



# Georgia Bar Journal

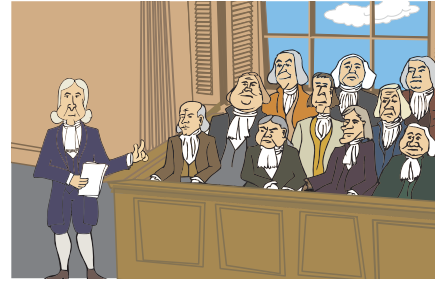
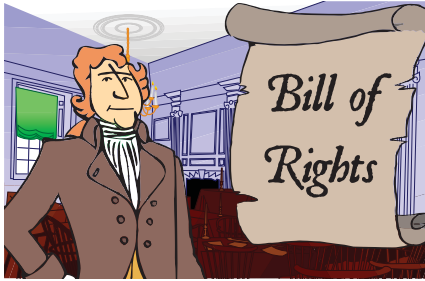
August 2008 · Volume 14 · Number 1



Jeffrey O. Bramlett  
46th State Bar President



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

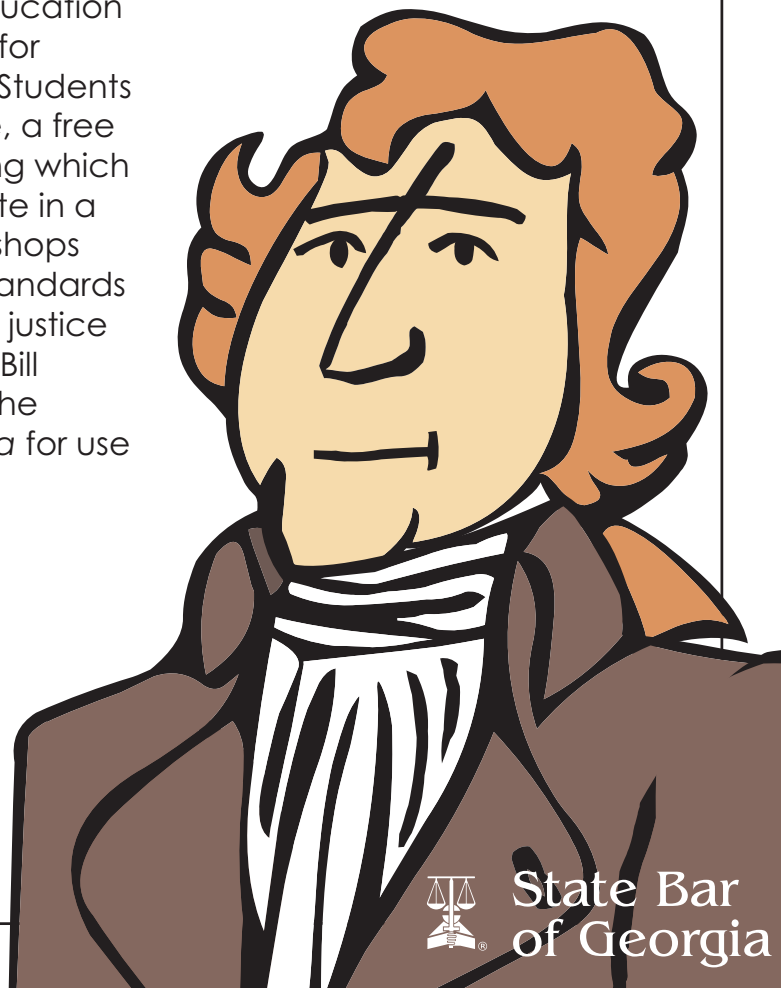


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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



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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 Jeffrey O. Bramlett

# John & Abigail Adams and the Rule of Law

**L**ike many armchair historians, I've become hooked on HBO's television series focused on the lives of Abigail and John Adams. The series is based on David McCullough's 2001 Adams biography. McCullough has proven himself to be a preeminent historian of the "Founding Fathers" era. In his Adams project, McCullough worked from a rich treasure trove of original source material: the letters John and Abigail exchanged during his prolonged absences from their Massachusetts home in the performance of public service.

During most of the Revolutionary War, Adams served in a variety of diplomatic postings to the capitals of Western Europe, seeking the resources and support essential to secure America's freedom from the British Empire. Following the successful outcome of the Revolutionary War, Adams was America's first ambassador to England before serving two terms as vice president and, ultimately, as president upon Washington's

retirement. The Adams' prolific correspondence over this 25-year period provides fascinating insight into these two remarkable people and the role they played in building the foundation of our nation.

"Plain John Adams" hasn't fared as well as his Revolutionary counterparts and co-conspirators — Washington, Franklin and Jefferson — in the verdict of most historians. Adams had, by many accounts, a hot temper, a sharp tongue and a high opinion of himself. His one-term presidency was marred by intense partisan bickering and a lack of

national unity. His views on the imperatives of national security, expressed in the Alien and Sedition Act, clashed with other American ideals that came to be embodied in our Bill of Rights. He was ineffectual in pressing his abolitionist views on the institution of slavery. The seeds of political dissension surrounding the judicial nomination process that continue to

germinate to this day may well have been sown by Adams' "court-packing" exercise challenged and affirmed in *Marbury v. Madison*. Whatever his personal shortcomings, I find John and Abigail Adams compelling figures whose contributions to the American Rule of Law warrant our consideration.

## A Definitional Digression

Whoa, there. "American Rule of Law" is one of those airy phrases that trips lightly off the tongue. But what, exactly, does it mean?

