Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "Out From Silence," by Cynthia L. Tolbert of Atlanta, as the winner of the 19th Annual Fiction Writing Competition.

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Tolbert and all of the other entrants for their participation and excellent writing.

**T**he killer drove his truck along a deserted gravel road stopping just short of the entrance to the pasture. It was midnight, but the moon illuminated the road and the nearby fence. He nervously turned off his lights and gradually pulled into the grassy field. It had been raining that week, and he drove slowly to avoid low spots.

*Getting stuck is all I need,* he thought to himself.

As he pulled to a stop, the killer grabbed the rifle next to his seat and carefully crawled out of the cab and onto the ground. He squirmed along on his stomach until he reached the fence along the north side of the pasture. Holding his breath, he pulled himself under. He stood up briefly to get the first good look at the house through the trees. Her lights were out. That was what he had hoped for.

Squatting again, he inched his way to the front of the house and silently repeated the steps of his mission. He had watched it a million times on TV. You first cut the tires to prevent anyone from coming after you, and then you cut the telephone lines so no one could call the police. Even though it was a warm summer night, he was shaking as if it were the dead of winter. Recently discovered letters

revealed truths that could destroy life as he knew it. He was thankful no one else had found them first. He resolved to complete the task before him.

*This has to be done...*, he thought, grimacing through clenched teeth.

He held his breath and slowly slit the tires of the family car. He then swiftly crawled around the side of the house and cut the phone lines. Her bedroom was along the same wall.

He stood up to look through the window and down on her sleeping form. He was surprised to see that her bed and headboard were covered with dolls and stuffed animals. Surrounded by her childhood toys, she appeared much younger than her 19 years. She looked so peaceful. He could see her blanket rising and falling with her breath.

With only a second's hesitation, he punched in the clip and began firing through her window without thinking to aim. Shocked at the gun's kickback, he panicked, spraying bullets around the room in spiraling sweeps. It was so dark in her room he couldn't see clearly, even with the moonlight over his shoulder, but he knew that he had managed to get off an entire 25 round clip and at least part of another. Gaining his composure, the killer vanished as swiftly as he had come, leaving the spent casings on the ground under the girl's window.



Sheriff Roy Colson got the call around 12:30 a.m. Lyle Patrick was hysterical.

"He's killed my baby, my little baby girl!" he sobbed over and over.

By the time the sheriff got to the house, Lyle's beefy face was puffy from crying. Sheriff Colson looked at his feet. He hated this. Jennifer was Lyle's only child. His wife had died about five years earlier. The man in front of him was a wrecked, inconsolable puddle of a man. The sheriff would have expected nothing else. Jennifer was all he had. Lyle had struggled for the past 20 plus years raising crops for live-

stock feed on about 100 acres of failing family land. A recent beef cattle business attempt had failed as well. All he had and all he had loved were now gone.

"I know who did this," he said with tears streaming down his face. "It had to be Adam. Jennifer broke up with him about a month ago. I never liked her seeing that boy. After Jennifer broke off their engagement, he was real upset. He said that she'd be sorry. I know he did this...Jennifer was probably the first person who had ever refused him anythin'," he fumed. Lyle Patrick was a huge man with fists to match. They were balled up like massive ham hocks at the thought of Adam Gannon.

The sheriff knew of the Gannons and recalled Adam as well. The boy lived in the next county and stood out from the other kids in the area, mainly because he was wealthier than most. Adam's parents were Robert and Darcy Gannon, who owned a large plantation in Jones County. Everyone knew them. They seemed to have money to burn, and they spared nothing for Adam, who was their only son. Sheriff Colson knew that something was wrong with the kid; he just couldn't put his finger on it.

"I been knowin' the Gannons," Lyle continued. "I used to sell hay to 'em from the back pasture. I remember Adam from when he was a little kid. He's deaf, you know."

*That's what it was! I never woulda guessed that,* thought Colson.

"Jennifer would not have it any other way but to have him as her boyfriend," he sighed, heaving his throbbing head into his hands with bitterness.

The sheriff remembered Jennifer from when she was a little girl. They had once all attended the same church. She was pretty enough, but big boned, like her dad. The last time he saw her he was surprised to see that she was nearly as tall as her 6'3" father, and weighed only slightly less. Lyle had spoiled her rotten since her mother died. Lyle had changed since then

too. He was far more withdrawn, and had become dedicated to that Pentecostal church down the road from his house. Sheriff Colson saw him driving down there nearly every evening. He never saw Jennifer with her dad anymore.

*Kids seem to drift away when they get to be a certain age,* the sheriff mused, sadly thinking of his own boys whom he hardly saw since they reached high school.

Sheriff Colson also knew that there was a considerable history between the Patricks and the Gannons, and that their relationship was a strained one at best. The sheriff suspected that Lyle had no fondness for the Gannons, and he was surprised that Lyle's daughter was involved in any way with Adam. He sighed with resignation. He was not looking forward to this.

"Can you show me what happened?" he asked with a slight nauseous feeling rising in his gut.

With a grim sigh, Lyle led him down the hallway and into Jennifer's room. Sheriff Colson was utterly unprepared for what he saw. There weren't many murders in Baldwin County, only two since he had been sheriff, and no lawman from his sleepy little hamlet had ever seen anything like this. The room still reeked of cordite. Jennifer was sprawled awkwardly like a broken doll in the middle of her blood-soaked bed. Her left arm and right leg had been blown completely off. He closed his eyes, overcome by the sight and the fetid odor of human flesh. For a while, he was unable to speak.

"The shots came from outside of the window into her room. I need to see what happened out there," he said, quickly moving out of the door, feeling a distinct sense of relief in his departure. *Good God, what sort of monster would do this?*

When he rounded the corner, flashlight in hand, he was surprised to see that the phone line had been cut as well as the tires to the family car.

"I ran to the neighbors to call you," Lyle explained.

"Whoever did this knew enough about the house to know where the phone lines were, even in the dark," the sheriff commented. "And sneaking up to the car to slash your tires was pretty gutsy since the dog could easily have heard," he shouted over the dog's yelping from the adjoining laundry room. "Make sure you don't touch anything, Lyle. I will have my men come out once daylight hits. They'll take photos of the scene and gather the evidence."

Lyle nodded silently and numbly. Sheriff Colson shone his light under Jennifer's window. He was surprised to see a clip from a semi-automatic rifle and what appeared to be 50 or so spent casings. There was also at least one perfect shoe print.

"This is what we need, Lyle," he said marking the site with yellow crime scene tape. "If we can find the gun, we got 'im. These rifles ain't legal 'round here, but kids have been gettin' 'em from a local dealer and usin' 'em for hunting deer. I got a pretty good idea where

the weapon came from. Also, the shoe print is pretty distinct. If we're lucky, we can match it up with the owner of the gun." He squinted into the nearby pasture. "When it's light, I'll come back and join the boys to see if there's any other evidence," he said climbing into his truck. "I'll send an ambulance out here to get Jennifer's body to the coroner. Somewhere I can drop you until then?" Shaking his head, Lyle waved him off and stepped back into his private nightmare.



The next morning, Sheriff Colson returned to the Patrick farm and parked his truck on the gravel road next to the fence. It had rained over the past two weeks and the pasture still smelled slightly of manure from Lyle's dwindling herd. It was hot, dank and steamy from the morning dew. The early sun beat down on his head as he peered into the blindingly lit fields, his hand shielding his eyes. He expected to see tire tracks in the pasture if his

suspicions were correct. He was not disappointed. He could see two sets of tracks from the side gate to the fence in front of the house. The first set appeared to have been made when the driver entered the pasture. The ground was lightly indented along these tracks, with no rutting, and the grass was bent but still intact. Judging by the size of the tires, those tracks had likely been made by a large pickup truck. Sheriff Colson followed the tracks until they ended. Boot marks that seemed to match the shoe print under Jennifer's window were visible in the mud where the truck stopped and what appeared to be toe marks continued to the fence. *He must have crawled on his stomach to the house*, he surmised. He knew there had been a full moon the night before, which must have illuminated the pasture and the house. Sheriff Colson spotted additional boot marks back to the truck. The toes of this set were deeply embedded in the mud and were obviously made while running. He now had

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Allie was one of those students who thought she had enrolled in law school in search of justice. Truth was, however, she liked a good fight.

at least three good sets of shoe prints. The next set of tire tracks began where the running shoe pattern stopped. The truck seemed to have made a wild swing into the pasture and out of the gate, leaving wide arched ruts in the grass. At least one clear tire track remained. Sheriff Colson had what he was looking for.



That same morning, Adam was startled out of a deep slumber when his father shook his shoulder. His heart pounded in his chest. He did not like surprises. His father was the last person he expected to see at his place that morning.

"Adam," his dad said, staring intently into his son's eyes. "I got a call early this morning. The Baldwin County sheriff was looking for you and wondered if I knew where you were." He paced back and forth across the room. "I told him that you should be in your dorm room. He asked me if he could come by this morning and I told him to come on," Robert Gannon choked out hoarsely, his voice filled with rising fear.

Adam was not certain what his father was talking about. His dad was upset, he knew that.

"Do you know what this is all about?" his father demanded.

Adam shrugged his shoulders and climbed into the shower.

Thirty minutes later, Sheriff Colson rapped on Adam's door. He and Robert Gannon gingerly shook hands. The sheriff knew he had to be cautious. He glanced toward Adam whose hair was still wet from his morning shower and looked him in the eye.

"Adam, last night there was a murder in Baldwin County. Jennifer

Patrick was killed. Her father thinks you did it. Do you have anything to say about that?"

Glancing at his father, Adam hung his head and said nothing.

"You must be out of your mind!" Robert Gannon shouted. "Adam is incapable of murder! Roy, you'd better be careful. You're on the wrong track here," he snapped.

"Robert," explained Sheriff Colson, "Lyle Patrick believes that Adam is not only capable of this, he's convinced that he actually did it. He says that Adam threatened Jennifer after they broke up. I gotta look into it. Do I have your permission to inspect Adam's room as well as his vehicle?"

"Sure, we got nothin' to hide," Gannon spat back.

Sheriff Colson looked around and saw a pile of muddy clothes and work boots.

"Mind if I take these?" he asked, looking at Adam and his dad.

Robert Gannon nodded his assent.

The sheriff looked into Adam's truck where he found an AR-15, which he also took, along with the truck's tires. The sheriff had the foresight to get Adam's signature verifying that he had permission to take all of the materials from Adam's apartment and truck before he left. "Don't go anywhere, Adam," the sheriff said as he climbed into the truck.



The following day, Sheriff Colson arrested Adam for the murder of Jennifer Patrick. That same day Adam's dad hired Jimmy Steele, a volatile, albeit clever attorney, who was as arrogant as he was skilled. Jimmy wasn't so sure he wanted to take the case. Adam

made Jimmy nervous. Jimmy had never had a deaf client and didn't know what to do or what to expect. He found Adam unreadable. Adam's facial features seemed immovable, frozen on his face. He didn't appear to emote and the explosive Jimmy could not relate to him on any level. Unlike Jimmy, Allie Thompson, his third-year law clerk, was excited about the case, and urged him to take it.

"I would bet that this guy didn't fully understand what was going on at the time he was arrested," Allie told Jimmy excitedly. "You should take the case. We might be able to get all of the evidence suppressed," she said enthusiastically. Allie was one of those students who thought she had enrolled in law school in search of justice. Truth was, however, she liked a good fight. Neither Jimmy nor Allie considered for a second whether Adam was guilty, and, at the time, they didn't care one way or the other.

Allie arrived late, as usual, for the first meeting between Jimmy and his new clients. As she barreled through the front door of the law offices, the receptionist jumped, scowling over her glasses as Allie slammed the door behind her. Allie breezed through the reception area of the old Civil War-era hotel Jimmy had converted to office space and into the conference room. Although Jimmy had refurbished some of the wiring, the conference room was dimly lit and it was hard to see, even during daylight hours. Allie peered into the room, trying to see whether she could read anything from the faces in front of her.

"Nice to see you could make it," Jimmy derided.

Allie was used to Jimmy and as usual, ignored him. She was more interested in the other people in the room. The Gannons, Robert and Darcy, were visibly shaken. Allie could sense terror seeping from their pores. Their faces were pinched and gray from two nights without sleep. They were scared.

Adam Gannon, their son, although recently released on bail, was stoic, silent and still. His eyes barely flickered in her direction when she entered the room. Adam's ease puzzled her.

Adam was a well-groomed, well-muscled 19-year-old freshman at GCSU. Allie had not known what to expect from him, but this was certainly not it.

When she was growing up, Allie was close to her mother's youngest sister who was also deaf, so she knew something of that community. She also learned how to communicate with her aunt in rudimentary sign language.

She was surprised that Adam did not wear a hearing aid. In fact, Adam did not appear to need any assistance in the interpretation of what others were saying. Curiously, his parents rarely made eye contact with him, but they were proud to point out that Adam maintained a 3.0 average in regular college courses, had played football in high school and continued to lift weights in college. They also reported that Adam had taken Taekwondo classes since junior high and had advanced rapidly in that sport as well. Allie spied a new red Dodge pickup truck parked outside and correctly assumed that it was Adam's. He was well-dressed and his sleek blonde hair was perfectly coiffed in the style of the day.

*That haircut alone costs at least a hundred dollars a month to maintain,* Allie surmised, swallowing her resentment.

Allie struggled financially. Even though she tried not to, she found herself resenting rich kids whose parents put them through school. Adam seemed destined for a similar path, or at least one of privilege and ease compared to her life. What Allie did not know was that all of Adam's appearances of normalcy and advantage were carefully constructed by his parents and perfectly executed by Adam. Adam was merely following a design conceived and orchestrated before he could



walk. Adam was nothing if not a dutiful son.

As Allie sat down, Jimmy leaned toward Adam, for once unsure of himself. He had never tried to speak to a deaf person.

"Can you tell me what happened?" he shouted at Adam, loud enough for the office next door to hear. Adam barely made eye contact, but his mouth twitched ever so slightly.

"Do you know why you are here?" he shouted even louder, flailing his hands and arms about the room.

Allie stepped in.

"Does Adam sign? Does he understand sign language?" she asked the Gannons.

"Well, no..." replied Mrs. Gannon. "We sent him to a school for the deaf when he was little, but when they tried to teach him

to use sign language we pulled him out."

Allie was stunned. She knew what that meant. Adam's language skills were limited at best. She was amazed that he was able to maintain a B average during his first semester at GCSU.

Mrs. Gannon explained, "We never wanted him to stand out from the other kids, so we sent him to a school in Atlanta and the teachers there taught him to lip read and speak some. He was there about a year and then we enrolled him in Milledgeville Academy."

*Idiots!* Allie fumed. She had read that lip readers only understood about a third of what was said, and that was with far more training than Adam apparently received. If that was true, she did not know how he had been so successful in school. *He must be brilliant!* she concluded.

"What classes has he been taking at college?" she asked.

"College algebra and physical education," Mrs. Gannon replied proudly. "We thought he should only enroll part time and he has always been good at math. Adam can read and write, but he has problems with English, history and other classes like that."

*No kidding*, Allie snorted.

Adam interrupted his mother and began to speak in a slightly muffled, staccato voice without making any eye contact with her.

Allie interrupted him.

"Mrs. Gannon, could you please interpret what he is saying for me? Everything he is saying is so important. I do not want to misunderstand him or misinterpret what he is saying."

"He's explaining that the sheriff took his tires and shoes," Mrs. Gannon said, her voice about an octave higher than it had been earlier. "Then he said that he went to a dark room at the sheriff's office where he had to stay. He's sayin' he couldn't leave," she announced. "He's also sayin' that he didn't hurt Jennifer."

With this statement Allie noticed that Adam raised his eyebrows and became much more animated.

"Now he's sayin' that that night as he was leavin' he saw some ninjas crawl up to Jennifer's house. Then he saw them cut the wires and cut the tires of her father's truck. He said they shot into her window and that they were all wearing black clothes and black masks. He said that there were about 10 of them and that he tried to stop them, but there were too many."

*Nice...*, Allie thought, *we've got a nut job for a client*. She couldn't tell if Adam believed his own ninja tale, but it was obvious that he thought that his story was plausible. Jimmy and Allie's eyes locked for an instant. They knew two things from Adam's description, as far-fetched as it was. Adam's story was full of murder scene detail. They had read the police report. So, he had to have obtained this knowledge from

some sort of firsthand experience. Fantasy seemed to play a large role in their client's life. How big a role, they were unsure.

Adam's parents attempted to clarify.

"He hardly watches anything other than 'Walker, Texas Ranger' or old Chinese martial arts movies," Mrs. Gannon explained. "Chuck Norris is his hero. But Adam could never hurt anyone else. He is incapable of harming anyone," she emphasized with conviction.

After this, Allie and Jimmy knew that neither Adam nor his parents would be much help in deciphering what had happened on the night in question, and that they would not likely offer much which would be useful in his defense. Allie and Jimmy also knew that the ninja story could not be used in front of a jury, which meant that their client could not take the witness stand. Allie could not tell where Adam's imagination ended, or where reality, for him, began.