"... I find John and Abigail Adams compelling figures whose contributions to the American Rule of Law warrant our consideration."



An eloquent explanation is supplied by the words of former Chief Justice Charles Longstreet Weltner, who told a 1990 Georgia professionalism seminar: “Because the *master* of the lawyer is the Law itself, insofar as Law is understood to stand for a system of resolving human problems on the basis of truth, and with the goal of *justice*.” Public trust and confidence in the premise that lawyers actually serve this end, Justice Weltner continued, is the only excuse for public tolerance of a self-regulating legal profession. We can never take that trust and confidence for granted.

Your State Bar certainly does not take it for granted. As reported on page 52 of this *Bar Journal*, Chief Justice Leah Ward Sears convened the State Bar’s first Rule of Law Conference on April 24 at the request of American Bar President William Neukom. We invited a multi-disciplinary audience including clergy, teachers, business leaders, physicians, journalists, state and local elected officials, lawyers and judges to reflect together on the rule of law. Our program materials noted:

The rule of law operates every day in Georgia to protect the peace, prosperity and personal security of each citizen. We strive to conduct commerce in a safe and stable social environment. People freely exercise their fundamental rights of speech, worship and democratic self-government in a civil society. Crimes are addressed and punished in a system that seeks the truth and that is truly designed to protect the innocent. The foundation of Georgia’s community of opportunity and equality is the rule of law.

Public understanding and support for the rule of law—and openness on the part of the legal profession to the insights and concerns of all affected elements of our society—are essential to assuring that the rule of law is fairly administered.

More than 100 people spent their afternoon at the Bar Center engaged in this process. After reflecting on the presentations, we saw and heard about the experience of human beings in places (from Iraq and post-Soviet Eastern Europe to DeKalb County) where the rule of law had broken down, each participant walked away armed with a greater appreciation for our functional justice system and resolved to see it maintained and improved.

## Adams’ Contributions to the Rule of Law

Subject to that digression about the meaning of “American Rule of Law,” consider the Adams’ perspective on the request that John lead the defense of British soldiers charged with criminal responsibility for the deaths of five unarmed Bostonians at the Old State House on March 5, 1770 (“the Boston Massacre”). Adams’ diary recounts his fears that undertaking the assignment would lead to endless labor, anxiety and obloquy, if not “infamy and death.” More poignantly, his diary reports that Abigail “burst into a flood of tears” at the dangers posed to their young family, but that she nevertheless supported him fully in an endeavor they both believed necessary to prevent an injustice “as foul a Stain upon this Country as [past] Executions of the Quakers or Witches.”

By 1770, the concept of trial by jury had advanced only so far in Colonial Massachusetts, with its history of religious intolerance and its penchant for inflicting of capital punishment on persons suspected of witchcraft based upon such compelling evidence as ownership of a black cat. The HBO series brings this home by juxtaposing the mob-rule environment of the Boston Massacre trial with a graphic depiction of a British customs agent being tarred, feathered and ridden out of town on a rail. The Eighth Amendment implications of publicly pouring hot pitch on the naked body of a British bureaucrat while

the mob urged the process onward were not lost on this viewer.

Since the early days of seeing Perry Mason beat Hamilton Burger time after time on a black-and-white TV, I’ve been a fan of televised courtroom drama. It doesn’t get much better than HBO’s depiction of the Boston Massacre trial, with Adams standing at the rail of the jury box and reminding the Massachusetts jurors in his closing, “Facts are stubborn things.” If HBO’s depiction is remotely accurate, one cannot doubt that Adams’ able and courageous trial advocacy under enormous personal and family pressures helped that jury to sort out the truth from fiction, to rise above bias and prejudice and to reach a just result—quite an advance for a jurisdiction where human beings were previously put to death for owning black cats.

## Summing Up

Perhaps historians are right in relegating Adams to a peg below the other Founding Fathers, but the story of Abigail and John is nevertheless worth our attention. Their fervent patriotism and their devoted relationship to one another sustained a remarkable life of community leadership and public service that stretched from the village of Braintree, Mass., to the capitals of Europe to the White House itself. Their sacrificial attachment to the rule of law—even in a case as inconvenient as the Boston Massacre trial—helped carve a commitment to substantive and procedural fairness into the bedrock of the U. S. Constitution and our Bill of Rights. As we work together over the next year to sustain a healthy attitude of respect for the rule of law, a well-resourced judicial branch of government and a unified legal profession, let’s take inspiration from these people who risked all they had for the nation we are blessed to call home today. 

**Jeffrey O. Bramlett** is the president of the State Bar of Georgia and can be reached at [bramlett@bmelaw.com](mailto:bramlett@bmelaw.com).

by Cliff Brashier



# Mentors Can Make a Difference

**D**uring the State Bar of Georgia's Annual Meeting in June, the Board of Governors voted unanimously to recommend to the Supreme Court of Georgia that the Transition Into Law

Practice Program (TILPP)

be granted permanent operational status.

The goal of the program is to afford every beginning lawyer who is newly admitted to the State Bar with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner. This is one of many ways the State Bar helps the public by helping Georgia lawyers.

In its three years of existence, 1,709 beginning lawyers have completed the program, and more than

**"In its three years of existence, 1,709 beginning lawyers have completed the program, and more than 1,000 beginning lawyers are currently enrolled."**

1,000 beginning lawyers are currently enrolled. Three types of mentoring are offered: inside mentoring (beginning lawyer works in association with his or her mentor); outside mentoring (beginning lawyer is a sole practitioner and is paired one-on-one with his or her mentor); or, group mentoring (beginning lawyer is either unemployed or employed in a non-legal setting).

Approximately 75 percent of participants are in inside mentoring; 10 percent are in outside mentoring; and 15 percent are in group mentoring.

Douglas Ashworth, director of the program, has been asked by more than 30 other bar associations and organizations to share his wisdom on Georgia's TILPP. There

have even been requests from as far away as Brazil, Canada, Portugal, Scotland and the People's Republic of China. Ashworth recently gave detailed presentations in Tallahassee, Fla., Columbia, S.C. and Raleigh, N.C. In March, he, along with Sally Lockwood, director of Bar Admissions, participated in a TILPP presentation during the National Conference on Mentoring for the


Legal Profession, where more than 100 bar leaders representing 22 states focused on the need of mentoring in the legal profession. During that conference, Ashworth was presented with a copy of a recent Order of the Supreme Court of Kentucky authorizing a mentoring pilot project—based upon Georgia's TILPP.

All beginning lawyers and mentors who have participated in the program have had the opportunity to evaluate the effectiveness of TILPP. For those participating in 2007, the results showed that 99 percent of men-

tors and 93 percent of beginning lawyers reported that the program had accomplished its goal. Further, 99 percent of mentors and 95 percent of beginning lawyers recommended that the program be continued for future beginning lawyers.

The State Bar of Georgia's Transition Into Law Practice Program is ambitious, multi-faceted and effective. We are very proud that the Board of Governors has approved TILPP for permanent inclusion in our long list of successful Bar programs. If you are interested in becoming a mentor,

please contact TILPP at 404-527-8704 or [tilpp@gabar.org](mailto:tilpp@gabar.org). We are always looking for volunteers with an abundance of wisdom to share with new lawyers just starting out.

As always, your thoughts and suggestions are welcome. 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).

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by Joshua C. Bell

# Tired of the Dividing Line

**E**ven before I was taught how to draft a complaint or file a lawsuit, I was taught that there were two types of lawyers in Georgia. There

were the Atlanta Lawyers and lawyers from the rest of the state. I was told that Atlanta lawyers treated all lawyers “outside the perimeter” as if they

didn’t exist. Naturally, I developed a preconceived opinion about Atlanta lawyers even before I dealt with any.

This division bleeds over into opinions about the State Bar of Georgia. The reason I got involved in working with the Bar was because I believed that the Bar catered to the will of the Atlanta lawyer. If I have heard it once, I have heard it a thousand times.... “those people at the Bar need to realize that there are lawyers that practice outside of Atlanta.” I am one of “those people” now, and I assure you that we do.

“Once we start treating one another with the respect our profession demands, the division will begin to fade.”

Why has there traditionally been such a division? Why do the opinions still exist today? The first question is for someone else to answer. I would only be speculating as to the initial cause of the division. As to the second question, we all know the answer. Lawyers are stubborn by nature. The way we deal with other lawyers is no exception. If “outside the perimeter” lawyers would deal with Atlanta lawyers with an open mind, attitude and opinions would change. The next time you pick up the phone to talk to an Atlanta lawyer, drop from your thoughts the word “Atlanta.” Your attitude will

change towards that person immediately! Will this solve the problem? No, because we are only halfway there.

Atlanta lawyers need to realize that the practice of law is different in other parts of Georgia. This is not to say that there is a right or a wrong way, but it is different. In reality, the practice of law is different for *every* lawyer. We all do things differently. Every courtroom is different. Every judge is different. Don’t believe that your way is the best way, and please don’t believe yours is the only way. In the end we might practice law differently, but the law that we use is the same. Once we start treating one another with the respect our pro-

fession demands, the division will begin to fade.

The Bar is faced with a similar problem. Now that I have attended my first year of meetings as a member of the Executive Committee, I can tell you that the Bar leadership I have been associated with has always been mindful of the entire state when making decisions –almost to the point of absurdity. A few months ago, an Executive Committee member wanted to give lawyers “outside Atlanta” an extra day to make a deadline. I spoke against this because on its surface it might seem to be a benefit for lawyers “outside Atlanta,” but it would just further the divide. I politely stated that overnight delivery companies pick up all across the state, not just in Atlanta.

Both the Bar and the YLD have gone to great strides to improve the dividing line. The Bar has operated a satellite office in Tifton for more than 13 years and will be opening another office in


Savannah this year. The Bar has provided Casemaker for all its members while also working to be inclusive of the whole state. Bar Rule 1-404 provides that there are not presidents from the same circuit year after year. Our last bar president, Gerald Edenfield, was from Statesboro. His predecessor was Jay Cook from Athens. Two years before Jay was Rob Reinhardt from Tifton. The YLD elected a president who lives in Whigham! Whigham is further away from Atlanta than almost any other city in the state.

The YLD has opened new affiliates in Albany and Valdosta in the past year. We have also worked hard to reach out to the members of the Bar who have chosen to pursue careers in public service. We have recently had more assistant district attorneys and public defenders get involved in our organization than we have had in several years, many of which practice outside of Atlanta.

For those of you who felt as I did, that the Bar only works for Atlanta lawyers, I encourage you to come to an Executive Committee meeting; come to a YLD meeting; or come to a Bar meeting. I assure you that the leadership of the Bar would be happy to have you—I know I would. At any of these functions you will see, as I did, that the Bar is inclusive of the entire state.