The next day Allie was dispatched to the sheriff's office to examine evidence collected at the time of Adam's arrest. Allie was blessed with what her brother called a "blind nose." For most of the year, allergies muddled her sinuses preventing Allie from detecting any odors whatsoever. So Allie, blissfully unaware of foul odors, approached the pungent wad of bedclothes in the evidence room without trepidation. Stalwart, middle-aged deputies fled the room as she methodically examined every piece of stained linen. One of them even threw up on his way to the bathroom.

The evidence was grisly. Allie, completely absorbed in her task, listed each piece of evidence in a notebook for later analysis. Photographs of the scene told most of the story. The shooter managed to fire two 25-round clips into the room. Only one clip was recovered at the scene. The killer was either a poor shot or was completely out of

control. Nearly 50 rounds of bullets splintered Jennifer's furniture and destroyed her bedroom walls.

Allie examined love letters exchanged between Jennifer and Adam and was surprised to find that Jennifer's letters were written in 12 different marker colors, complete with rainbows, hearts and flower decorations, like love letters of girls half her age. Jennifer was a college freshman of at least average intelligence, but seemed to be as naive as a 12-year-old. Adam was her first and only boyfriend. Jennifer's letters revealed that although she was initially happy to have Adam in her life, she grew weary of him.

Adam's letters were written in a generally competent hand, but were brief, disjointed remarks regarding his daily plans. Jennifer's letters gushed with promises of love and dreams and longing. For a while it seemed that she basked in Adam's attention and enjoyed the time they spent together. Slowly Jennifer began to see Adam as a two-dimensional version of a boy; a cardboard cutout of the real thing.

*Can't you tell me that you love me?* she complained repeatedly. *Can't you see that I need to hear that you care in some way?*

Adam never responded. Jennifer seemed to need the sort of declarations echoed in the romance novels she read every night. Adam did not and could not deliver. Love, to Adam, was not about language.

It was apparent that Adam's parents had relentlessly trained him to "make a good appearance," and he had learned this lesson well. Adam rarely spoke since his parents squelched every early utterance which was not perfectly articulated. They effectively barred Adam from the deaf community by refusing to allow him to learn sign language, which, in turn, made him desperate to be accepted in the hearing world. Allie knew his relationship with Jennifer was an important link to acceptance there.

Jennifer's letters reflected that she had yearned for a boyfriend

since she could remember. Unfortunately, with the exception of Adam, there seemed to be few boys who were willing to accept her for who she was.

*They were both victims in a sense, Allie mused.*

Jennifer and Adam were victims of the dictum of society norms and the idolatry of beauty icons. They were misfits who wanted to fit, and for a time, when they were with each other, they thought they did. Jennifer's dismissal of Adam must have crushed him to the quick. Allie believed he had few coping skills for dealing with that sort of emotional turmoil.

Allie was unsure how Adam could have purchased a semi-automatic rifle, but one was found in his truck by Sheriff Colson, and some of the prints on the barrel were his. The sheriff's department was going to test the casings fired from Adam's gun against the casings found at the scene, and Allie had a feeling that they would match. She quickly looked at the large tires from Adam's truck as well as his boots, both of which were in the evidence room. She also examined the plaster casts the sheriff's department made from footprints and tire tracks at the scene. The plaster casts seemed to match the sole of Adam's boots and his tires. Allie knew that she had to try to speak to Adam again.



The next day, Allie found Adam waiting for her in the conference room. She wanted to speak to him alone and had convinced Jimmy that she would be able to get more information from Adam than he could. Adam and Jimmy tended to defensively bow up in each other's presence.

"Can you tell me about your relationship with Jennifer?"

Adam lowered his head.

"I like going to Jennifer's house," he said hesitantly, straining to say every word as carefully as possible, but Allie could not make out much of what he said.

"We meet at night after her dad goes to sleep. She lets me come in through her window and sit on her bed. I do not know why Jennifer gave me back my ring," he said with obvious sadness. "I saw her this week. We talked about getting back together."

Afraid she had missed a good bit of what he had said, Allie got out a piece of paper and a pencil.

"Can you write down where you got the gun the sheriff took out of your truck?"

Adam nodded, and carefully wrote, "Arnie from the Fish and Game store. I met him one night by the river. I bought it for hunting deer."

"Did you realize that it was illegal to have such a gun in this county?"

"No."

"But Adam, why did you meet Arnie at night down by the river if you thought purchasing the gun was legal?" Adam stared at his hands and did not answer the question. Allie considered his silence an admission and headed back to the sheriff's office for another review of the evidence.



Because math had never been her strong suit, Allie counted the spent casings from under Jennifer's window twice. There were about 50. There was a spent clip in the remaining evidence and it only held 25 rounds. There was no clip, empty or otherwise, in the semi-automatic recovered from Adam's truck. Even she could do that calculation. They were missing one of the clips.

The plaster casts produced from under Jennifer's window and the pasture were confusing to Allie as well. Since it had rained on and off for about two weeks before the incident, there were several sets of shoe prints cast by the deputies. The prints were not of the same shoes. It appeared that at least one set did match the boots confiscated from Adam. There was another set of shoe prints with a peculiarity of the left foot.

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Both sets of shoes appeared to be a type of ubiquitous work boot commonly worn by field workers, contractors or anyone who worked outside in the muddy Georgia farmland. Nearly every man Allie knew had a pair of these boots, and she was not surprised that Adam did. Yet the left foot cast of this particular boot was different. It was worn down on the left side so that each step made with this shoe seemed heavier on that side, creating a greater indentation in the ground. Whoever wore this boot limped and favored the left side. Prints from this shoe were found under Jennifer's bedroom window and in the pasture. The cast from this left boot did not match Adam's more pristine version. Allie decided she needed to take greater notice of men's shoes, and she needed to find the missing boot.



The next day Allie made appointments with several of Adam's relatives and folks who worked for Robert Gannon. She needed to know more about the family. She was a little nervous when she met Ben, Adam's cousin. Although he was a young man, he was dressed in what appeared to be his grandfather's overalls under which he was wearing a similarly aged flannel shirt. Allie tried to avoid staring at his wretched teeth, which were heavily populated by gaping spaces.

"I think we should drive on over to the Patricks' pasture," Ben drawled, looking sideways at Allie's skirt. "I'll drive since I know the way."

Allie nodded in agreement, horrified at the thought of climbing into his decrepit pickup truck.

*This had to have been his grandfather's as well,* she thought, smiling to herself.

She had no idea what she would find at the scene, but felt that it would help her understand what might have happened on the night Jennifer was murdered. Several jarring minutes later, Allie emerged from the truck, hoping that she did not smell like tobacco and dead game. She gingerly picked her way through the muck and knobby grass knolls of the Patrick's pasture in her four-inch heels, trying not to lose her balance.

The pasture appeared to have been fallow for years. The ground was completely overrun with rutted tire marks.

*Apparently the sheriff's department has not maintained an unspoiled crime scene,* she thought wryly. In fact, Ben's tracks only added to the jumble.

"Do you know the Patricks?"

"Yup, everyone knows the Patricks. They owned near 'bout the entire county at one time or 'nuther. But that was before my time. Lyle's daddy lost it all in the war," he explained.

"How did he lose it?"

"Story is, my Uncle Will, Robert Gannon's daddy, bought the place from Lyle's momma when Mr. Patrick was fightin' in Germany. It's rumored that Lyle is Will's kid," he said, flicking the dirt from his fingernails with his pocket knife.

*Holy crap! Allie thought. That means Adam and Jennifer were cousins. First cousins. And, if that were true, Lyle Patrick and Robert Gannon were half brothers.*

"What makes you say that?"

"Well, my momma said it was the timin' of it all," Ben explained. "Seems like Lyle was born only two months after his daddy got back after the war. Ever'one knew Uncle Will had been spendin' plenty a time over at the Patricks. Rumor is, he promised to marry her just to get her to sell him the land. When Mr. Patrick returned from the war, Uncle Will dropped her like a hot potato. She was already pregnant when Mr. Patrick got back. My momma said Mr. Patrick never did get over it, but raised Lyle like he was his own. When he died my momma said it was from a broken heart."

*Oh my God!!!* Allie gasped, realizing that she had to be extremely careful with her next question.

"Do you know whether either Robert or Lyle knew anything about this?" she queried, hoping that she was not being too obvious.

"Dunno, really, but my momma said that Mrs. Patrick always sent Uncle Will a card on Lyle's birthday just to drive the point home. Momma said that Mrs. Patrick used to send Uncle Will a lotta letters and she saw them all piled up in a box once. Also, if you notice, Robert and Lyle do look a lot alike, except that Lyle's fat and Robert got kicked by one of them horses and limps."

"Do you know which leg was kicked?"

"Yeah, his left'n," Ben recalled. "I remember that 'cause he always mounts his horse funny, from the right side of the horse, so he could swing his left leg around. I think the left leg still hurts him some."

Allie was exhilarated. She was certain that Adam's father had been at the scene of the murder, but had no proof. Yet.



Jimmy was in his office when Allie flew through his door flushed with excitement. She spit out the details of her trip to the Patrick's farm with Ben in rapid-fire bursts.

"Allie, this doesn't mean anything. I don't see any motivation here for Robert Gannon."

"Well, if either Robert or Lyle knew that they are brothers, either of them could have a motivation for the murder," she defended.

"How's that?" Jimmy sneered.

"Lyle is extremely religious and would not have wanted his daughter to have relations with a first cousin. But he was so crushed by Jennifer's death. I cannot imagine that he could have hurt her. Also, I think Adam said that he and Jennifer were getting back together. If Robert knew that he may have thought it necessary to reveal the fact that Jennifer and Adam were first cousins to avoid a marriage. Such a revelation would lead to the discovery of Lyle's paternity, and that Lyle's father was Will Gannon. This would enable Lyle to make a claim for half of the Gannon property. I would think that would be motivation enough. Also, Lyle could expose the fact that Jennifer was Adam's cousin, prevent the marriage and still make a claim for half of the land," she explained slowly.

"Sounds like you just took a will and estate exam," snorted Jimmy.

"And then there is the shoe!" she said with mounting excitement.

"Huh?" Jimmy grunted.

"I noticed that one of the plaster shoe casts indicated that the wearer limped on the left side. Robert limps on his left side."

"Allie, folks all over the county limp. Do you want the sheriff to go out and arrest all of them?"

"No, just Robert Gannon," she quipped.

Allie realized that she was a long way from proving anything. She

had to find the missing clip, and she had to find out everything Adam knew about the murder. He knew that phone lines and Lyle's tires had been cut. He knew that Jennifer was shot through her bedroom window. Adam may have done this, but Allie felt that his father had a hand in it.



At Ben's suggestion, Allie set up an appointment with one of Robert Gannon's oldest employees, Joe Thornton. Ben told Allie that Joe Thornton had lived on Gannon land all of his life and likely lived there when the Patricks owned it as well. Joe was about 90 years old, although he was uncertain since he never had a birth certificate.

On the day Allie met him he looked like a little dried up raisin elegantly attired in his Sunday best. He had donned his straw fedora and diamond tie clip and pulled it all together with a ruby ring on his little finger. He had rolled himself out of his one-room home on the Gannon's property to sit and wait for her in a lawn chair next to his pink 1956 Buick. Although Joe had to get around in a wheelchair, he didn't like sitting in one.

Allie pulled up in her sputtering Pontiac T1000. She was lucky to have arrived at all in that beast. Joe looked up at her with amusement twinkling in his eyes.

"Howdy! You Miss Thompson?"

"Yes, and I presume you are Mr. Thornton?" she shot back waving and smiling at the spectacle he made next to his pink car. "Ben told me all about you."

"Yeah, well, Mr. Ben is nice enough, but he is a sorry fella, that one," Old Joe said with a smile. "But we can't all be ambitious," he said with a grin, revealing a twinkle of gold.

"Mr. Thornton, I am here to ask you a few questions about the Patrick family. And the Gannons. I understand that you worked for both of them, right?" Allie asked in her most official manner while peering into Joe's home with amazement. She had never seen a

one-room home before, noting with a pang that the walls were covered in newspaper and that they were lit with one bare lightbulb hanging from the lopsided ceiling.

"Yep. I know'd 'em all. I raised Mr. Will, Mr. Robert and now Mr. Adam. I also know'd Mr. Jim Patrick, Lyle's daddy, back when he owned this here land."

"What was your job with the family?"

"Well, back when the Patrick family owned the land, I was foreman and ran the crews that worked the land. Back then it was cotton. But of course, Mr. Will bought the Patrick land and everythin' changed after that."

"What do you mean?"

"Will Gannon was greedy. He wanted to diversify. He divvied up the land into cotton fields and fields for corn. He carved out a special piece to raise racin' horses. Once he took over, I worked everythin' but the horse farm. I don't know much about horses. I used to ride 'em around the different pastures a little, but a rabbit spooked my horse one day and I fell with him on top of me. I ain't walked much since. Mr. Robert lets me stay here free. So, I got nothin' to complain about," he said ruefully, false teeth clacking a bit as he closed his mouth.

"What did you mean when you said that you raised Will, Robert and Adam?"

"I took them out to the pastures and taught them about the land and how to take care of it. Mr. Will understood, but ignored everything I told him. Mr. Robert never did understand, even though I talked to him about soil and puttin' certain crops back into the land for the nutrients. He only cared about money, what he could buy and where he could go. He was so upset when he had a deaf son. It just didn't fit in his life, no how. Now Mr. Jim Patrick, he knew how to care for the land. He had a beautiful farm. I learned everythin' I know from him."

"What else can you tell me about Adam? Did you know

that he was arrested for the murder of Jennifer Patrick, Jim Patrick's granddaughter?"

"I know'd he was arrested, but Jennifer wudn't no granddaughter of Jim Patrick," he muttered quietly.

"How do you know that?"

"Ever'body knew. We would see Mr. Will going over to Mrs. Patrick's when Mr. Jim was away. I worked the Patrick land then. We knew what happened, and she was stickin' out to here when Mr. Jim came back from the war," he said gesturing with his hand over his stomach area. "Mr. Jim was a good man."

"Do you think Adam killed Jennifer Patrick?"

"No, m'am. I don't believe he did."

"Why not?"

"I have proof, or at least I think I do. Somethin' strange has been going on for sure," he said. "I been meanin' to call the sheriff, and was glad when you called." He stretched out his withered legs and Allie was shocked at their thinness.

"I don't have much to do now that I'm not workin' and I like to sit outside on a good day, 'specially if there is a breeze like there is now. Last week, right before dark, I was sittin' out here, right by my car, and Mr. Robert came by drivin' real fast. He drove out behind the stable there and got out with what looked like a pair of boots and some gloves and what appeared to be a clip to a semi-automatic weapon, like Adam's deer rifle."

Allie raised her eyes to Joe in question.

"He grabbed a shovel from the stable and started diggin' faster than I'd ever seen anyone dig. He buried that stuff about 50 feet out from the stable. Horses have trampled the dirt down since then, but I don't think it would be that hard to find. Don't think he could see me 'cause I was kinda hidden behind this big ol' taillight here," he grinned, patting the back end of his Buick. "If I were you, I'd call the sheriff and tell him to get over there and start digging."

Allie's knees nearly buckled. She had been convinced that Adam was guilty, nearly from the begin-

ning. Even when evidence began mounting against Robert, she still thought that Adam had killed Jennifer. He was so stoic. So unmoved. She had seen him in pensive moments, but most of the time he seemed cold and detached.

"Joe, I don't know what to say," Allie muttered in disbelief.

"You don't know them people like I do," Joe said kindly. "Mr. Robert was always the problem, not Adam. Adam has a good heart. He might get a little confused sometimes, but he ain't bad. I know that he thinks them ninjas crawl around on a regular basis, and I know that's a little off, but he couldn't a kilt no one. He tried to shoot deer like the rest of the boys around here and couldn't. He's never wanted to hurt anythin'. But Mr. Robert has always done anythin' he could for a buck. He ain't never cared if it was legal or illegal. And he's always had a cold streak. He don't care about people like he should."

Allie nodded her head, still amazed at the turn of events.

"It might be hard for you to talk to Adam 'bout the night the Patrick girl got shot since his parents never wanted him to speak much. They thought he sounded funny and cared more about what other people thought than about Adam's feelings. So, even though he can do it, Adam ain't too good 'bout talking. He sort of gets embarrassed. He might need some help. You can bring him here, if you'd like," he suggested. "Him and me used to go fishin' and he would talk to me some. I figured out how to tell what he was sayin' then. He might open up to me now."

Allie nodded and looked at Joe with newfound appreciation. She wanted to speak with Adam and Joe before she called the sheriff.



Late that afternoon, she managed to find Adam in town. Together they drove back to Joe Thornton's one-room shack. She wasn't sure what Joe thought he could do, but it was worth a shot.

Joe was back out by his car again, this time with a blanket. He felt chilly, and his legs hurt once the sun started to descend. He greeted the duo affably when they arrived.

Allie looked at Joe.

"Joe, I need to make certain that I understand everything he says. Can you interpret what Adam is saying for me?"

Joe nodded his head.

"Adam," Allie said, catching the boy's eye after quickly jotting down her question. "What were you doing the night Jennifer was shot?" she asked, while showing him the written version.

Adam began to speak, enunciating every word as carefully as he could.

"He's a sayin' that he was at Jennifer's house that night, but that he saw Jennifer every night," Joe explained.