I have lofty goals for myself in my service to the Bar in the coming year that I hope I can reach. One of my goals is that we erase the dividing line together. I am just a phone call or e-mail away for any of my fellow Bar members to discuss this article or any issue that faces lawyers and the State Bar of Georgia. GBJ

**Joshua C. Bell** is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at [joshbell@kirbokendrick.com](mailto:joshbell@kirbokendrick.com).



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# “Rarely Utilized”: The Georgia Business Trust Code

by James R. Robinson

**M**any practitioners, even experienced trust lawyers, may be surprised to learn that the Georgia Trust Act (the Trust Act)<sup>1</sup> contains provisions for a form of entity commonly known as a “business trust.” Indeed, the preamble to the relevant sections of the Trust Act<sup>2</sup> states that these provisions are “rarely utilized,” and the title of the relevant Article—“Creation by Deed to Acquire Beneficial Interest”—is far from illuminating.

This group of statutory provisions—let us call it the “Georgia business trust code,” for want of a better title—has been carried over from revision to revision of the Trust Act. Indeed, the proposed draft of the revamped Trust Act (now called the Georgia Trust Code) currently in circulation among the members of the State Bar, while making several dramatic changes, has left the business trust code completely intact and unchanged, without comment.<sup>3</sup>

The modern business trust has its origins in Massachusetts, and was developed originally as a result of the inability of corporations to own real estate.<sup>4</sup> Perhaps not surprisingly, it now finds its most complete and modern expression in Delaware.<sup>5</sup> Indeed, in this author’s experience, it is common to refer to this form of entity as a “Delaware business trust,” although the Delaware Code itself now refers to a “statutory trust.”<sup>6</sup>

The Georgia business trust code reflects these historical antecedents. In its current form, it serves primarily as a means to share ownership and centralize management of one or more specific properties. The current code relies extensively on corporate law for some of its most crucial terms. Although the form is not limited to ownership of real properties, it seems clear that this was its original purpose, as witnessed by the requirement of recording of a deed with the county clerk, as well as the time limits imposed on its duration, both of which are discussed in more detail below.

The potential uses of the business trust, however, go far beyond its historical antecedents. At least under modern statutes,<sup>7</sup> the business trust is not only an acceptable, but in many cases a preferable alternative to other forms of business organization. The business trust represents a unique juxtaposition of the modern business entity and the fiduciary relationship. If one





thinks of the business trust as a “trusteed partnership,” one begins to appreciate the possibilities offered by the form.

The first part of this article examines the current statutory requirements for the creation of a Georgia business trust. Next, the article reviews the degree to which the parties to the deed or trust agreement—namely, the trustee and the beneficial owners—may structure the terms of their arrangement, and discusses the need for revision of the business trust code in the context of possible uses of the form. Finally, the article concludes by making specific suggestions for change.

## **Basic Requirements to Form a Georgia Business Trust**

The requirements to establish a valid business trust in Georgia are few, and quite specific. A Georgia business trust is created by the filing of a deed with the clerk of the superior court of the county in which the principal office of the trust is located. The deed must evi-

dence an intent to acquire, improve or develop property identified therein, and must impose on the trustee (also identified in the deed) some active duty to perform in and about the property, or to exercise control and management of the same. Each of these requirements is examined in turn.

### **Property**

Under the present business trust code, the trust property, which may be either real or personal, must be “located” in Georgia.<sup>8</sup> It seems clear that this requirement reflects the historical antecedents of the business trust as a commercial form for the ownership of real property, and it seems clear enough what it means for realty to be “located” in Georgia. It is much less clear, however, what it means for personal property to be located in this state. Suppose, for example, that the trust property consists of an intangible such as a promissory note. Where is that property “located”? In the context of general trust law, there are many different possible answers to that question, including the place in which the trust is administered, i.e., the domicile or

place of business of the trustee.<sup>9</sup> Does this mean that a Georgia business trust must have a Georgia trustee? There is no such express requirement, but the location requirement may impose one de facto if the trust property is not realty.

### **Intent**

The statute specifically provides that intent to create a business trust must be indicated, either expressly or by implication, in the deed creating the trust. Although such intent can safely be inferred by the parties’ following the very specific requirements discussed here, it probably is preferable to recite the express, specific intent to create a business trust in the document.

### **Deed**

The deed is the instrument that sets forth the terms of the trust. As mentioned above, it must identify the property and provide for its acquisition, improvement or development. It also must name one or more trustees and impose duties on them (and their successors) with respect to the property. The deed also may identify a business or

trade name for the trust and set forth additional terms of the trust arrangement, including the powers of the trustee, the duration of the trust (subject to the limits discussed below), the issuance of certificates of beneficial interest, and other terms of the arrangement, all of which are discussed in more detail below.

### Recording and Filing

The deed must be filed with the clerk of the superior court of the county in which the principal office of the trust is located—again, presumably the office of the trustee—within 30 days of execution, along with the statutory fee. The clerk in turn gives the filer two certified copies, which must then be filed with the secretary of state. The secretary attaches a certification to one copy, the form of which is set forth in the statute. The deed as so (doubly) certified serves as evidence in any court of the existence and terms of the trust.<sup>10</sup>

From the foregoing, several things should be apparent. First, creating a Georgia business trust is a relatively straightforward matter, and the few requirements for doing so are easily followed. Second, the terms of the trust, which must be set forth in the deed, become public record upon filing with the clerk. The identity of the property transferred to the trust likewise is a matter of public record.

### Mandatory Trust Provisions

As discussed in more detail below, one of the chief advantages of the trust form, whether in the donative or the commercial context, is its flexibility.<sup>11</sup> The Georgia business trust code does, however, mandate certain provisions beyond the formation requirements just discussed. First and foremost, there is a statutory limit on the duration of a business trust. Unless the deed specifies otherwise, the term of a Georgia business trust is 25 years. The deed may provide for a renewal of the

term for another 25 years. Alternatively, the deed may provide that the trust is to last for a specified term, not to exceed the common-law Rule Against Perpetuities period, i.e., lives in being at the creation of the trust plus 21 years. Whatever the term, at its end the property vests in the beneficiaries.

Second, as just mentioned, at the trust's termination, title to the trust property must vest in the beneficial owners, in proportion to their respective interests in the trust. The pattern of distribution may not be altered by the deed, although presumably the beneficial owners are free to transfer interests among themselves or to others, unless precluded from doing so by the terms of the deed. Interestingly, the code provides specifically that legal title to the original trust property, and any property subsequently held by the trust, vests and remains in the trustee, and "shall not during the continuance of the estate pass to or vest in the beneficiaries."<sup>12</sup> On its face, this language precludes the trustee from making distribution of the property to the beneficial owners prior to the termination of the trust. This seems unlikely in the extreme, and is at least partially contradicted by another section that provides for the repurchase or redemption of certificates of beneficial interest,<sup>13</sup> but there is no provision expressly allowing for current distributions (for example, of income from the property) to the beneficiaries, whether by the terms of the deed or otherwise.

Third, although the powers and responsibilities of the trustee may (and should) be specified in the deed, the trustee is vested with "sole and exclusive" management and control of the property. In other words, unless a beneficial owner also is a trustee, he or she has no authority to deal with the trust property (as opposed to his or her interest in the trust, which may be freely transferable).

Fourth, business trusts are subject to the same annual filing requirements as are corporations;

in other words, an annual registration for the trust must be filed with the secretary of state.

### Optional Trust Provisions; Liability; Taxation

Apart from the mandatory provisions discussed above, the terms set forth in the deed are controlling. Among many other matters, the deed may establish:

- Subject to the limitation already discussed, the term of the trust, and whether that term may be renewed.
- A trade name for the trust, as long as the name does not include the phrase "trust company."
- The powers of the trustee with regard to the trust property,<sup>14</sup> as well as any limitations on the same.
- Along the same lines, any restrictions on the investments that the trustee may make, or any investments that it may make in addition to those normally permitted to trustees in Georgia.<sup>15</sup>
- The means by which the trustee may resign or be removed, and by which a successor may be appointed.
- Whether the trust may be merged into a domestic for-profit corporation.

In addition, the deed may<sup>16</sup> provide for the issuance of certificates of beneficial interest to the beneficial owners of the trust. These certificates, which are personalty, may be transferred in the same manner as corporate stock. Presumably, this means as well that the transfer of certificates can be subject to restriction, whether in the deed or in a separate agreement, in the same manner as corporate stock,<sup>17</sup> although the statute does not specifically address the question.<sup>18</sup>

The business trust code expressly provides the same protection against personal liability for claims

against the trust that officers and stockholders of a “private corporation” enjoy. In other words, as long as the beneficial owners respect the form of the entity, their liability should be limited to the assets of the trust, and the trustee would be liable only for an unlawful distribution (i.e., a distribution that breaches the trust deed or that renders the trust insolvent).<sup>19</sup> Moreover, creditors of a beneficial owner may levy upon the owner’s beneficial interest in the same manner as they may levy upon shares of stock. Query whether a more forthright statement of the rights of creditors of the trust, the trustee or the beneficiaries, as in the Delaware Code,<sup>20</sup> might be more helpful.

In most cases, a business trust will be treated for income tax purposes either as a disregarded entity—that is, it will have complete tax identity with the person establishing the trust, much like a single-member LLC or a wholly-owned grantor trust—or, more likely, as a partnership, with tax items “passed through” to the beneficial owners in proportion to their interests in the entity. Unlike Georgia’s limited partnership<sup>21</sup> or LLC<sup>22</sup> statutes, both of which provide for allocations of profit, loss and other tax items in accordance with the governing documents, Georgia’s business trust code does not address allocations or other financial questions. Although one can speculate that this omission results from the code’s pre-dating partnership treatment for business trusts,<sup>23</sup> the effect is to foreclose (or at least leave uncertain) one of the advantages of the tax partnership form, that is, the ability (within certain economic parameters) for the owners to structure the economics of their entity as they may agree.

## Why a Business Trust?

One might legitimately question why a legislative effort to modernize the Georgia business trust code is necessary, or even worthwhile. Georgia has a full range of other options for commercial entities, including partnerships of various kinds, corporations and LLCs, which offer the organizer a variety of options to suit his or her purpose.