"Adam," Joe said, acknowledging Allie's questioning look, "was anyone else there the night that Jennifer was killed?"

Adam hung his head.

Allie touched Adam's arm. "Joe saw your dad burying some boots and gloves and maybe a gun clip," Allie explained. "Do you know why he would have done that?"

Adam did not respond.

"Did you kill Jennifer?" Allie asked.

"No."

"Did your dad kill Jennifer?"

Tears began to stream down Adam's face. His hands shook as he quickly wiped away his tears and began to speak.

"He's a sayin' that his dad did not kill Jennifer, but that them ninjas did it. He's sayin' he saw them," Joe explained.

"What weapons did the ninjas use, Adam?" Allie asked.

Adam looked frantically at Allie and Joe, speaking with an animated voice and waving gestures. "He's saying that he told you that them ninjas shot into her window!" Joe said.

"But Adam," Allie interjected, "I didn't think ninjas used guns or automatic weaponry, although I

admit I don't know very much about ninjas."

Adam looked at his hands, avoiding both Joe's and Allie's eyes.

"Adam," Joe said, getting Adam's attention by gently touching his arm. "What's going on? Do you know why your daddy buried the boots, and gloves and that rifle clip?"

Adam held his head, sobbing in anguish.

"Adam," Allie said, "did you ever ask your dad about what happened that night?"

Adam sighed and began to speak.

"He's sayin' that he cain't speak none to his dad," Joe explained. "His dad cain't understand him and dudn't want to hear what he has to say."

Although Joe was interpreting, Adam struggled to say each word clearly for Allie. Adam touched his chest.

"He cain't tell him how he feels," Joe said. "He cain't tell him that he has always hurt his feelings. He says he is a problem to his dad. He thinks his dad would like it better if he wudn't around."

Adam, exhausted by the effort it took for him to speak, rested when Joe spoke, but began immediately after Joe stopped.

"Adam's sayin' that his dad hates the sound of his voice and that he thinks that it reminds him that he ain't perfect."

Allie's heart ached for the boy. He was struggling to speak clearly, and she was struggling as hard to understand, writing as Joe spoke.

"His dad followed him the night Jennifer was kilt and saw him comin' out of her window," Joe continued. "His dad came up to him before he got in his truck and told him to go home. But he didn't. After his dad left, Adam pulled his truck back off of the road to watch Jennifer's house," Joe said, watching Adam's hand gestures.

"So you pretended to leave, but you didn't?" Allie asked.

"Yes!" Adam shook his head with some relief, happy she had understood. When he spoke, Adam

moved his hands and body to illustrate his words. Allie felt as if she understood most of what Adam was saying by watching his graceful movements, but she also needed Joe's help. It was as if she was watching a movie acted out by Adam and narrated by Joe.

Adam began speaking again. Allie looked to Joe.

"He's saying that he liked watchin' Jennifer's house for a while, and usually left after she turned her light out to go to bed," Joe said, watching Adam moving his hands to mimic Jennifer turning out the light and going to sleep.

"Then, when he was 'bout to go, he saw someone stand up by the road across from Jennifer's house. He says it was hard to see, but he believes he saw a gun. He says the man started crawling and then he saw him crawling up to Mr. Patrick's truck. He said that the man cut the tires," Joe said watching Adam making a jabbing move. "Then he says that the man cut the phone lines," Joe repeated as Adam demonstrated how the lines were cut. "And then he says that the man shot into Jennifer's window," Joe said, looking at Adam carefully. Adam was sobbing and shaking uncontrollably. Adam put his face in his hands.

Joe waited for Adam to continue.

"He says that he wanted to get out of his truck and stop him but he *couldn't*. He says he *couldn't* move!"

Adam wept uncontrollably.

"He thinks he coulda saved Jennifer if he coulda gotten out of the truck," Joe explained.

Adam continued speaking, moving his hand over his face.

"When the man came back from the house he could see him better because the moon was shining on his face," Joe explained. "He says it was his dad. He thinks his dad killed Jennifer, but he don't know why!" Joe exclaimed.

"Adam thinks his dad used his gun and then put it back in his truck the morning after Jennifer was killed. But he don't really

know. He's guessin' at some of that," Joe explained, watching as Adam wiped tears from his face.

Adam sobbed, breathing heavily, feeling a sense of relief. He was shaking so much that he had to lean against the car.

"What do you want to do, Adam?" Allie asked.

"Could you call the sheriff?" he asked, standing up again looking out over his family's pastures and stables. He was steadied by the vast horizon across his family's fields and Joe's solid gaze in his direction.

"I can talk now." 



**Cynthia L. Tolbert** is a senior attorney with Buckley King in its Atlanta office, practicing in the field of

products liability, professional liability and premises liability litigation. She is licensed to practice law in Louisiana, Mississippi and Georgia. Tolbert graduated from the University of Mississippi School of Law. Prior to law school she earned a Masters of Education from the University of Southern Mississippi. She was an associate professor at Loyola University School of Law from 1993-96 and managed the Homelessness Clinic for the Gillis Long Poverty Law Center at that time. Tolbert has published several professional articles. This is her first published work of fiction. She resides in Atlanta with her husband. Tolbert may be contacted at [tolbert@buckleyking.com](mailto:tolbert@buckleyking.com).




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## Kudos


>    **Kilpatrick Stockton LLP** announced that **James Stevens**, a partner in the firm's corporate department, has been named one of "**Atlanta's 40 Under 40 Rising Stars**" by the *Atlanta Business Chronicle*. Stevens was one of only two attorneys from Atlanta law firms to make the publication's annual listing of the top "Up and Comers" among the Atlanta business community.

**Gary Sheehan**, counsel on Kilpatrick Stockton's environmental team, was recently appointed to the **Metro Atlanta Chamber's Environmental Policy and Sustainability Committee**. The committee brings members together to share best practices and to encourage effective corporate sustainability programs.


Intellectual property partner **Wendy Choi** played a key role in launching Atlanta's first **Intellectual Property Inn of Court** chapter. Choi serves as program co-chair and as a master. The prestigious American Inns of Court are designed to improve the skills, professionalism and ethics of the bench and bar.

> **James J. Long** and **Thomas L. Holder** were inducted as fellows of the **College of Workers' Compensation Lawyers**. The college is sponsored by the Tort Trial & Insurance Practice Section of the American Bar Association. Long and Holder are both partners at Long & Holder, LLP. The firm specializes in the representation of injured workers in workers' compensation cases.

> **Nancy Ingram Jordan** was sworn in as **president** of the **Cobb County Bar Association**. Jordan is only the ninth woman to serve as president of the bar association. Jordan's father, Hon. Conley Ingram, served as president in 1958-59. They are the only father-daughter duo to have held this position. Jordan is a member of Brock Clay's litigation practice group. Her primary focus is in family law.


>  Supreme Court of Georgia **Justice David E. Nahmias** was installed as an **honorary member** of **Phi Alpha Delta Law Fraternity, International**. Honorary membership is reserved for those who have never before been a member of any legal fraternity, have attained unusual distinction in the law on at least a statewide basis and have been

approved by the International Executive Board of the Fraternity. Only four other Georgians have received honorary membership in the fraternity: President Carter, Court of Appeals of Georgia Judge G. Alan Blackburn and Judge Sara Doyle, and Supreme Court of Georgia Justice Harold Melton.

>  The **Public Interest Law Association (PILA)** recently selected litigator **Lance LoRusso** for the third annual **Serving Others and Achieving Results Award**. PILA is a Georgia State University College of Law student organization that promotes the goals of public interest law. PILA selected LoRusso for this award because he is a "problem solver with a true passion for helping those who defend our safety."

> The *Northeastern Pennsylvania Business Journal* named **Kimberly Manning** as one of the **Top 25 Women in Business** in Northeastern Pennsylvania as selected by the National Association of Women Business Owners (NAWBO) and the *Northeastern Pennsylvania Business Journal*. Founded in 1975, the NAWBO is the unified voice of America's more than 10 million women-owned businesses representing the fastest growing segment of the economy.

>  **Valdosta State University (VSU) Attorney Laverne Lewis Gaskins** spent two weeks in March at Eszterházy Károly College in Eger, Hungary, presenting a variety of lectures, many focused on the intersection of race, gender and law. Gaskins, who also teaches political science courses at VSU, traveled on a **2010 Fulbright Grant**, awarded through the J. William Fulbright Foreign Scholarship Board, the Bureau of Education and Cultural Affairs of the Department of State and the Council for International Exchange of Scholars.

>  **Hon. Cynthia D. Wright** of the Atlanta Judicial Circuit received an official **Supreme Court of Georgia Resolution** recognizing her six years of service on the Georgia Commission on Dispute Resolution. Supreme Court Justice Hugh P. Thompson presented Wright the resolution at her final Commission meeting in April.

> **Miller & Martin PLLC** was recognized at the **Corporate Counsel Pro Bono Gala** with the **2010**

## ALI and State Bar of Georgia Join for Luncheon Meeting

by Hon. Dorothy Toth Beasley

On March 31, members of The American Law Institute (ALI) and members of the State Bar of Georgia Judicial Procedure and Administration/Uniform Rules Committee gathered in Atlanta for what is believed to be the 25th time. The Jones Day law firm hosted a luncheon in its beautiful dining room at the behest of partner and ALI member Stephanie E. Parker. The ad hoc planning committee consisted of Parker, ALI members James C. Nobles Jr. and Hon. Dorothy Toth Beasley, and J. Kevin Moore, chair of the committee, which has among its charges to “confer and advise with the American Law Institute in its work and promote its programs as may be of interest and benefit to the State Bar.” Engineering the event administratively were Michelle Garner and Gakii Kingoriah of the State Bar and Jane Giacinto and Beth Goldstein of ALI’s membership department. Special guests at the luncheon were Bryan Cavan, president of the State Bar, and Stephanie Middleton, the new deputy director of ALI.

The meeting’s highlight was a presentation on the Model Penal Code by Hon. Paul L. Friedman, judge of the U.S. District Court for the District of Columbia. Friedman was a particularly appropriate speaker as he serves on the ALI council and its executive committee, is chair of the program committee and is an adviser on the institute’s project on the sentencing provisions of the Model Penal Code. He first discussed the ALI membership’s 2009 resolution, subsequently affirmed by the council, to withdraw § 210.6 of the Model Penal Code dealing with the death penalty, describing the procedural steps leading to this action. Friedman then discussed ALI’s current sentencing project. Luncheon attendees received copies of the council’s report to the ALI membership on the death penalty, as well as copies of Prof. Kevin R. Reitz’s article “Demographic Impact Statements, O’Connor’s Warning, and the Mysteries of Prison Release: Topics from a Sentencing Reform Agenda,” published in volume 61, number 4, of the *Florida Law Review*.

Friedman pointed out that the institute’s work on the Model Penal Code was particularly significant because no work in the field of criminal law had been undertaken by ALI since the code’s adoption in 1962. He said the original sentencing provisions focused on rehabilitation, providing for indeterminate sentences imposed with judicial discretion, as well as with parole board discretion after certain periods of time had been served. In contrast, Friedman noted the recent trend emphasizing punishment or retribution rather than rehabilitation, as many jurisdictions have adopted determinate sentencing with the objective of “truth in sentencing.” The new Model Penal Code recommends a hybrid approach that would allow the pursuit of utilitarian goals like rehabilitation, but only when the sentence is also proportionate to the gravity of the offense. He described different versions of sentencing guideline systems, noting that some states have sentencing commissions, which ideally are composed of representatives of all




(Left to right) Joseph Bankoff, Stephanie Parker, Hon. Paul Friedman, Pamela Tremayne, Hon. Dorothy Toth Beasley, C. Wilson DuBose, Amy Totenberg and Bryan M. Cavan.


stakeholders in sentencing, and discussed the impact of *Blakely v. Washington* (542 U.S. 296(2004)), and *United States v. Booker* (543 U.S. 220 (2005)). The hot issues still to be resolved by the council and the membership, he said, were determinate versus indeterminate sentences; “second look” provisions for determinate sentences, such as compassionate release; and the sentence of life without parole and its ramifications. Friedman related that, to ensure that his presentation was up to date, he had gone to the Supreme Court the previous day to hear arguments in two sentencing cases, *Dillon v. United States*, involving resentencing and sentencing modifications, and *Barber v. Thomas*, involving how to calculate good-time credits.

Discussing the death penalty, Friedman related the history of its inclusion in the Model Penal Code, the Supreme Court’s citation to § 210.6 of the Model Penal Code in 1976 when it determined that the death penalty could be administered in a constitutional way, the use of § 210.6 in the states and finally the events that led ALI to withdraw the provision: the 2007 motion by Profs. Ellen Podgor and Roger Clark that the institute state its opposition to the death penalty, the institute’s commission of an extensive report on the death penalty prepared by Profs. Carol Steiker and Jordan Steiker and the membership’s vote at the 2009 Annual Meeting on the council’s recommendation that the provision be withdrawn from the Model Penal Code. Friedman was the council member who presented the council’s report and resolution to the membership.

Looking ahead, Friedman mentioned several other areas of criminal law that may be taken up by ALI, such as collateral consequences of sentences and the outmoded definitions of certain crimes, particularly sex crimes. He ended his lively discussion by urging participation in the sentencing project and in other important ALI work.

**Corporate Counsel Pro Bono Initiative Gala Award** for their commitment to providing free legal services to the needy. The gala is part of the Tennessee Bar Association's Corporate Counsel Pro Bono Initiative, which encourages and supports pro bono activities for lawyers serving as in-house and corporate counsel in the state.

>  **Locke Lord Bissell & Liddell partner Brian T. Casey**, who co-chairs the firm's corporate insurance practice group, has been named by *Life Settlement Review* as one of its "**Top 10 Most Influential People in the Life Settlement Industry**" for the second year in a row.

>  **Matthew J. Calvert**, a partner in the litigation and intellectual property practice in the Atlanta office of Hunton & Williams LLP, was appointed **board president** of **Atlanta Legal Aid Society, Inc.** As president, Calvert will lead the board in overseeing the operations of the society and advising the executive director and staff on operational matters; preside over board and executive committee meetings; and assist with fundraising.

> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, named **Steven G. Hall** its firm-wide **2010 Baker Donelson Pro Bono Attorney of the Year**. A shareholder in the firm's Atlanta office, Hall was recognized for his extensive pro bono efforts on behalf of the Metropolitan Atlanta Task Force for the Homeless. Since late 2008, Hall has represented the task force in ongoing litigation that has threatened to shut down its facility.

>  **Dennis Keene**, a partner with the law firm of HunterMaclean, will speak at the **ALFA International seminar** in Paris, France, in September 2010. The seminar will unite leaders from top international law firms to address timely legal issues. The seminar, which is hosted by ALFA's International Law Practice Group, is titled "The Legal and Business Consequences of 'Going Green.'" Keene is scheduled to speak about the impact of new environmental legislation on product liability claims in the construction and real estate industries.

## On the Move

### In Atlanta

>  **Davis, Matthews & Quigley, P.C.**, announced that **Wayne Morrison** was named a **shareholder** in the firm. Morrison practices in the firm's family and domestic law section. The firm is located at Fourteenth Floor, Lenox Towers II, 3400 Peachtree Road NE, Atlanta, GA 30326; 404-261-3900; Fax 404-261-0159; [www.dmqlaw.com](http://www.dmqlaw.com).

>  Banking attorney **Jim Wheeler** joined **Morris, Manning & Martin, LLP**, as a **partner** in the firm's financial institutions, corporate, mergers and acquisitions and securities practices. The firm is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; [www.mmmllaw.com](http://www.mmmllaw.com).

> **Miller & Martin PLLC** announced that **Laura Gary** joined the firm as an **associate** in the litigation department. She was previously with King & Spalding. Gary concentrates her practice on business and tort litigation. The firm is located 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; [www.millermartin.com](http://www.millermartin.com).

> **Musa L. Eubanks** announced the formation of **Eubanks Law Group, LLC**. The firm handles employment, personal injury and commercial litigation. The office is located at 3455 Peachtree Road NE, 5th Floor, Atlanta, GA 30326; 404-459-9250; Fax 404-420-2137; [www.eubankslawgroup.com](http://www.eubankslawgroup.com).

>  **Swift, Currie, McGhee & Hiers, LLP**, announced that **David L. Pardue** joined the firm as a **partner**. Pardue represents clients in a wide variety of complex business litigation matters. The firm is located at 1355 Peachtree St. NE, Suite 300, Atlanta, GA 30309; 404-874-8800; Fax 404-888-6199; [www.swiftcurrie.com](http://www.swiftcurrie.com).

>    **Dr. Tina McKeon, Andrew Meunier and Dr. Christopher Curfman** announced the opening of the intellectual property law firm **McKeon, Meunier, Carlin & Curfman, LLC**. **Dr. Miles Hall** joined the firm as an **associate**. The firm focuses heavily on the

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Curfman



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Mr. Walker hired an attorney and denied all the allegations against him, including service of the TPO. Our lawyer subpoenaed the sheriff's officer who had served Mr. Walker. During the hearing, Mr. Walker finally admitted he had broken into Ms Walker's home and had continued to call her after the initial TPO. The judge ordered him immediately arrested. The judge ordered support for Ms. Walker in the amount of \$800 per month and gave her possession of the car and house.

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- >  **Nall & Miller, LLP**, announced that **John D. Hocutt** was named **partner**. Hocutt's practice concentrates in the areas of health care law, insurance law, motor carrier litigation, premises liability, product liability, professional liability, toxic torts and trial practice. The firm is located at 235 Peachtree Street NE, Suite 1500, Atlanta, GA 30303; 404-522-2200; Fax 404-522-2208; [www.nallmiller.com](http://www.nallmiller.com).

- > **Seyfarth Shaw LLP** announced that real estate partner **Steven L. Kennedy** was named **managing partner** of the firm's Atlanta office. The firm also relocated its office to one of the city's newest properties, in the process becoming one of Atlanta's first law firms to seek the coveted LEED Commercial Interiors Silver certification for green design. The firm is now located at 1075 Peachtree St. NE, Suite 2500, Atlanta, GA; 404-885-1500; Fax 404-892-7056; [www.seyfarth.com](http://www.seyfarth.com).
- > **Hale E. Sheppard** was promoted from junior shareholder to **full equity shareholder** with **Chamberlain, Hrdlicka, White, Williams & Martin**. Sheppard specializes in tax audits, criminal tax investigations, tax appeals and tax litigation.

## Georgia Rising Stars

This list recognizes the top up-and-coming attorneys in the state—those who are 40 years old or younger, or those who have been practicing for 10 years or less.\*

### Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

L. Clint Crosby  
Erica V. Mason  
Damany F. Ransom  
Scott N. Sherman  
Carl R. Varnedoe

### Burr & Forman LLP

Kathryn Y. Bouchillon  
Erich N. Durlacher  
Bryan T. Glover  
Kwende B. Jones  
Ashby L. Kent  
F. Maria Sheffield  
Graham H. Stieglitz

### Fisher & Phillips LLP

Sarah J. Hawk  
Brian Herman  
Shanon Stevenson

### HunterMaclean

Jennifer Dickinson  
Brad Harmon  
Adam Kirk  
Nicholas Laybourn  
Bates Lovett  
Colin McRae  
Rachel Young

### Kilpatrick Stockton LLP

Blair Andrews  
Frank L. Bigelis  
Candice C. Decaire  
Audra A. Dial  
Kristin J. Doyle  
Alex S. Fonoroff  
Geoffrey K. Gavin  
R. Charles Henn Jr.  
Wab P. Kadaba  
Russell A. Korn  
Steven D. Moore  
James R. Paine  
Michael S. Pavento  
Shyam K. Reddy  
Gary R. Sheehan Jr.  
Burleigh L. Singleton  
James W. Stevens  
Chad V. Theriot  
Wilson L. White

### Miller & Martin PLLC

Jimmy Daniel  
Joe Delgado  
Jennifer Grippa  
Catherine King  
Michael Kohler  
Ryan Kurtz  
Tamika Nordstrom  
Jim Woodward

### Parker, Hudson, Rainer & Dobbs LLP

Keith R. Blackwell  
David B. Darden

### Smith Moore Leatherwood LLP

Aaron E. Pohlmann  
Jennifer Pritzker  
Sender

### Stites & Harbison PLLC

Ron C. Bingham II  
Kenneth B. Franklin

### Troutman Sanders

Matthew R. Almand  
Daniele Bourgeois  
Tyler B. Dempsey  
Heather M. Ducat  
Paul Davis Fancher  
Andrea M. Farley  
Nicholas R. Farrell  
Seth T. Ford  
David W. Ghegan  
Alison A. Grounds  
Brian C. Harms  
Steven J. Hewitson  
Eric A. Koontz  
Lindsay S. Marks  
Brandon F. Marzo

Hallie M. Meushaw  
Evan H. Pontz  
Thomas E. Reilly  
Andrea Rimer  
F. Richard Rimer Jr.  
James E. Schutz  
John W. Stephenson Jr.  
Brian A. Teras  
Jaime L. Theriot  
Trenton A. Ward  
Hunter Yancey

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

# Georgia Super Lawyers

In selecting attorneys for Super Lawyers, *Law & Politics* employs a rigorous, multiphase process. Peer nominations and evaluations are combined with third party research. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Selections are made on an annual, state-by-state basis.\*

## **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**

Robert G. Brazier  
Linda S. Finley  
David E. Gevertz  
Charles T. Huddleston  
Linda A. Klein  
Edmund J. Novotny  
Michael J. Powell

## **Burr & Forman LLP**

Danielle J. Cole  
Betsy P. Collins  
Paul Burke O'Hearn  
Oscar N. Persons  
Edgar C. Snow Jr.

## **Constangy, Brooks & Smith, LLP**

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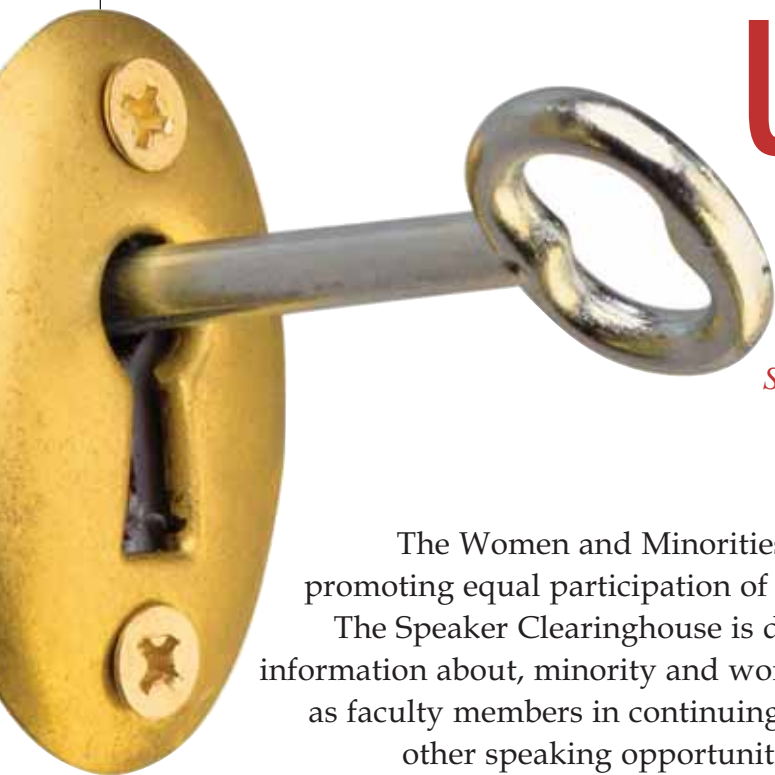
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A. Michelle Willis  
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*\*This is not a complete list of all State Bar of Georgia members included in the publication. The information was compiled from Bench & Bar submissions from the law firms above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

*\*\* Selected for inclusion in the March 2010 Law & Politics' Super Lawyers, Corporate Counsel Edition which lists attorneys from across the United States that have been recognized in previous 2009-10 state and regional editions of Super Lawyers magazine in the practice area of business litigation.*



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**Wit Hall, Chris Arbery and Matt Gilligan** established the law firm of **Hall, Arbery & Gilligan LLP**.


The firm focuses on all aspects of workplace law, providing a full range of counseling, contract drafting and interpretation and litigation services. Hall and Gilligan previously practiced at Alston & Bird LLP; Arbery previously practiced at Hunton & Williams LLP. The firm is located at Tower Place 100, 3340 Peachtree Road NE, Suite 2570, Atlanta, GA 30326; 404-442-8776; [www.hagllp.com](http://www.hagllp.com).

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that **Kevin A. Stine** was elected a **shareholder** and **Adam Sowatzka** joined the firm as a **shareholder** and a member of the government regulatory actions practice group. Stine focuses his commercial and business litigation practice on bankruptcy, insolvency, creditors' rights, secured transactions and intellectual property issues. Sowatzka, previously counsel with King & Spalding, joins as the firm's senior environmental lawyer in Georgia. The firm is located at 3414 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; [www.bakerdonelson.com](http://www.bakerdonelson.com).

### In Athens

- > **Timmons, Warnes & Anderson, LLP**, announced that **Adam M. Cain** and **Cash V. Morris** joined the firm as **associates** in the litigation division. McCain's practice focuses on collections and criminal and miscellaneous civil matters. Morris concentrates his practice on consumer bankruptcy, personal injury, social security disability and workers' compensation and miscellaneous civil matters. The firm is located at 244 E. Washington St., Athens, GA 30601; 706-621-4665; Fax 706-546-8017; [www.classiccitylaw.com](http://www.classiccitylaw.com).

### In Macon

- >  **Jeffrey M. Rutledge** joined **James, Bates, Pope & Spivey, LLP**, as **of counsel**. His practice areas include estate and tax planning, probate and estate administration, tax-exempt organizations and charitable giving, corporate

and business, and transactions. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; [www.jbplaw.com](http://www.jbplaw.com).

### In Savannah



The partners at **HunterMaclean** elected administrative partner and tax attorney **Frank S. Macgill** to serve as the firm's **managing partner** for a three-year term. Macgill will provide long-term vision and experienced leadership for the firm.

The office is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; [www.huntermaclean.com](http://www.huntermaclean.com).

- > **Dr. James Johnson**, a patent attorney with over 25 years of experience and a former partner at King & Spalding LLP, announced the opening of **Johnson & Associates**, a boutique intellectual property law firm dedicated to providing quality legal counsel for biotechnology, pharmaceutical and medical device companies. The firm is located at 317 E. Liberty Street, Suite A, Savannah, GA 31401; 912-257-4864; Fax 678-947-9798; [www.johnsonbiopatent.com](http://www.johnsonbiopatent.com).

### In Valdosta



**Elliott, Blackburn & Gooding, P.C.**, announced that **Joanna Smith Nijem** joined the firm as an **associate**. Nijem practices in the areas of real estate, business planning, corporate law and commercial finance. The firm is located at 3016 N. Patterson St., Valdosta, GA 31602; 229-242-3333; Fax 229-242-0696; [www.ebbglaw.com](http://www.ebbglaw.com).

### In Memphis, Tenn.

- > **Rubin Lublin Suarez Serrano, LLC**, a real estate default law firm, announced the addition of a location in Memphis. The office is located at 119 S. Main St., Suite 500, Memphis, TN 38103; 901-322-8705; [www.rubinlublin.com](http://www.rubinlublin.com).

### In Washington, D.C.

- > The **American Bar Association (ABA)** named **Lt. Gen. Jack L. Rives** as its new **executive director**. Rives previously served as the judge advocate general, U.S. Air Force. The ABA's Washington, D.C., office is located at 740 15th St. NW, Washington, DC 20005; 202-662-1000; [www.abanet.org](http://www.abanet.org).

# There Has Got to Be a Better Way!

by Paula Frederick

**T**his contract stinks!" you announce, scanning the paperwork your client has handed you. "Did you do the math on this interest rate?"

The monthly percentage doesn't sound bad, but it's compounded monthly—the APR is around 120 percent per year!"

"If you can find me a better deal, I'll take it," your client announces. "I've been out of work since the accident, I'm in debt up to my ears and the only thing I've got that's worth a dime is this lawsuit. Who else is going to lend me money?"

Frustrated, you remind the client that you are fronting the litigation expenses in his case, and that the Rules of Professional Conduct prohibit you from providing him with money for living expenses.

"I'm not asking you for money," the client insists. "PreSettlementCo will give it to me with no credit check, no collateral and no monthly payments. I don't even have to pay them back if we lose! All you have to do is call and tell them that I've got a good case."

Back in the office, you share your reservations with your partner. "I'm just not comfortable with helping Rusty get this advance," you admit. "The interest rate these people charge is outrageous—I'm not sure it's even legal!"

"Do you know anything about these pre-settlement funding companies?" your partner asks. "Maybe we can find one that doesn't charge such a high interest



rate. Rusty has a great case, but he can't afford to hold out for the offer he deserves."

Resigned, you pick up the telephone. "I bet I'll live to regret this," you mutter as you dial PreSettlementCo's number.

What ethics issues are involved when a lawyer helps a client get a cash advance against a potential settlement?

A client who seeks pre-settlement funding authorizes the company to get information directly from the lawyer. Most companies require copies of documents

filed in the case; most also want some estimate from the lawyer about the value of the case and the likelihood of success. Even where the lawyer is not a signatory to the agreement with the pre-settlement company, the company expects the lawyer to honor the client's assignment directing the lawyer to pay the company from the proceeds of the case.


Assuming the company is operating lawfully, Georgia's Rules of Professional Conduct do not prohibit a lawyer from helping a client obtain a cash advance against a potential settlement. Before doing so, however, the lawyer should carefully consider some of the common ethical pitfalls:

- Although you may recommend a company that provides pre-settlement financing, it's best to do so only at the client's request. A lawyer who has played an active role in choosing the company and assisting the client in obtaining funding may be accused of a conflict of interest if things go sour.

- If you have an ownership interest in a funding company, do not refer your own clients to it. Do not accept "kickbacks" or rewards from a company for making referrals.
- Most pre-settlement funding is "non-recourse," and as a result the interest rates can be astronomical. Counsel the client about the pros and cons of accepting funding, and help the client make an informed decision about alternatives.
- Do not cosign the funding documents, or otherwise guarantee the transaction. Although a lawyer may disburse client funds directly to the company with the client's OK, it is a mistake for the lawyer to become more directly obligated to the company.
- Do not reveal confidential or secret information about the client's case without express permission from the client. If the client consents, it is not unethical to estimate the value of the case and the likelihood of recovery.

- Do not allow the company to interfere in the case itself, or to affect your exercise of professional judgment on behalf of the client.

Many grievances involving pre-settlement funding come from the funding company, not from the client. Predictably, they arise when a client instructs a lawyer not to pay the company pursuant to the agreement. Bar Rule 1.15(I) can provide guidance when there is a dispute about how the recovery should be disbursed.

Although it should be an option of last resort, pre-settlement funding may be a permanent fixture in the legal landscape. Remember to call or e-mail the Ethics Helpline if you have questions about your role in a pre-settlement funding agreement. 



**Paula Frederick** is the general counsel for the State Bar of Georgia and can be reached at [paulaf@gabar.org](mailto:paulaf@gabar.org).



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# Discipline Summaries

(February 20, 2010 through April 15, 2010)

by **Connie P. Henry**

## Voluntary Surrender/Disbarments

### **Deborah K. Rice**

Parkland, Fla.

Admitted to Bar in 2007

On March 1, 2010, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Deborah K. Rice (State Bar No. 512724). On November 2009 Rice pled guilty to and was convicted in the U.S. District Court for the Eastern District of Pennsylvania of three felonies: two counts of mail fraud and one count of wire fraud. She was sentenced to two years on probation.

### **Frederick Andrew Gardner**

Atlanta, Ga.

Admitted to Bar in 2002

On March 1, 2010, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Frederick Andrew Gardner (State Bar No. 284151). Gardner pled guilty to a misdemeanor of obstructing a police officer and was sentenced to 12 months of probation. Gardner gave false information to a Georgia Bureau of Investigation agent during an interview regarding a real estate closing. Gardner falsely told the agent that he had instructed his employees to notify the lender about the back-to-back closings of the property and misled the agent as to why money had not been disbursed after the first closing.

In determining the level of discipline, the Court recognized that mortgage fraud is a very serious problem in Georgia and that real estate closing attorneys are relied on by their lender clients and by the public to act ethically and lawfully to identify and prevent such fraud, rather than facilitating and concealing it as Gardner did.

### **Thomas P. Burke**

Bronx, NY

Admitted to Bar in 1973

On March 15, 2010, the Supreme Court of Georgia disbarred Attorney Thomas P. Burke (State Bar No. 095650). The New York Supreme Court found that Burke failed to disburse estate's assets worth approximately \$100,000 and failed to wind up the estate as required by law. Based on his failure to respond to the investigation, Burke was suspended on an interim basis for six months. Under New York disciplinary procedures, Burke subsequently was disbarred due to his failure to apply for a hearing or reinstatement following the suspension. Burke did not file a response to the State Bar of Georgia's notice of reciprocal discipline although he was personally served.

### **Jeffrey Scott Denny**

Carrollton, Ga.

Admitted to Bar in 1998

On March 29, 2010, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Jeffrey Scott Denny (State Bar No. 218397). Denny pled guilty in the Superior Court of Douglas County, GA, to three felony counts of Fraud-Financial Identity and one felony count of Forgery.

## Review Panel Reprimand

### **Ralph James Villani**

Gainesville, Ga.

Admitted to Bar in 1993

On March 1, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Ralph James Villani (State Bar No. 727700) and ordered that he be administered a Review Panel reprimand. A client hired Villani in August 2007 concerning the death of

her son. Villani failed to timely and properly respond to the client's inquiries and she discharged him in December 2007. The client had paid Villani \$15,000 and she requested an accounting of his services and a refund of fees. Villani provided a billing statement, but the client disputed it and continued to request at least a partial refund. Villani did not return any fees and the client filed a fee arbitration petition with the State Bar. In November 2008 the fee arbitration panel awarded the client \$6,500. Villani admitted the fee was unreasonable and refunded that amount. In mitigation, Villani stated that he cooperated with the State Bar, that he was remorseful and accepted responsibility for his misconduct, that he had no discipline aside from an Investigative Panel reprimand in 2001, and that he refunded the \$6,500.