There are a number of answers to this question, ranging from the theoretical to the essentially pragmatic, all of which concern to some degree the unique nature of the trust form itself. To begin with the pragmatic: Institutional trust funds represent a substantial part of the financial services industry.<sup>24</sup> For example, more than half of all mutual funds are organized as trusts.<sup>25</sup> Prof. John H. Langbein attributes this to the flexibility of the business trust in terms both of governance (i.e., no requirement of shareholder meetings and therefore costly proxy solicitations) and of beneficial ownership (i.e., virtually unlimited ability to issue and redeem vast numbers *and different classes* of ownership interest).<sup>26</sup> Georgia is not a particularly attractive state in which to establish a commercial trust, both for income tax reasons and for what might be called “legal” reasons, i.e., characteristics of Georgia trust and property law, and is therefore a lagging participant in what Prof. Robert H. Sitkoff calls the “jurisdictional competition for trust funds.”<sup>27</sup>

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Continuing with the pragmatic, perhaps the most appealing characteristic of the trust for practitioners is its combination of flexibility and fiduciary restraint. On the one hand, as already noted, commercial trusts are used in significant numbers when it is important to be able to create and define—and eliminate—numerous classes of beneficial interest by contract,<sup>28</sup> and to craft the relationship between persons in management to suit the purpose of the entity.<sup>29</sup> For example, although the beneficial owners of the business trust are analogous to the shareholders of a corporation, there typically is no requirement for beneficiary meetings of any sort, and no provision, in the Georgia Code at any rate, for any voting or management rights in the beneficiaries, other than dissenter's rights in the event of a merger of a business trust with a domestic corporation (the only form of merger contemplated under the code). Moreover, while the Georgia Code is not at all helpful in this regard, several other state codes provide for the creation of different classes of beneficial interests having different rights, powers and duties, including voting and distribution rights, and for the creation and elimination of such classes with relative ease.<sup>30</sup> On the other hand, the stricter fiduciary regime generally imposed on trustees makes the trust an attractive choice in certain commercial arrangements.<sup>31</sup> Again, if one thinks of a business trust as a "trusteed partnership," one begins to appreciate its unique combination of flexibility and strictness.

Prof. Steven Schwarcz has made the theoretical argument that the most important difference between a trust and other forms of business organization, particularly the corporation, and what makes it especially suitable for certain kinds of commercial ventures such as structured finance transactions, is the lack of divergence between "senior" interests (i.e., creditors) and "residual" interests (i.e., equity owners).<sup>32</sup> In Schwarcz's view, the

trust creates different management incentives from those in other forms of business organization, and is oriented more toward preservation than toward growth.

If that analysis is correct, then a trust may be a particularly suitable choice for certain ventures. Consider, for example, the following:

### Trusteed cross-purchase agreement

Entity buy/sell agreements often are structured as "cross-purchase" agreements, whereby the shareholders agree to buy each other's shares upon defined events such as death. These arrangements often are funded through the purchase of insurance on the life of each shareholder. A business trust that holds both the shares and the insurance, and in which each shareholder's interest is represented by a certificate of beneficial interest, is highly suitable for this purpose. Upon the death of a shareholder/beneficiary, the personal representative of his or her estate can exchange the certificate for the stipulated payment for the decedent's beneficial interest, and the trustee can allocate the shares pro rata among the survivors.<sup>33</sup>

### Premium financing of life insurance

Life insurance has long been a basic tool, not only of business planning of the kind discussed above, but also of wealth transfer planning, where it typically is used to offset federal tax liability and to leverage value to descendants. Many alternatives exist in today's market for the payment of premiums, including so-called "premium financing" programs, whereby a third-party lender pays the premiums in exchange for an interest in the proceeds equal to the premiums paid plus a specified rate of interest. This is an archetypal financing arrangement of the kind discussed by Schwarcz, for which he argues the trust is optimally suited. Moreover, in this author's experience, a lender often will require a pledge of the beneficial

interests in the trust as collateral. A business trust with certificated beneficial interests makes this transaction seamless.

### Maintenance of a "legacy" asset

Practitioners, and perhaps especially estate planners, often are asked to structure the ownership of legacy assets. For example, suppose a senior family member owns a large tract of unimproved real estate. At some point, the property may be developed, but in the meantime she wishes to keep it intact, to limit her personal liability exposure and to be able to transfer gifts of interests in the property without having to convey undivided interests. Given these facts, many planners would recommend that the senior members transfer the property to a family limited partnership or LLC as a means to accomplish their objectives.

Consider, though, whether a business trust might be a suitable, if not preferable, alternative. The business trust offers the same features that make the limited partnership and the LLC suitable for these purposes: centralized management, limited liability, pass-through taxation, and (we assume) ability to restrict the transfer of interests. These features are well-suited for accomplishing the objectives of continued ownership and control within the family group. In addition, as wealth transfer practitioners know, these same attributes can produce sizable discounts, and therefore tax savings, for transfers of interests in the entity. The lack of control over the management of the entity or the underlying property greatly reduces the fair market value of the interest. Perhaps most significantly, the stricter fiduciary duties imposed on trustees, combined with the entity structure of the business trust, may create the possibility of a retention of control by the donor (or granting that control to a third-party trustee) that is difficult, if not impossible, to achieve with other entities.<sup>34</sup>



All of this is not to say that the trust is superior to other forms of business organization in every circumstance; rather, that the trust is well-suited for many business applications, that it is better suited than other forms of organization for some business purposes and that it should be a viable choice for transactional lawyers and their clients. For the Georgia practitioner, though, this choice typically requires that the practitioner establish the entity in another jurisdiction and, often, appoint a trustee in that state.<sup>35</sup> Although this article has focused on the business trust code, the Georgia Trust Act as a whole, like the trust law of many states, is not drafted with commercial or business trusts in mind. As a result, Georgia trust law in its current form simply is inadequate for most, if not all, commercial purposes. For example, apart from the business trust code, the Georgia Trust Act does not contemplate or provide for the certification of beneficial interests in the trust. As another example, at least one Georgia case<sup>36</sup> indicates, and most trust lawyers assume, that trustees cannot give binding representations and warranties in deeds or contracts, at least absent express provision to the contrary in the instrument.<sup>37</sup> Issues like these can create significant difficulties, for

example when corporate shares have been transferred to a trustee, who is then asked to make various representations and warranties as party to the sale of the company.