#### **Craig Steven Mathis**

Leesburg, Ga.

Admitted to Bar in 1991

On March 15, 2010, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Craig Steven Mathis (State Bar No. 477027) and ordered that he be administered a Review Panel reprimand. In May 2007 Mathis agreed to represent a client in a child custody matter. His secretary conferred with the client and had the client sign a sworn "Verification" to be used in the petition for change in custody. The petition had not been drafted at the time the client signed the Verification, in which he swore and attested that the facts in the petition were true and accurate. The client also signed an employment agreement and paid \$1,500. In a June 2007 telephone call the secretary read to the client the petition drafted by Mathis and confirmed the accuracy of the allegations. When the petition was not filed as expected, the client attempted to call Mathis and arrange a meeting but he spoke with Mathis only once in September 2007 and never met

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

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*An Attorney's Attorney*

with him. In the meantime, Mathis filed the petition in August 2007. The client discharged Mathis in October 2007 and hired new counsel. The client subsequently filed a fee arbitration petition against Mathis and he then returned \$500 to the client.

The Court found in mitigation that Mathis cooperated with the State Bar, he was remorseful and he refunded \$500 to the client.

### **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 Feb. 19, 2010, four lawyers have been suspended for violating this Rule and three have been reinstated.


### **Reinstatement**

**Ike A. Hudson**

Newnan, Ga.

Admitted to Bar in 1979

On March 15, 2010, the Supreme Court of Georgia accepted the petition for reinstatement of Ike A. Hudson (State Bar No. 374518) and ordered that he be reinstated to practice law in the state of Georgia. In 2008 the Court accepted Hudson's petition for voluntary discipline and imposed a one-year suspension, based on his fail-

ure to do promised legal work for two clients despite accepting retainer fees from them, and for his failure to communicate with these clients. Reinstatement was conditioned upon satisfactory proof to the Review Panel that he had reimbursed the retainers. Hudson submitted copies of cancelled checks payable to the clients as well as proof that he satisfied the judgment one client obtained against him. 



**Connie P. Henry** is the clerk of the State Disciplinary Board and can be reached at [connieh@gabar.org](mailto:connieh@gabar.org).

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# Hot Technology Basics for 2010

by Natalie R. Kelly

*This article is a revision of the article, "Hot Technology Basics for 2001" that appeared in the April 2001, Vol. 6, No. 5, issue of the Georgia Bar Journal.*

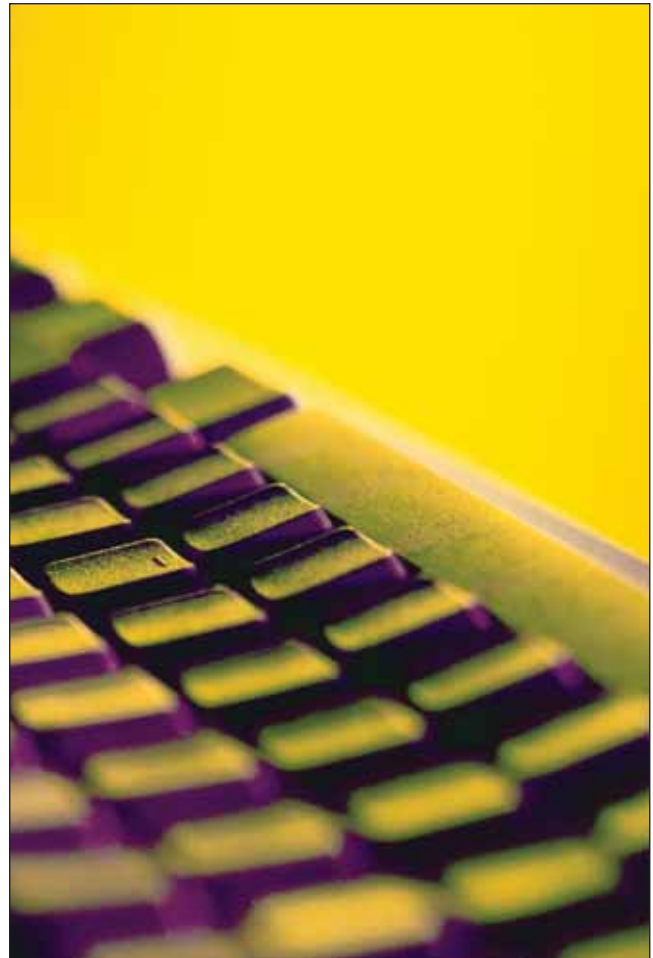
**T**he Law Practice Management Helpline receives more calls for technology advice than it does on almost any other subject. Let's talk about some of the basics and review some of the most popular technology products and services for lawyers.

Basic legal computing requires a few things. I have found that while most firms have these systems in place, every now and then I encounter firms who still haven't bothered to catch up.

So, here's my short list of the basic technology must-haves for today's lawyer.

## Networked Computers

In 2001, I wrote, "With the rarest of exceptions, the benefits of networking computers far outweigh any reason for not linking your computers together. The ability to share file information and resources, like printers, is reason alone to hunt down a local computer consultant for an estimate on running the cables from one computer to the next. If you are one of the 'techno dinosaurs' that remains, please contact our program for more information and a review of specific needs for networking computers in your office." Today, most firms do have a network and now need to focus on network reliability and stability, i.e., no down time. And with more people using databases to keep



up with their firm information, you must be careful when using wireless networks. While typically very convenient, it is important to know that relational databases do not work well on them, if at all; and most practice management, time billing and accounting applications are databases of this type.

## Backups

Another scary thing is that lawyers are still found storing all of their work on computers, but not performing any type of backup. Whether you choose to copy files to thumb drives, CDs or DVDs, or invest in an online data storage account, you *must* have some backup procedures in place. You also *must* make sure that the procedures work. Ask yourself this: If I am away from my office and there is a flood, can I retrieve my work? Enough said. *Backup*, store backups off site and make sure you can get data back (restore routine) in case of a disaster. If you need help with developing these procedures for your firm, don't hesitate to contact our program. Check out [www.backupreview.info](http://www.backupreview.info) for listings on online services and [www.seagate.com](http://www.seagate.com) for some strong tools to manage local backups. Remember you should layer your backups to be best protected.

## Upgrades

By now you have learned that with technology, upgrading is inevitable. Make sure you stay abreast of any upgrades that are on the market. While hardware typically does not require as much tweaking as software, keep your techno tools sharp and in good working order. Download the latest maintenance releases, service patches or bug fixes on a regular basis. Remember the old saying about an ounce of prevention? It works for computers and software too.

## Virus Protection

You would think that lawyers who are highly skilled at protecting

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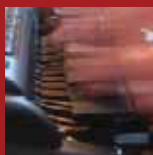
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the interests of others would have no problem protecting themselves. However, many firms operate with no form of protection from computer viruses. Bottom line: there are a lot of bored computer criminals and they will continue to build destructive programs that can harm other people. Make sure you have downloaded or purchased a virus protection system for your office. Don't think that non-networked systems don't need it, too. In fact, using thumb drives and other transportable media may make the need even more pressing.

## Training

A pet peeve that I have is being told that training is not necessary. Everyone has to learn how to use new systems. You can spend several weeks (read whenever I have time or the work in the office slows down) or a day or two in the process. You can teach yourself (didn't someone say something about "the blind leading the ...?") or hire professionals. You can immediately begin to get a return on your investment or wait until later (okay, much later). No one can convince me that there is no benefit to proper training. It is necessary. Check out our technical consultations for training or use vendor-sponsored sessions to learn about the tools you are putting in place in your practice. For general training, I like [www.lynda.com](http://www.lynda.com).

## Internet

In some form or another, we all need to be able to go online. For e-mail (don't forget to use a formal domain name registration to avoid looking less professional, i.e. [lawyer@lawfirm.com](mailto:lawyer@lawfirm.com) vs. [lawyer@commercial-email-account.com](mailto:lawyer@commercial-email-account.com)), legal research, visiting websites, participating in Listservs, downloading information and on and on, you should harness the power of the Internet in law offices. Many benefits lie in being able to communicate with others remotely and in new ways. Consider the new wave of social

media options online. There is so much information and so many new options available with an enhanced Internet (YouTube videos, geotagging, etc.). If you need help moving forward with your online presence, call our program to discuss the benefits and the best ways to get connected and caught up with the rest of us. Web 3.0 anyone?

## Practice/Case Management

I used to have trouble explaining the benefits of case management software. There were just too many features to focus on. It has gotten a little easier. Now, I just ask the unbeliever, "How long does it take you to find a phone number for a particular judge on a particular case, and how long does it take to update a change to that number throughout the office?" With case management software you have the ability to make much more money and save more time. I can't think of one reason why you would not have one of these programs that allows you to keep a copy of the physical file on the computer. Contact our program for help in deciding what program will work best for you. You can't afford not to.

## Automated Time Billing and Accounting

Recreating time entries for bills you make in the word processor and doing manual ledgers should be things of the past, but unfortunately, they are not. Today's time and billing and legal accounting software is the answer. Back office procedures are needed in all businesses, law offices included. I can tell you that you need it and show you why if you contact our program. Trust me.

## Handheld Devices

If you are walking around with a paper calendar in your pocket or a bulky day planner, I say,

"stop it and get a handheld." With many flavors to choose from, PDAs are still hot techno gadgets and most are simply built into your cell phone. These devices can hold your entire calendar, all of your contact records, your e-mail and even run applications to help you keep up with everything you will need both personally and professionally. To learn more about handhelds, and see what applications are available for any existing device you might have, check out Handango at [www.handango.com](http://www.handango.com).

## Resources

If you do not know much about legal technology, then you should know this. There are many resources available to help you learn more. Whether it's an online venue or service like *Technolawyer* for legal specific information, or [www.webopedia.com](http://www.webopedia.com) or [www.learnthenet.com](http://www.learnthenet.com) for technology in general, you can look to the Internet for help. Legal technology shows also take place annually around the country. Check out the American Bar Association's Annual TECHSHOW, usually held in Chicago, or the various LegalTech shows that may take place in a location near you. At these shows you can learn the latest things about hot legal technologies like cloud computing, running a law office on a Mac and voice recognition software. A print publication to check out is *Law Technology News*. Finally, don't forget to contact the Law Practice Management Program. We will be glad to help with assessing your legal technology needs and give you a guided tour of our software library before you make any purchases. 



**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](mailto:nataliek@gabar.org).

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# The State Bar's Newest Office Celebrates Its First Year

by Linda Edwards

**M**ore than 275 years after its founding as a lawyer-free colony, Savannah made legal history on June 8, 2009, with the opening of the Coastal Georgia Office of the State Bar of Georgia. As we celebrate the one-year anniversary of the beautiful and functional Coastal Georgia Office, one cannot help but reflect on the rich Savannah history the State Bar now joins.

The colony of Georgia was established by Great Britain in 1733 as the last of the original 13 colonies. Founder Gen. James Oglethorpe and 114 colonists arrived and pitched their tents on Yamacraw Bluff, which would later become known as the beautiful historic city of Savannah. A historic marker has been placed in the small park area in front of the Hyatt Hotel just west of the Coastal Georgia Office on Bay Street marking the spot as "the most historic spot in Georgia." The original intent of the colony was to create a buffer between Spanish Florida and the northern English colonies. In addition, the Georgia colony was also charged with enhancing imperial trade as well as navigation of the coastal waterways. General Oglethorpe had four rules for his new community: no slaves, no Roman Catholics, no strong drink and no lawyers.

Four days after the settlers arrived, Oglethorpe began mapping out his new settlement which would eventually morph into 24 squares with a network of interconnected streets. Of the 24 original squares, 22 remain today. The original plan is still in use and just recently, Ellis Square at City Market, a short walk from the Coastal Georgia Office, was restored as showcase green space in



Photos by Sarah I. Coole

the middle of bustling Savannah, complete with a commons, water feature and life-size salute to one of Savannah's greats, world-renowned songwriter and musician Johnny Mercer.

North of Bay Street lies the Savannah riverfront, which has played an important role in Georgia since its founding as a colonial port and its emphasis on exporting cotton. For over a century, trading in the Cotton Exchange on Savannah's waterfront set world cotton prices. The first commercial house below Yamacraw Bluff opened in 1744. In the early 1800s, construction of multi-storied warehouses began along the riverfront, one of which now houses the Coastal Georgia Office. In

1817, this warehouse area, later to be known as Factors Walk, was the original site for the Cotton Exchange. The first two floors were for the cotton coming into port. Then, in 1853, three more floors were added. The third floor was used for storage and the fourth and fifth floors were offices. Soon the whole riverfront bluff consisted of a network of alleys and iron and wood walkways connecting the buildings to the bluff. These alleys and walkways were called Factors Walk, so named because the men who worked with the cotton exchange were called *factors*. They *factored* how much cotton was brought in to be sold. This area was the center for most commercial activities. It was an important part of Savannah's history due to its impact in the cotton industry. Its historical significance has weathered the test of time.

Today, the history of Yamacraw Bluff and Factors Walk is carried forward with the opening of the State Bar's Coastal Georgia Office, right here upon the very spot where our great state was founded, where Georgia commerce was born, where beautiful Savannah took shape and where now, these many years later, the State Bar continues to support Savannah, her people and our fellow citizens throughout Georgia.

June 8, 2010, marks the one-year anniversary of the Coastal Georgia Office. Just a year after a grand opening event attended by judges, lawyers, city and county officials, community leaders and the press, the newest office of the State Bar has turned its attention to the work of helping Georgia lawyers. Amidst the hustle and bustle of the daily traffic of cargo ships entering and exiting the Georgia Ports, the Coastal Georgia Office has experienced an equal burst of excitement and activity.

The Coastal Georgia Office offers a magnificent view overlooking historic River Street, which was created in 1834 and cobbled with ballast stones from ships entering the




View of the historic Savannah riverfront.

port. It is also located only a few steps away from the Savannah Cotton Exchange whose history came to an end with the closing of the last cotton office on the waterfront in 1956. The area was in a state of decline for the next 20 years until revitalization began in 1977, a process that resulted in a new birth of this rich, historic area. Today, the Coastal Georgia Office joins that grand history. It features a training room that can accommodate 30-35 attendees, a 14-person conference room and two smaller meeting rooms. The facility also offers wireless access and video conferencing. A large kitchenette enables users to serve simple refreshments or provide catering for groups.

In reflecting over the past year, the Coastal Georgia Office has experienced steady growth as members of the legal community across the state of Georgia learn about, visit and utilize the facility. Many are taking advantage of this resource that provides State Bar members with a convenient place to conduct their legal business. Over the past year it has hosted a variety of events, including more than 30 CLEs, numerous mediations, depositions, video conferences and client meetings. Access to video conferencing equipment has made it easier for area lawyers to participate in meetings originating in Atlanta

and/or Tifton. In addition, it has provided a way for Coastal Georgia lawyers to participate in business that would have previously required travel. The office has hosted events put on by the Young Lawyers Division, the Lawyers Foundation of Georgia, the Georgia Association for Women Lawyers and the Georgia Association of Criminal Defense Lawyers, as well as training events for Casemaker, Law Practice Management and others. From the lawyer who practices in a large firm to the solo practitioner who uses the facility to enhance his business, this office can accommodate everyone. The goal of the Coastal Georgia Office is to assist Georgia lawyers in any way that we can as well as increase access to State Bar programming. We look forward to seeing you in Savannah!

For assistance in planning and implementing your programs or CLEs for your local bar association, or for reserving space for your meeting, please send an e-mail to [lindae@gabar.org](mailto:lindae@gabar.org) or call 877-239-9910. 



**Linda Edwards** is the office administrator at the State Bar of Georgia's Coastal Georgia Office in Savannah and can be reached at [lindae@gabar.org](mailto:lindae@gabar.org).

# Pro Bono Honor Roll

The Pro Bono Project of the State Bar of Georgia salutes the following attorneys, who demonstrated their commitment to equal access to justice by volunteering their time to represent the indigent in civil pro bono programs during 2009.

*\*denotes attorneys with 3 or more cases*



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# Section Events Update

by Derrick W. Stanley

**V**arious sections have been active in providing networking and educational opportunities over the past six months. In that same time frame, a good number of section members have utilized the new database and registered for these events online. Enhancements have allowed for easier registration and increased attendance at section events.

The Franchise and Distribution Law Section held its CLE, *Enforcing System Standards and the Risk of Vicarious Liability*, on Nov. 17, 2009. This panel discussion was moderated by Ron Coleman, Parker, Hudson Rainer & Dobbs; Peter Dosik, Cajun Operating Company; and Kathie Lee, Starwood Hotels & Resorts Worldwide, Inc. Topics discussed included: transfers, renewals, buy-outs, conversions and more.

The Licensing and Patent committees of the Intellectual Property Law Section held the *Patent Licensing Roundtable*, on Dec. 15, 2009. Rivka D. Monheit, Pabst Patent Group, moderated a panel consisting of Wendy Choi, Kilpatrick Stockton, LLP; William A. Hartselle, IPinvestments Group; and David S. Teske, Alston & Bird LLP, regarding patent licensing with a focus on practical considerations. Highlights



included discussions regarding pros and cons for standard licensing provisions, the effect of *MedImmune v. Genentech* (2007) and *Quanta v. LG Electronics* (2008) on patent licenses and marketing patents to third parties.

On Dec. 17, 2009, the Intellectual Property Law Section of the State Bar, the IP Committee of the Young Lawyers Division and the Intellectual Property Law Section of the Atlanta Bar held a joint holiday party at the Four Seasons in Midtown Atlanta. Representatives from all three sponsors were present to greet the guests.

The Labor and Employment Law Section of the State Bar and the Atlanta Bar, along with ICLE, presented *Professionalism: Views From the Bench*, on Jan. 12. Hon. Linda Walker shared tips and gave advice to attendees who were able to earn one hour of professionalism credit. A capacity crowd enjoyed breakfast before the program.

*Trademark Law in 2010 & Beyond: How the Economy and Internet Are Reshaping Trademark Issues* was held on Feb. 4 and presented by the Trademark Committee of the Intellectual Property Law Section and the IP Committee of the Young Lawyers Division. Featured panelists included: Phil Hampton, Dickstein Shapiro LLP; Jennifer Gruber, Turner Broadcasting System, Inc.; Paula Guibault, The Coca-Cola Company; and Doug Isenberg, The Giga Law Firm.

On March 16, The Labor and Employment Law Section held its second breakfast CLE program at the Bar Center. A *Conversation About the NLRB* was facilitated by Peter C. Schaumber, one of two current members of the National Labor Relations Board. Schaumber provided insightful information about the NLRB and took questions from the attendees.

The Franchise and Distribution Law Section held a panel discussion at Church's Chicken Corporate Headquarters on March 18 titled *Issues in International Development*. The program was moderated by:



(Left to right) Appellate Practice Section members Chris McFadden, past chair; Christina Smith, vice chair; Hon. Gerald Bard Tjoflat, judge, 11th Circuit Court of Appeals; Amy Weil, chair; Laurie Daniel, past chair.

Photo by Alison Church

Ken Cutshaw, Cajun Operating Company d/b/a Church's & Texas Chicken; Bachir Mihoubi, chief executive officer, Francounsel Group; and Rupert Barkoff, partner, Kilpatrick Stockton LLP.

During the month of March, the Intellectual Property Law Section held several events for its members. On March 10, the section had a pre-Saint Patrick's Day reception at RiRa Irish Pub in Midtown. Knoll Ontrack and TrialGraphix IP assisted in making this event a success with their generous sponsorship. *Alternative Fees in the IP Context: Ideal or Preposterous?* was held on March 20. Expert consultant Marie Lefton discussed alternative fee arrangements in the IP context, including: market trends on alternative billing, understanding and dealing with cost pressures, factors to consider when choosing an alternative fee structure, best practices for pricing and managing the work, strategies for reducing costs, other ways to add value and special perspectives on these issues for both law firms and in-house counsel. On March 23, the section presented *Pleading Standards in IP Litigation after Twombly and Iqbal*. This panel presentation looked at the effect of the Supreme Court's *Twombly* and

*Iqbal* decisions on pleading standards in intellectual property litigation. The panelists addressed this topic with special focus on patent and trademark litigation, as well as practice considerations for defendants and plaintiffs.

Todd McClelland, partner, Alston & Bird, provided an update on the latest business and legal issues in cloud computing on March 30. *Cloud Computing: Watch Out For The Lightning* was co-hosted by the Technology Law and Intellectual Property Law Sections.

*Thinking Outside the Box: New Approaches to Digital Music Licensing* was presented by the Entertainment and Sports Law Section and the Southeast chapter of the Copyright Society. The featured speakers were Jim Griffin, managing director, OneHouse LLC; and Leron Rogers, partner, Hewitt & Rogers and Advisory Board member of the Future of Music Coalition.

The Environmental Law Section held its annual meeting on April 7. This event allowed the section time to conduct business, network and discuss key issues. During the meeting, A. Stanley Meiburg, acting regional administrator for EPA Region 4, presented *Key*



# Let CAP Lend a Helping Hand!

## What is the Consumer Assistance Program?

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

## Does CAP assist attorneys as well as consumers?

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

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

## What doesn't CAP do?

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

## Are CAP calls confidential?

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

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

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

*Environmental Issues in U.S. EPA Region 4: An Update from the Acting Regional Administrator.*

On April 7, the Appellate Practice Section hosted a luncheon at the Commerce Club featuring Hon. Gerald Bard Tjoflat, U.S. Court of Appeals for the 11th Circuit. Judge Tjoflat fielded a lively question-and-answer session with the audience, who came away with useful tips for appellate practice—both for brief writing and oral argument.

A free continuing legal education session was held on April 20 at the Bar Center for members of the Real Property Law Section. The session was geared to new section members and new closing attorneys. Taught by a team of senior attorneys, the program highlighted the most common problems and pitfalls new real estate closing practitioners may face. Areas discussed included the ethical issues of “who is your client”; spotting and correcting title problems and liens, and other tips for a strong practice.

In their April 20 CLE, the Intellectual Property Law Section discussed *Ariad v. Eli Lilly*. On March 22, the en banc Federal Circuit reaffirmed that section 112 contains two distinct requirements: a written description of the invention and an enabling disclosure. The court further confirmed that the written description requirement


applies to all claims, even originally filed ones. This timely discussion of the decision and an exploration of the distinction between written description and enablement was lead by Tim Holbrook, Emory University School of Law.

The International Law Section sponsored the event *The Global Movement of People—Navigating the International Assignment Maze* on April 22. An esteemed panel experienced in the international movement of executives and other employees demonstrated how to identify potential areas of concern, particularly in the areas of employment, taxation, immigration and benefits, so that proactive steps may be taken to avoid unpleasant surprises. The panelists were: John Parkerson, FSB FisherBroyles, a Limited Liability Partnership Counsel, moderator; Mark Hilliard, director, employment and benefits law, Cisco Systems, Inc.; Atiqua Hashem, associate general counsel, CARE International; Clayton Cartwright, The Cartwright Law Firm, LLC; and Rebecca L. Sigmund, Ogletree Deakins. The Labor and Employment Law Section co-sponsored this event.

*Fraud in Trademark Cases: Impact of the Bose Case* was presented by the Trademark Committee of the Intellectual Property Law Section on April 23. The Trademark Trial

and Appeal Board Acting Chief Judge Gerard Rogers gave an overview of the U.S. Patent and Trademark Office’s reaction to the *Bose* decision.

On May 12, the Immigration Law Section invited members of the Family Law, Criminal Law and International Law sections to a meet and greet at Shout! in Midtown. This annual event attracted members to a networking function with cocktails and appetizers served in a relaxed atmosphere with great views of the city.

A benefit of being a member of a particular section provides attorneys with the option to participate in events and functions described above. Many of the educational programs receive CLE credit through a partnership with ICLE, aiding in the process of meeting the yearly CLE requirement. Additionally, section members are the first to receive invitations to section sponsored events with ICLE, which makes the process that much easier. If you haven’t done so already, consider joining a section. You won’t be disappointed. 



**Derrick W. Stanley** is the section liaison for the State Bar of Georgia and can be reached at [derricks@gabar.org](mailto:derricks@gabar.org).

**Thanks to the following sections for sponsoring the Opening Night Ceremony at the 2010 State Bar of Georgia Annual Meeting**

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# Casemaker 2.2

## Improved Content and Design plus Mobile Phone App

by Sheila M. Baldwin

**L**egal research through the State Bar of Georgia's Casemaker is better than ever with the addition of several improvements designed to make your research easier and more complete. Casemaker 2.1 has been updated and replaced with Casemaker 2.2. The new 2.2 has all the improvements of a new version but operates basically in the same way as Casemaker 2.1, so there is no learning curve. Since mid-February, Casemaker has added enhanced content as well as improved the search capabilities.


State Bar users will find several major changes in "Code and Acts," "Session Laws" and "Multi Jurisdiction" searching. "Code and Acts" new design enables a simpler search. The statutes are now grouped by chapter and title with all subsections in a single view. By selecting the link in italics you can see the entire chapter or you can go to a specific subsection to view it alone (see fig. 1). If you should need a refresher on the history and intent of a law, Casemaker has added history and archives to this library. When the statute is open you can link to Archives to find a fully set out version of the provision as it appeared back through 2001 (see fig. 2).

Casemaker 2.2 separates newly passed statutes which have not yet been added to the O.C.G.A. into a separate book in the library called Session Laws. The new statutes are listed with the most recent at the top and include summaries (see fig. 3). When browsing or searching statutes, you should always either check both the Code and Acts book and the Session Laws book, or you may run a MultiBook Search with both books checked. The "MultiBook Search" link is found on the main Georgia Library home page on the right hand side next to the "Currency" link (see fig. 4).

Casemaker 2.2 has also improved the "Case Search" area. It is now possible to run a search in State and Federal books from the Case Law results page. Run your search as usual and find related Georgia cases, then choose the "All Jurisdictions" tab at the top right hand side of the search results page (see fig. 5). Click this tab to access a drop down menu containing links to Supreme Court, Circuit Opinions and District Court Opinions for any other state. With two clicks of your mouse you can rerun your exact search in one of these other jurisdictions. This has been something our members have wanted for some time and will be a great time saver.

Along with the improved content and design of Casemaker 2.2, Lawriter, LLC, parent company of Casemaker, recently released a beta version of the Casemaker Mobile App, which runs on almost all smart phones (see fig. 6). (Phones using the Windows Mobile operating system are not currently supported, but a version is due soon.) Download the app and give it a try and you'll automatically be entered in a drawing for a new iPad. The app runs quite well on my Droid, with full document search capabilities as well as advance search options, and it was easy to download.

To get your copy of the Casemaker Mobile App, go to <http://mobile.lawriter.net> on your smart phone and provide your name and e-mail address to download the app. It only takes a second and you'll be able to pull and read cases right from your phone. The current version of the app provides access to cases from all Casemaker jurisdictions, with the ability to set your preferred library (Georgia or Federal) as your default search database. Future versions will incorporate statutes and other items from the Casemaker library.

We hope that you'll enjoy these enhancements. If you have Casemaker questions please e-mail [sheilab@gabar.org](mailto:sheilab@gabar.org) or call 404-526-8618. 



**Sheila Baldwin** is the member benefits coordinator of the State Bar of Georgia and can be reached at [sheilab@gabar.org](mailto:sheilab@gabar.org).



# Suggested Summer Stories

by Karen J. Sneddon and David Hricik

**W**ith the humid summer air once again settling into the state, it's nice to kick back and relax in a cool environment, whether at the beach, by the pool or in a nice air conditioned quiet space. Although we are all for mindless reading, some good books can also help you develop your legal writing skills. In that vein, we suggest some fun fiction reads that also might boost your writing power.

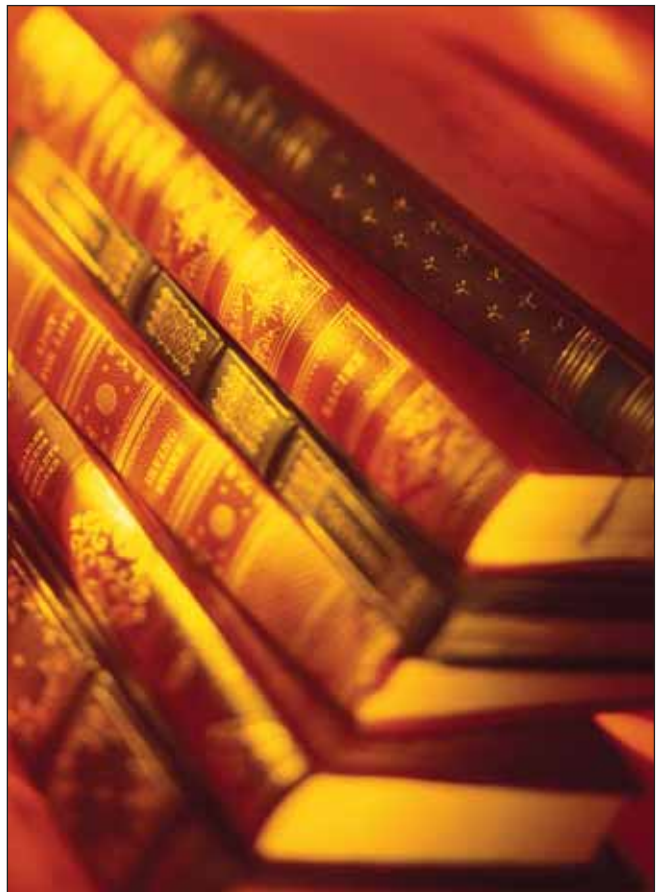
We'll go beyond the ubiquitous *To Kill a Mockingbird* and *Bleak House* and remind you of some other classics—without spoiling any endings. These books can be found used not only on amazon.com, but also often at a much lower price on abebooks.com or even checked out from your local library. Enjoy!

## Franz Kafka, *The Trial*

Everyone knows the tale of Josef K., a respectable bank officer who must defend himself against a charge—with no information about that charge. The reader is thrown into a pit of bureaucracy and totalitarianism that brings home the meaning behind the requirements of both procedural and substantive due process.

## Leo Tolstoy, *The Death of Ivan Ilych*

Few stories begin with the protagonist's death, let alone the death of a judge. The reader follows Ivan Ilych through "the spiritual conversion of a judge—an



ordinary, unthinking, vulgar man—in the face of his terrible fear of death." For Tolstoy—who must have been paid by the word—this is a manageable length read, especially compared to *Anna Karenina* and *War and Peace*. (Of course, pulling this slim volume out of your beach bag won't impress those lounging with you around the pool as much as lugging out Dostoevsky's *Crime and Punishment*.)

## Agatha Christie, *Witness for the Prosecution*

Murder mysteries are not only a fun read, but often showcase aspects of the law. For example, the change of intestacy statutes was the motive for murder in *Unnatural Death: The Dawson Pedigree* by Dorothy L. Sayers. Today, any mention of a murder mystery immediately brings up Agatha Christie, the Grand Dame of Mystery, who supplies motive, murder and mayhem galore. Her short story *Witness for the Prosecution* makes for exceptional summer reading. Charged with murdering an elderly wealthy woman, Leonard Vole seeks the help of a defense attorney who must confront the strongest witness against Leonard: Leonard's wife.

## John Jay Osborn Jr., *The Paper Chase*

If the smell of sunscreen is making you nostalgic for those summer family vacations of yore, consider revisiting your law school years with *The Paper Chase*. Published in 1970, this novel takes you back to the nail-biting world of the Socratic Method. At least now you will be able to laugh at Prof. Charles Kingsfield rather than worry that you'll be on call.

## Louis Auchincloss, *Manhattan Monologues: Stories*

Characterized as "Edith Wharton with a male sensibility," Auchincloss is a witty, prolific writer who examines the world of East Coast attorneys, stockbrokers, bankers and socialites. He draws from his extensive practice experience, including practicing at Sullivan and Cromwell in New York City, to create realistic, three-dimensional characters. This collection of stories is a perfect quick read and includes a protagonist not often included in fiction: the corporate attorney. Another gem by Auchincloss is his novel *Last of the Old Guard*, a biography of a deceased

corporate lawyer who was obsessed with his firm. (Reminds us of a few of our old jobs...)

## Andre Dubus III, *House of Sand and Fog*

This National Book Award Finalist details the tragic course of events following the simple non-payment of real property taxes. Evicted from her home, Kathy's attempts to regain her house move the story into a downward spiral of dismay, futility and grief. Not necessarily a light read, this novel (which is also part of Oprah's Book Club) makes the consequences of legal error real. The movie is also wonderful.<sup>1</sup>


## Steve Berry, *The Amber Room*

Although not a classic legal read, this fun legal thriller follows an Atlanta judge and her ex-husband (an estate planner) across Europe. Working within the discourse conventions of the genre, Berry spins a web of intrigue and suspense. And when a judge and attorney get the chance to unravel a diabolical plot, you know the story has to be worth reading.

## George Orwell, *Animal Farm, Politics and the English Language and Why I Write*

Orwell's masterful works all ponder the ability of language to corrupt and manipulate. Those are clearly issues that should concern all lawyers. There's even a statute given retroactive effect when it is changed to read, "No animal shall kill any other animal" to "No animal shall kill any other animal without cause."

Our summer reading list omits many great legal reads. (And great legal reads are everywhere. Who can forget, for example, that the fee tail is really the heart of *Pride and Prejudice*?) If you have a particular fiction work involving lawyer, judges and the law, e-mail us a one

paragraph summary. We'll compile them to publish in a future column—with proper attribution to you. 



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



**David Hricik** is a professor at Mercer Law School who has written several books and more than a dozen articles. The Legal Writing Program at Mercer Law School is currently ranked as the nation's number one by *U.S. News & World Report*.

## Endnote

1. Looking to watch a great legal movie? The *ABA Magazine* in August 2008 created a list of the "Twenty-Five Greatest Legal Movies." The entire list is available at [http://www.abajournal.com/magazine/article/the\\_25\\_greatest\\_legal\\_movies/](http://www.abajournal.com/magazine/article/the_25_greatest_legal_movies/). The ABA also awards the Silver Gavel for Media and the Arts. For a listing of award winners, see <http://www.abanet.org/publiced/gavel/>. There are also a number of great non-fiction books about lawyers and non-fiction books written by lawyers. For a collection of essays, see William S. Duffey Jr. & Richard A. Schneider, *A LIFE IN THE LAW: ADVICE FOR YOUNG LAWYERS* (2009).