## Recommendations

It is possible that the changes to accommodate the creation and use of commercial trusts in Georgia could be made apart from any revision of the business trust code. That is the most sensible place to begin, however, as it is in the modern statutory trust acts that the most refined form of commercial trust has emerged.<sup>38</sup>

With that in mind, the following are specific recommendations for modernizing the Georgia business trust code in order to make it more useful as a business and planning entity. It should be noted that most, if not all, of these are included in the Delaware statute and, by extension, in the Uniform Act. Delaware, however, like many other states, defaults to free transferability of interests; for planning reasons,<sup>39</sup> a default rule like that of Wyoming—no transferability except as provided by the trust instrument—is far preferable.

### Remove the “location” requirement for the initial trust property

As discussed, there seems little reason for requiring that the prop-

erty initially contributed to the business trust, particularly personal property, be “located” in Georgia. Certainly, the trust should be required to appoint an agent for service of process, just as other business entities are required to do, but the location requirement is antiquated and unnecessary.

### Eliminate the requirement of a recorded deed to create a business trust; require only a filing of a certificate with the secretary of state

There seems little reason to require that the business trust instrument itself be recorded with the clerk. If real property is transferred to the trust, the deed making the transfer can be recorded, just as it would be for any other trust to which real property is transferred. Moreover, there seems no reason to require the terms of the trust to be public record, any more than an LLC operating agreement (for example) should be. Rather, there should be a simplified requirement of filing a certificate with the secretary of state, setting forth the essentials—the name of the trust and the identity and location of the trustee—to give adequate notice of the existence of the trust.

### Remove the limit on the term of a trust

There seems little justification for imposing the common-law perpetuities limit on the life of a business trust, an entity that has more in common with a partnership than with a typical donative trust. Allowing for perpetual existence would put the business trust on par with other business entities.

### Clarify the ability of the trustee to make current distributions

It is absolutely essential to make clear that current distributions can be made by the business trust, if and to the extent provided for in the trust instrument. Without this, the business trust will remain a marginal entity.

## Provide for allocations of profit, loss and other economic events in the trust instrument

As in a partnership or LLC, the parties should be able to agree as to the economics of their arrangement. This change also will reflect the income tax treatment of the business trust as a partnership.

## Add the ability to merge or convert into other entities

There seems little or no justification to permit a merger of a business trust into a corporation and not into another entity such as a partnership or LLC, particularly given the similarity between the business trust and those entities.

## Permit indemnification of the trustee

To open the business trust to management by competent trustees, whether institutional or otherwise, the business trust code should provide for the possibility of indemnification of the trustee, to the extent that the same is provided for general partners of limited partnerships and managers of LLCs.<sup>40</sup>

## Clarify that the certification of beneficial interests is optional

The statute as currently drafted is ambiguous at best. Although many, if not most, participants will prefer to have their beneficial interests represented by certificates or shares, making the issuance of certificates mandatory seems unnecessary.

## Make clear that the parties have the ability to restrict transfer of certificates under the trust document or by separate agreement


The ability to restrict the universe of potential transferees is essential to the utility of the entity. In order to maximize the entity's effectiveness for transfer tax purposes,<sup>41</sup> as well as to conform it to the limited partnership and LLC statutes,<sup>42</sup> the "default" provision should be that, unless the trust

instrument provides, or the trustee and the other beneficial owners agree, any transferee of a beneficial interest has only the rights of an assignee, i.e., the same rights to distributions as the assignor, but no other rights (whatever they may be under the trust instrument or otherwise under the code).

## Make trust law control in unspecified situations

In addition to the flexibility afforded by modern business or statutory trust codes, certain aspects of the trust form in particular—for example, fiduciary duty<sup>43</sup>—may be quite helpful and appealing. The general principles of trust law should control situations not expressly addressed by the business trust code.<sup>44</sup>

## Conclusion

The Georgia business trust has significant potential as a commercial and planning entity, but in its current form the Georgia business trust code is not at all sufficient. As there currently is a proposal to revise the Georgia Trust Act in its entirety, it seems an opportune time to review these provisions with an eye toward their overhaul and modernization. Many of the changes discussed above can be found in the existing statutes of other states and in the Uniform Act, which could provide a template for this worthwhile project. 



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## Endnotes

1. O.C.G.A. § 53-12-1 to -394 (1997 & Supp. 2007).
2. *Id.* §§ 53-12-50 to -59 (1997 & Supp. 2007).
3. See Proposed Revision of the Georgia Trust Code, available at [http://www.gabar.org/public/pdf/sections/fiduciarylaw/trustcodeproposal\\_sept1207.pdf](http://www.gabar.org/public/pdf/sections/fiduciarylaw/trustcodeproposal_sept1207.pdf).
4. See Wendell Fenton & Eric A. Mazie, *Delaware Statutory Trusts*, in 2 THE DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS §§ 19.1-19.14 (R. Franklin Balotti & Jesse A. Finkelstein eds., 3d ed. 1998 & Supp. 2008).
5. See *id.* The uses of the business trust, however, have expanded far beyond these rather modest origins. See, e.g., John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 YALE L.J. 165, 187-88 (1997); see generally Irving S. Schloss, *Some Undiscovered Country: The Business Trust and Estate Planning*, 22 TAX MGM'T ESTS. GIFTS & TRS. J. 83 *passim* (1997).
6. See 12 DEL. CODE ANN. § 3801-3826 (2008).
7. In addition to the state-specific acts discussed herein, see also the Uniform Statutory Trust Entity Act (the "Uniform Act"), currently in draft form, available at <http://www.law.upenn.edu/blj/archives/ulc/ulc.htm#ubta>. The