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# Now That's Progress!

## What'll You Do Next?

by Roy M. Sobelson

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**M**y grandmother once said to me, "I've seen the invention of the airplane, the jet plane and rockets. I've seen men go into space, orbit the earth and walk on the moon. Now that's progress! What'll they do next?" Like my grandmother, I like to take the long view. Consider some of the changes I've seen in my profession. When I graduated law school, legal advertising was nonexistent. The largest law firms had dozens of lawyers. Hourly billing was not the common order of the day. Motions to disqualify counsel and legal malpractice cases were almost unheard of. And "professionalism" was not something lawyers talked about.

That changed in 1989. Spurred on by Emory President Laney and Justice Charles Weltner, Georgia became the first state to bring "professionalism" into the legal lexicon. It took the vision of Justices Harold Clarke and Thomas Marshall, and the support of State Bar of Georgia President Jim Elliott, to bring the Chief Justice's Commission on Professionalism into being.



The first such body of its kind, it became the model for similar commissions around the globe.

As a participant in some of the early Commission convocations, I remember the wisdom and

## Having achieved and created so much, the Commission must still ask of itself, "Is this really progress?" and "What should we do next?"

passion of Justice Clarke, who chaired the Commission from 1990-94. Justice Clarke felt that lawyer professionalism was endangered by the "over-commercialism of the profession, over-aggressiveness...of some lawyers, and the view that lawyers and the law are obstacles in the path of things which should be accomplished."<sup>1</sup> He went on to say:

The debt of professionalism has an enormous principal, carries an astronomical rate of interest and its terms extend for a lifetime. The debtor is each lawyer, but the creditors are at least five in number. Each lawyer owes a debt to the client, the lawyer, the system of justice, fellow lawyers, and the public.<sup>2</sup>

Without putting words in Justice Clarke's mouth, I wonder if he might have looked at the changes he'd witnessed in his profession as my grandmother had looked at the history of flight and thought, "Yes, there have been changes. But is that really progress? What should we do next?"

If you'll look in the blue pages in your Bar Directory, you'll see part of what the Supreme Court and the Commission did next. They created a set of aspirational statements, in contrast to the ethical rules which precede them, to emphasize the idea that ethics is a minimum standard *required* of lawyers while professionalism is a higher standard *expected* of them.

I find the Lawyer's Creed especially inspiring.

To my clients, I offer faithfulness, competence, diligence and good judgment... To opposing

parties and their counsel, I offer fairness, integrity and civility... To the courts... I offer respect, candor and courtesy... To my colleagues in the practice of law, I offer concern for your welfare... To the profession, I offer assistance... I will strive to keep our business a profession and our profession a calling in the spirit of public service...[and]... To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

Pretty simple. And right on the money.

As inspiring as these ideals are, the Commission would not have lasted had it not produced something of tangible value. Without the Commission, we would not have the mandatory Professionalism Orientation programs we now see at every Georgia law school; the Transition into Law Practice Program, the country's first mandatory mentoring program for new lawyers; the Judicial District Professionalism Program; dozens of innovative educational programs; and much more.

Having achieved and created so much, the Commission must still ask of itself, "Is this really progress?" and "What should we do next?" In 1996, the Commission said that its mission was to:

support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the

courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

This February, the Commission held a retreat, one purpose of which was to re-examine our mission. We asked two questions: (i) have we met our mission?; and (ii) where do we go from here? The retreat group—with representatives from the Commission, Georgia's state and federal courts, the law schools, the Attorney General's Office, lawyers in private practice, the Office of Bar Admissions, ICLE and the State Bar—looked at the Commission's strengths, weaknesses, opportunities, threats and priorities. All agreed that the Commission had accomplished a great deal, raising the Bar's and the public's awareness about professionalism and the need to inculcate professional-

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ism values in young lawyers as early as possible.

But we were less successful in deciding what to do next. In particular, we focused on the final words of the mission statement, asking whether any of our valuable work had really helped to ensure access to the justice system. Just how a Commission can do that is a question we could only begin to think about in a two-day retreat. And how we can do that in a time of skyrocketing legal fees, unmet needs of indigents, and dire economic circumstances is a question that will likely require careful consideration and long-term coordination with numerous other groups. I'm convinced the Commission is up to the task of tackling these dif-

ficult questions, and remaining relevant for years to come. I can just hear my grandmother saying to the members of the Commission, "Now that's progress! What'll you do next?" 



**Prof. Roy M. Sobelson** joined the Georgia State College of Law faculty in 1985 where he teaches professional responsibility and civil procedure and evidence. Sobelson has also served as associate dean for Academic Affairs and taught as a visiting professor at the Emory University School of Law. Before entering academia, he served as managing attorney at the Brunswick

office of Georgia Legal Services. Sobelson has served on the Georgia Chief Justice's Commission on Professionalism, the Formal Advisory Opinion Board and the Clients' Security Fund, as well as acting as reporter for the Georgia Chief Justice's Commission on the Evaluation of Disciplinary Enforcement. He is a regular instructor in trial techniques and served for a year as the Interim Director of the Kessler-Eidson Program for Trial Techniques at Emory.

## Endnotes

1. Harold G. Clarke, *Professionalism: Repaying the Debt*, 25 GA. ST. B.J. 170 (1989).
2. *Id.* at 173.

# First, We Weather the Perfect Legal Storm

by Avarita L. Hanson and Sharon Obialo

*In response to the question posed by Prof. Roy Sobelson in the article "Now That's Progress! What'll You Do Next?" Avarita L. Hanson and Sharon Obialo present the following as one answer.*

Peruse any legal magazine, newspaper or journal and you are sure to come across what is no longer alarming legal buzz: the economic recession has changed the dynamic of the profession and effectively placed many lawyers in flux.

There are now four generations of working lawyers: the Veterans, the Baby Boomers, Generation X (Gen X) and Generation Y or Millennials (Gen Y). As a result the profession is beginning to appear full. Despite having exceptional credentials from law schools and oftentimes a body of work which boasts demonstrated legal aptitude, many Gen X and Gen Y lawyers are out of work and facing tough choices in order to stay economically afloat. We are in the midst of a per-

fect legal storm, whose force grows stronger with every class of young, energetic attorneys not currently practicing or deferred from joining the profession.

Before this proverbial bubble bursts, it would be wise to take preemptive action, which must materialize as a collective effort from the entire legal community. First, law schools must prepare students to actually practice law. Beyond teaching students how to theorize and understand the law, how to research and how to write and even how to procedurally navigate the courts, schools must prepare students to be self-sufficient lawyers. Learning how to generate clients, manage billing and try a case, for example, are a few skills with which every law student must graduate,

particularly in this uncertain economy where hanging out one's shingle is the inevitable trend.

Second, the technology boom that we are currently in must be exploited. The gadgets that we are confronted with can appear overwhelming. From handheld phones and data devices such as the iPad, iPhone, Blackberry and Android, to online chat forums such as Skype, AOL instant messenger and G-chat, to social networking sites such as Facebook, Twitter, Google Buzz and LinkedIn, technology can sometimes make us want to unplug from the network. However, our ever-evolving digital world offers the potential for expanded social networks and thus increased opportunities for marketing and potential client building.

Third, the importance of in-person networking cannot be overstated as strategic and effective methods of weathering the storm. Attending local bar events, conferences and CLE sessions are a few avenues, but true networking is not confined to the legal world. No matter the location, whether at a restaurant, in the grocery store, at church or at a sporting event, lawyers must remain open to meeting people.


And finally, mentoring is truly a necessary part of surviving the perfect legal storm. Mentoring falls in the very same category as pro bono or volunteer work, because although it cannot be mandated, it is most certainly unquantifiable. It is an endeavor that every lawyer must aspire toward. For more mature lawyers who are nearing retirement, guiding and advising younger lawyers provides a graceful path toward transitioning out of the profession while remaining active and invaluable assets to the profession. For up and coming lawyers, they can mentor upward—teaching mature lawyers how to use today's

technology tools and communicate effectively with peers.

If as individuals and a collective legal community we can take these steps towards securing the profession for the next generation, the only storm we will be facing will be the result of an abundance of rainmakers.

So what do we do next?

The Chief Justice's Commission on Professionalism is currently organizing a convocation CLE on the state of the legal profession, scheduled for November 2010, which will bring together experts, judges and practicing lawyers. Issues to be addressed include how the profession can work together across generations to weather the perfect legal storm while tackling professionalism issues such as understanding cross-generational workplace etiquette, managing a virtual law practice, graying in the profession, providing access to justice for low and moderate income citizens and the continuing need for and benefits for community service. We welcome your ideas

and input and may be contacted at [professionalism@cjcpga.org](mailto:professionalism@cjcpga.org). 



**Avarita L. Hanson** is the executive director of the Chief Justice's Commission on Professionalism and can be reached at [Ahanson@cjcpga.org](mailto:Ahanson@cjcpga.org).



**Sharon Obialo** graduated from Duke University in 2008 and then spent four months in Berlin, Germany, studying minority and human rights issues as a fellow with the Humanity in Action Foundation. From June 2009 until December, she served as a judicial intern in the Fulton County Superior Court with Hon. Gail S. Tusan. Currently, she interns in the Chief Justice's Commission on Professionalism. Obialo will be attending Columbia Law School in the fall of 2010.



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## In Memoriam

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

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Fredericksburg, Va.  
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Died January 2010

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Died January 2010

**Hon. William R. Killian**

Saint Simons Island, Ga.  
University of Georgia School  
of Law (1943)  
Admitted 1947  
Died November 2009

**Andrew R. Kirschner**

Atlanta, Ga.  
University of Georgia School  
of Law (1974)  
Admitted 1977  
Died December 2009

**David C. Kohler**

Los Angeles, Ca.  
Duke University School of Law  
(1978)  
Admitted 1994  
Died October 2009

**Jonathan S. Lynton**

Decatur, Ga.  
Georgia State University College  
of Law (1992)  
Admitted 1992  
Died December 2009

**Robert H. McDonnell**

Atlanta, Ga.  
Emory University School of Law  
(1976)  
Admitted 1976  
Died April 2010

**R. Lamar Moore**

Moultrie, Ga.  
University of Virginia School  
of Law (1942)  
Admitted 1946  
Died April 2010

**Charles E. Muskett**

East Point, Ga.  
Villanova University School  
of Law (1958)  
Admitted 1960  
Died April 2010

**Henry G. Neal**

Dahlonega, Ga.  
University of Georgia School of  
Law (1948)  
Admitted 1949  
Died January 2010

**W. Joseph Patterson Jr.**

Lawrenceville, Ga.  
University of Georgia School  
of Law (1948)  
Admitted 1947  
Died February 2010

**Leslie L. Rood**

Atlantic Beach, Fla.  
Yale Law School (1937)  
Admitted 1970  
Died January 2010

**David M. Rothschild II**  
Columbus, Ga.  
Yale Law School (1947)  
Admitted 1948  
Died November 2009

**Michael L. Sellers**  
Atlanta, Ga.  
Emory University School of Law  
(1967)  
Admitted 1967  
Died April 2010

**Col. Clarence H. Shirley**  
Alpharetta, Ga.  
Atlanta Law School (1950)  
Admitted 1950  
Died December 2009

**Robert W. Storey**  
Atlanta, Ga.  
Emory University School of Law  
(1954)  
Admitted 1956  
Died December 2009

**Robert H. Suttles**  
Fayetteville, Ga.  
John Marshall Law School (1985)  
Admitted 1986  
Died December 2009

**Dolly Hays Todd**  
Columbus, Ga.  
Mercer University Walter F.  
George School of Law (1984)  
Admitted 1984  
Died March 2010

**L. Cecil Turner**  
Atlanta, Ga.  
Atlanta Law School (1938)  
Admitted 1968  
Died February 2010

**Carroll L. Wagner Jr.**  
Atlanta, Ga.  
University of Virginia School  
of Law (1969)  
Admitted 1969  
Died July 2009

**Charles H. Wills**  
Atlanta, Ga.  
Emory University School of Law  
Admitted 1958  
Died February 2010

**James J. Wolfson**  
Atlanta, Ga.  
George Washington University  
Law School (1986)  
Admitted 1986  
Died January 2010



**Henry Getzen Neal**, retired executive secretary and legal counsel to the Georgia Board of Regents and former assistant attorney general and legal counsel to Gov. Ernest Vandiver and Gov. Carl Sanders, died in January 2010.

Neal was born in November 1923, in Fortson, Ga. He was son of the late Charles Minchen Neal and Frances Fortson Neal. At age 16, he entered the University of Georgia and graduated with a BBA in accounting in June 1943.

Like many young men, he enlisted in the armed forces, reporting to the Officers Candidate School at Ft. Benning. Neal graduated as a second lieutenant with the 405th Regiment and deployed to fight in France and Germany on the famous Seigfried Line. In November 1944, he suffered life-threatening wounds when his fox-hole was hit, killing his runner and his medic. Sixteen months later, he was released from the hospital. Among his many meritorious awards were several Purple Hearts and the Bronze Star Medal.

Returning to civilian life, Neal entered the University of Georgia School of Law where he was twice president of the Kappa Sigma fraternity. It was there that he became an avid fan of UGA football. A list of other involvements included president of the Interfraternity Council, National Honor Fraternity, Blue Key, Who's Who Among Students of American Colleges, Phi Delta Phi National Society of Scabbard and Blade, Omicron Delta Kappa Society, Sphinx Club and the Demosthenian Literary Society.


Upon graduation with a J.D. in 1948, he became a partner in the Robert Knox Law Firm in

Thomson, Ga., where he was active in church and civic affairs. Later, he was one of the founders of the First Federal Savings and Loan Association in Thomson. He left his business and professional life in Thomson to join the administration of Gov. Ernest Vandiver in 1959.

He served as assistant attorney general and legal counsel to the governor in both the Vandiver and Sanders administrations. During the Vandiver years, he witnessed first-hand the great change wrought in Georgia by desegregation. When the courts ordered the desegregation of the University of Georgia, the governor sent Neal in disguise to the campus to take the pulse of student reactions. The information he gathered was extremely helpful in the development of a plan that led to the peaceful desegregation of the University of Georgia and prevented a potential racial conflict that would have been tragic for the state.

In 1975, Neal married Polly Hunt of Greenville, S.C. They were married for 35 years.

Having served two progressive governors, both of whom were interested in the advancement of education in the state, the next step in Neal's distinguished career led him to the position of executive secretary and legal counsel to the Board of Regents of The University System of Georgia. He served in that position until his retirement in 1994. In that position, he served as the Regent's liaison with the State Attorney General's Office; he advised the board and the chancellor, as well as various system institutions on all legal matters.

As a sixteen-year-old, Henry left Columbus in 1940 and could not have imagined the journey on which his life would take him: working his way through the University of Georgia, to the battlefields of Europe, to a successful professional and business career, to the halls of judicial power at the state capitol and to a place of influence in the state's highest education system. 

# June - August

<b>JUN 10</b>	ICLE <i>Elder Law Training</i> Macon, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE Hours	<b>JUN 26-28</b>	Prosecuting Attorneys' Council of Georgia <i>2010 Summer Conference</i> Jekyll Island, Ga. 12 CLE Hours
<b>JUN 10</b>	Stewart Title Guaranty Company <i>Georgia Foreclosure Law and Title Insurance</i> Roswell, Ga. 1 CLE Hours	<b>JUL 9</b>	Lorman Education Services <i>Building Codes</i> Atlanta, Ga. 6 CLE Hours
<b>JUN 18-20</b>	ICLE <i>Child Welfare Skills Clinic</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE Hours	<b>JUL 14</b>	NBI, Inc. <i>Real Estate Closing A-Z – Navigate Your Closings with Confidence</i> Atlanta, Ga. 6 CLE Hours
<b>JUN 23</b>	NBI, Inc. <i>Limited Liability Companies</i> Atlanta, Ga. 6.7 CLE Hours	<b>JUL 15-17</b>	ICLE <i>Fiduciary Law Institute</i> St. Simons Island, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE Hours
<b>JUN 24</b>	NBI, Inc. <i>Nuts and Bolts of Bankruptcy Law</i> Albany, Ga. 6 CLE Hours	<b>JUL 20</b>	NBI, Inc. <i>Financial Settlements and Support Issues in Divorce</i> Atlanta, Ga. 6 CLE Hours
<b>JUN 24-27</b>	ICLE <i>Georgia Trial Skills Clinic</i> Athens, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 24 CLE Hours	<b>JUL 26-28</b>	Prosecuting Attorneys' Council of Georgia <i>2010 Capital Litigation Course</i> Jekyll Island, Ga. 14.8 CLE Hours
<b>JUN 25</b>	NBI, Inc. <i>Dirty Litigation Tactics</i> Atlanta, Ga. 6 CLE Hours	<b>JUL 30-31</b>	ICLE <i>Environmental Law Summer Seminar</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 8 CLE Hours
<b>JUN 25-26</b>	ICLE <i>Southeastern Admiralty Law Institute</i> Charleston, SC See <a href="http://www.iclega.org">www.iclega.org</a> for location 10 CLE Hours		

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 (May 2010)  
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 12 CLE Hours

**AUG 19**

ICLE  
*Nuts & Bolts of Family Law*  
 Savannah, Ga.  
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 6 CLE

**AUG 20**

ICLE  
*Arbitration*  
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# First Publication of Proposed Formal Advisory Opinion No. 09-R3

Pursuant to Rule 4-403(c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. State Bar members are invited to file comments to this proposed opinion with the Formal Advisory Opinion Board at the following address:

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

An original and one (1) copy of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board by July 15, 2010, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request 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. 09-R3**

### **QUESTION PRESENTED:**

May an attorney who has been appointed to serve both as legal counsel and as guardian ad litem for a child in a termination of parental rights case advocate termination over the child's objection?

### **SUMMARY ANSWER:**

When it becomes clear that there is an irreconcilable conflict between the child's wishes and the attorney's considered opinion of the child's best interests, the attorney must withdraw from his or her role as the child's guardian ad litem.

### **OPINION:**

#### **Relevant Rules**

This question squarely implicates several of Georgia's Rules of Professional Conduct, namely Rule 1.14. Rule 1.14, dealing with an attorney's ethical duties towards a child or other client with a disability, provides that "the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." Comment 1 to Rule 1.14 goes on to note that "children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."<sup>1</sup>

This question also involves Rule 1.2, Scope of Representation, and Rule 1.7, governing conflicts of interest.<sup>2</sup> Comment 4 to Rule 1.7 indicates that "[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client."<sup>3</sup>

Finally, this situation implicates Rule 3.7, the lawyer as a witness, to the extent that the guardian ad litem must testify and may need to advise the court of the conflict between the child's expressed wishes and what he deems the best interests of the child. Similarly, Rule 1.6, Confidentiality of Information, may also be violated if the attorney presents the disagreement to the Court.

#### **Statutory Background**

Georgia law requires the appointment of an attorney for a child as the child's counsel in a termination of parental rights proceeding.<sup>4</sup> The statute also provides that the court *may* additionally appoint a guardian ad litem for the child, and that the child's counsel is eligible to serve as the guardian ad litem.<sup>5</sup> In addition to the child's statutory right to counsel, a child in a termination of parental rights proceedings also has a federal constitutional right to counsel.<sup>6</sup>

In Georgia, a guardian ad litem's role is "to protect the interests of the child and to investigate and present evidence to the court on the child's behalf."<sup>7</sup> The best interests of the child standard is paramount in considering changes or termination of parental custody. *See, e.g., Scott v. Scott*, 276 Ga. 372, 377 (2003) ("[t]he paramount concern in any change of custody must be the best interests and welfare of the minor child"). The

Georgia Court of Appeals held in *In re A.P.* based on the facts of that case that the attorney-guardian ad litem dual representation provided for under O.C.G.A. § 15-11-98(a) does not result in an inherent conflict of interest, given that “the fundamental duty of both a guardian ad litem and an attorney is to act in the best interests of the [child].”<sup>8</sup>

This advisory opinion is necessarily limited to the ethical obligations of an attorney once a conflict of interest in the representation has *already arisen*. Therefore, we need not address whether or not the dual representation provided for under O.C.G.A. § 15-11-98(a) results in an inherent conflict of interest.<sup>9</sup>

## Discussion

The child’s attorney’s first responsibility is to his or her client.<sup>10</sup> Rule 1.2 makes clear that an attorney in a normal attorney-client relationship is bound to defer to a client’s wishes regarding the ultimate objectives of the representation.<sup>11</sup> Rule 1.14 requires the attorney to maintain, “as far as reasonably possible...a normal client-lawyer relationship with the [child].”<sup>12</sup> An attorney who “reasonably believes that the client cannot adequately act in the client’s own interest” may seek the appointment of a guardian or take other protective action.<sup>13</sup> Importantly, the Rule does not simply direct the attorney to act in the client’s best interests, as determined solely by the attorney. At the point that the attor-

ney concludes that the child’s wishes and best interests are in conflict, the attorney should petition the court for removal as the child’s guardian ad litem, disclosing only that there is a conflict which requires such removal.

The attorney should not reveal the basis of the request for the appointment of a guardian ad litem to preserve confidentiality and so as not to compromise the child’s position.<sup>14</sup> An exception to the duty of confidentiality may arise “[w]here honoring the duty of confidentiality would result in the children’s exposure to a high risk of probable harm.”<sup>15</sup>

The attorney should not reveal further information received during the representation, nor should the attorney otherwise use the information received from the child in confidence to advocate a position not desired by the child.<sup>16</sup> This contrasts with the attorney’s ability to disclose such information to the court in service of the child’s wishes.<sup>17</sup>

The attorney is under an affirmative ethical obligation to seek to have a new guardian ad litem appointed following his withdrawal as guardian, as Comment 3 to Rule 1.14 explains that “the lawyer should see to [the appointment of a legal representative] where it would serve the client’s best interests.” If the conflict between the attorney’s view of the child’s best interests and the child’s view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16 or seek to have a separate guardian appointed.<sup>18</sup>



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The attorney may not withdraw as the child's counsel and then seek appointment as the child's guardian ad litem, as the child would then be a former client to whom the former attorney/guardian ad litem would be adverse.<sup>19</sup>

This conclusion is in accord with many other states.<sup>20</sup> For instance, Ohio permits an attorney to be appointed both as a child's counsel and as the child's guardian ad litem.<sup>21</sup> Ohio ethics rules prohibit continued service in the dual roles when there is a conflict between the attorney's determination of best interests and the child's express wishes.<sup>22</sup> Court rules and applicable statutes require the court to appoint another person as guardian ad litem for the child.<sup>23</sup> An attorney who perceives a conflict between his role as counsel and as guardian ad litem is expressly instructed to notify the court of the conflict and seek withdrawal as guardian ad litem.<sup>24</sup> This solution (withdrawal from the guardian ad litem role once it conflicts with the role as counsel) is in accord with an attorney's duty to the client.<sup>25</sup>

Connecticut's Bar Association provided similar advice to its attorneys, and Connecticut's legislature subsequently codified that position into law.<sup>26</sup> Similarly, in Massachusetts, an attorney representing a child must represent the child's expressed preferences, assuming that the child is reasonably able to make "an adequately considered decision...even if the attorney believes the child's position to be unwise or not in the child's best interest."<sup>27</sup> Even if a child is unable to make an adequately considered decision, the attorney still has the duty to represent the child's expressed preferences unless doing so would "place the child at risk of substantial harm."<sup>28</sup> In New Jersey, a court-appointed attorney needs to be "a zealous advocate for the wishes of the client...unless the decisions are patently absurd or pose an undue risk of harm."<sup>29</sup> New Jersey's Supreme Court was skeptical that an attorney's duty of advocacy could be successfully reconciled with concern for the client's best interests.<sup>30</sup>

In contrast, other states have developed a "hybrid" model for attorneys in child custody cases serving simultaneously as counsel for the child and as their guardian ad litem.<sup>31</sup> This "hybrid" approach "necessitates a modified application of the Rules of Professional Conduct."<sup>32</sup> That is, the states following the hybrid model, acknowledge the "'hybrid' nature of the role of attorney/guardian ad litem which necessitates a modified application of the Rules of Professional Conduct," excusing strict adherence to those rules.<sup>33</sup> The attorney under this approach is bound by the client's best interests, not the client's expressed interests.<sup>34</sup> The attorney must present the child's wishes and the reasons the attorney disagrees to the court.<sup>35</sup>

Although acknowledging that this approach has practical benefits, we conclude that strict adherence to the Rules of Professional Conduct is the sounder approach.

## Conclusion

At the point that the attorney concludes that the child's wishes and best interests are in conflict, the attorney should petition the court for removal as the child's guardian ad litem, disclosing only that there is a conflict which requires such removal. The attorney should not reveal the basis of the request for the appointment of a guardian ad litem to preserve confidentiality and so as not to compromise the child's position. The attorney should not reveal further information received during the representation, nor should the attorney otherwise use the information received from the child in confidence to advocate a position not desired by the child. The attorney is under an affirmative ethical obligation to seek to have a new guardian ad litem appointed following his withdrawal as guardian. If the conflict between the attorney's view of the child's best interests and the child's view of his or her own interests is severe, the attorney may seek to withdraw entirely following Rule 1.16 or seek to have a separate guardian appointed.

## Endnotes

1. Georgia Rules of Professional Conduct, Rule 1.14, Comment 1.
2. Georgia Rules of Professional Conduct, Rules 1.2, 1.7.
3. Georgia Rules of Professional Conduct, Rule 1.7, Comment 4.
4. O.C.G.A. § 15-11-98(a) ("In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court *shall* appoint an attorney to represent the child as the child's counsel and *may* appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel") (emphasis added).
5. *Id.*
6. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359-61 (N.D. Ga. 2005), *rev'd on other grounds*, 2010 WL 1558980 (U.S. Apr. 21, 2010).
7. *See Padilla v. Melendez*, 228 Ga. App. 460, 462 (1997).
8. *In re A.P.*, 291 Ga. App. 690, 691 (2008).
9. *See, e.g.*, Wis. Ethics Op. E-89-13 (finding no inherent conflict of interest with the dual representation of an attorney and guardian but concluding that if a conflict does arise based on specific facts, the attorney's ethical responsibility is to resign as the guardian).
10. Georgia Rules of Professional Conduct, Rule 1.2.
11. Georgia Rules of Professional Conduct, Rule 1.2, Comment 1.
12. Georgia Rules of Professional Conduct, Rule 1.14.
13. *Id.*
14. *See In re Georgette*, 785 N.E.2d 356, 367 (Mass. 2003).
15. *In re Christina W.*, 639 S.E.2d 770, 778 (W. Va. 2006).
16. *See* Georgia Rules of Professional Conduct, Rule 1.6, specifically subsection (e).
17. *See* Georgia Rules of Professional Conduct, Rule 1.6(a) (permitting disclosure of confidential information "impliedly authorized to carry out the representation").
18. *See* Rules 1.14 (b), 1.16 (b) of the Georgia Rules of Professional Conduct.

19. See Rule 1.9 of the Georgia Rules of Professional Conduct.
20. See, e.g., Wis. Ethics Op. E-89-13, Conflicts of Interests; Guardians (1989) (providing that dual representation as counsel and guardian ad litem is permitted until conflict between the roles occurs, and then the attorney must petition the court for a new guardian ad litem); Ariz. Ethics Op. 86-13, Juvenile Proceedings; Guardians (1986) (providing that a "lawyer may serve as counsel and guardian ad litem for a minor child in a dependency proceeding so long as there is no conflict between the child's wishes and the best interests of the child").
21. Ohio Board of Comm'rs. on Griev. and Discipline, Op. 2006-5, 2006 WL 2000108, at\*1 (2006).
22. *Id.* at \*2.
23. *Id.*
24. *Id.*, quoting *In re Baby Girl Baxter*, 17 Ohio St. 3d 229, 479 N.E.2d 257 (1985) (superseded by statute on other grounds).
25. *Id.* See also *Baxter*, 17 Ohio St. 3d at 232 ("[w]hen an attorney is appointed to represent a person and is also appointed guardian ad litem for that person, his first and highest duty is to zealously represent his client within the bounds of the law and to champion his client's cause").
26. See Conn. Bar Ass'n Comm. on Prof. Ethics, CT Eth. Op. 94-29, 1994 WL 780846, at \*3 (1994); *In re Tayquon*, 821 A.2d 796, 803-04 (Conn. App. 2003) (discussing revisions to Conn. Gen. Stat. § 46b-129a).
27. See Mass Comm. For Public Counsel Servs., *Performance Standards*, Standard 1.6(b), at 8-10, *available at* [http://www.publiccounsel.net/private\\_counsel\\_manual/private\\_counsel\\_manual\\_pdf/chapters/chapter\\_4\\_sections/civil/trial\\_panel\\_standards.pdf](http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_pdf/chapters/chapter_4_sections/civil/trial_panel_standards.pdf); See also *In re Georgette*, 785 N.E.2d 356, 368 (Mass. 2003).
28. Mass Comm. For Public Counsel Servs., *Performance Standards*, Standard 1.6(d) at 11.
29. *In re Mason*, 701 A.2d 979, 982 (N.J. Super. Ct. Ch. Div. 1997) (internal citations omitted).
30. See *In re M.R.*, 638 A.2d 1274, 1285 (N.J. 1994).
31. See *Clark v. Alexander*, 953 P.2d 145, 153-54 (Wyo. 1998); *In re Marriage of Rolfe*, 216 Mont. 39, 51-53, 699 P.2d 79, 86-87 (Mont. 1985); *In re Christina W.*, 639 S.E.2d at 777 (requiring the guardian to give the child's opinions consideration "where the child has demonstrated an adequate level of competency [but] there is no requirement that the child's wishes govern."); see also *Veazey v. Veazey*, 560 P.2d 382, 390 (Alaska 1977) ("[I]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years.") (superseded by statute on other grounds); Alaska Bar Assn Ethics Committee Op. 85-4 (November 8, 1985)(concluding that duty of confidentiality is modified in order to effectuate the child's best interests); Utah State Bar Ethics Advisory Opinion Committee Op. No. 07-02 (June 7, 2007) (noting that Utah statute requires a guardian ad litem to notify the Court if the minor's wishes differ from the attorney's determination of best interests).
32. *Clark*, 953 P.2d at 153.
33. *Id.*
34. *Id.*
35. *Id.* at 155-54; *Rolfe*, 699 P.2d at 87.

## Notice of Filing of Formal Advisory Opinions in Supreme Court

### Second Publication of Proposed Formal Advisory Opinion No. 07-R1 Hereinafter Known as "Formal Advisory Opinion No. 10-1"

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after June 15, 2010.

Amended proposed Formal Advisory Opinion No. 07-R1 appeared in the February 2010 issue of the *Georgia Bar Journal* for first publication. Five (5) comments were received. The Formal Advisory Opinion Board reviewed the proposed opinion in light of the comments. After careful consideration and discussion, the Board made a final determination to approve the proposed opinion for 2nd publication and filing with the Supreme Court. For clari-

fication purposes, the last sentence was added to the last paragraph of the opinion.

Rule 4-403(d) states that within 20 days of the filing of the Formal Advisory Opinion or the date the publication is mailed to the members of the Bar, whichever is later, **only the State Bar of Georgia or the person who requested the opinion may file a petition for discretionary review thereof with the Supreme Court of Georgia**. The petition shall designate the Formal Advisory Opinion sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. If the Supreme Court grants the petition for discretionary review or decides to review the opinion on its own motion, the record shall consist of the comments received by the Formal Advisory Opinion Board from members of the Bar. The State Bar of Georgia and the person requesting the opinion shall follow the briefing schedule set forth in Supreme Court Rule 10, counting from the date of the order granting review. A copy of the petition filed with the Supreme Court of Georgia pursuant to Rule 4-403(d) must be simulta-

neously served upon the Board through the Office of the General Counsel of the State Bar of Georgia. The final determination may be either by written opinion or by order of the Supreme Court and shall state whether the Formal Advisory Opinion is approved, modified, or disapproved, or shall provide for such other final disposition as is appropriate.

In accordance with Rule 4-223(a) of the Rules and Regulations of the State Bar of Georgia, any Formal Advisory Opinion issued pursuant to Rule 4-403 which is not thereafter disapproved by the Supreme Court of Georgia shall be binding on the State Bar of Georgia, the State Disciplinary Board, and the person who requested the opinion, in any subsequent disciplinary proceeding involving that person.

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal Advisory Opinion, it shall be binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court, which shall treat the opinion as persuasive authority only. If the Supreme Court grants review and disapproves the opinion, it shall have absolutely no effect and shall not constitute either persuasive or binding authority. If the Supreme Court approves or modifies the opinion, it shall be binding on all members of the State Bar and shall be published in the official Georgia Court and Bar Rules manual. The Supreme Court shall accord such approved or modified opinion the same precedential authority given to the regularly published judicial opinions of the Court.

## **Second Publication of Formal Advisory Opinion No. 07-R1 Hereinafter Known as "Formal Advisory Opinion No. 10-1"**

**STATE BAR OF GEORGIA  
ISSUED BY THE FORMAL ADVISORY OPINION  
BOARD  
PURSUANT TO RULE 4-403 ON APRIL 23, 2010  
FORMAL ADVISORY OPINION NO. 10-1**

### **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. 2<sup>nd</sup> 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 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

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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 confi-

dential 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 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. Conversely, lawyers employed in circuit public defender offices in different judicial circuits are not considered members of the same “unit” or “firm” within the meaning of Rule 1.10.

## Proposed Amendments to Uniform Superior Court Rules 1, 2, 3, 4, 18, 21, 24 and 36.

At its business meeting on Jan. 21, 2010, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 1, 2, 3, 4, 18, 21, 24 and 36. A copy of the pro-

posed amendments may be found at the Council’s website at [www.cscj.org](http://www.cscj.org). Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior

Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to (404) 651-8626. To be considered, comments must be received by Monday, July 26, 2010.

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