- Reporter for this Uniform Act is Harvard's Robert H. Sitkoff, who has presented several cogent analyses of the uses and potential of the trust as a business entity. See, e.g., Robert H. Sitkoff, *Trust as "Uncorporation": A Research Agenda*, 2005 U. ILL. L. REV. 31; Robert H. Sitkoff, *Trust Law, Corporate Law, and Capital Market Efficiency*, 28 IOWA J. CORP. L. 565 (2003); Robert H. Sitkoff & Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*, 115 YALE L.J. 356 (2005).
8. O.C.G.A. § 53-12-51 (1997).
  9. See, e.g., FLA. STAT. § 736.0108 (2008).
  10. Any amendments to the deed must be filed in the same way. See O.C.G.A. § 53-12-52(d) (Supp. 2007).
  11. See Langbein, *supra* note 5, at 179-84.
  12. O.C.G.A. § 53-12-51 (1997).
  13. See *id.* § 53-12-56 (1997).
  14. Presumably, the deed could incorporate by reference the broad fiduciary powers set forth in O.C.G.A. § 53-12-232 (1997).
  15. See *id.* §§ 53-12-232, -280-290 (1997 & Supp. 2007).
  16. The trustee "shall" issue such certificates of beneficial interest as "may be provided" in the deed. *Id.* § 53-12-54 (Supp. 2007). Query whether this means that the trustee may refrain from issuing any certificates if the deed so provides.
  17. See *id.* § 14-2-627 (2003).
  18. Cf. CONN. GEN. STAT. § 34-516(d) (2008) (free transferability except as otherwise provided in trust instrument); 12 DEL. CODE ANN. § 3805(d) (2008) (free transferability except as otherwise provided in trust instrument); WYO. STAT. ANN. § 17-23-107(d) (2007) (transferee entitled only to share of profits and return of contributions unless otherwise provided in document or other beneficial owners unanimously consent).
  19. See O.C.G.A. §§ 14-2-622, -640, -832 (2003).
  20. See 12 DEL. CODE ANN. § 3805 (2008).
  21. See O.C.G.A. § 14-9-503 (2003).
  22. See *id.* § 14-11-403 (2003).
  23. See Schloss, *supra* note 5, at 89 (discussing IRS's 1996 adoption of "check the box" regulations and resulting partnership tax treatment for business trusts).
  24. See, e.g., Langbein, *supra* note 5, at 177-79.
  25. See Robert H. Sitkoff, *Trust as "Uncorporation": A Research Agenda*, 2005 U. ILL. L. REV. 31, 34.
  26. See Langbein, *supra* note 5, at 183-84.
  27. Robert H. Sitkoff & Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*, 115 YALE L.J. 356, 359 (2005). In addition to the characteristics of our trust law discussed in the article, Georgia imposes an entity-level tax on trust income that is not distributed and limits the life of a trust to the 90-year period imposed by the Uniform Statutory Rule Against Perpetuities. See O.C.G.A. §§ 44-6-201 (1991), 48-7-22 (2005); see also generally Sitkoff & Schanzenbach, *supra*, at 404 & n.125 (attributing \$100-200 billion movement in trust funds to states' repeal of the Rule Against Perpetuities *plus* no imposition of entity-level income tax).
  28. See Steven L. Schwarcz, *Commercial Trusts as Business Organizations: Unraveling the Mystery*, 58 BUS. LAW. 559, 566-68 (2003) (discussing use of different investor interests in "master trusts").
  29. See Langbein, *supra* note 5, at 183-85.
  30. See, e.g., CONN. GEN. STAT. § 34-517 (2008); 12 DEL. CODE ANN. § 3806 (2008); WYO. STAT. ANN. § 17-23-108 (2007); see also Langbein, *supra* note 5, at 183-84.
  31. See Langbein, *supra* note 5, at 182-83; see also Schwarcz, *supra* note 28, at 576-78 (discussing duty of impartiality and effect on risk-taking and expected return).
  32. See Schwarcz, *supra* note 28, at 578-79.
  33. Although this structure also could be accomplished through a common-law trust or another form of entity such as a partnership, it is the combination of characteristics of the business trust that makes it ideal.
  34. See, e.g., *Estate of Schutt v. Comm'r*, 89 T.C.M. (CCH) 1353 (2005). In this remarkable case, the decedent created two Delaware statutory trusts to hold the two stocks in which he and several family trusts held significant concentrated positions. His goal was to perpetuate his "buy and hold" philosophy and prevent his descendants from diversifying the assets. He served as trustee during his life. In determining that his estate was entitled to a 32.5 percent discount on its interest in the underlying trust assets, the Tax Court determined that this scheme constituted a legitimate, nontax business purpose. In this author's experience, this structure, and the favorable tax treatment that it produced, would be very difficult to replicate with another entity, such as a family limited partnership.
  35. See, e.g., 12 DEL. CODE ANN. § 3807 (2008) (requirement for resident trustee).
  36. *Moss v. Twiggs*, 260 Ga. 561, 561, 297 S.E.2d 707, 708 (1990).
  37. The draft Trust Code indicates that this issue is "under consideration." In this author's opinion, at a minimum the new Trust Code should make clear that the trust instrument can authorize the trustee to make representations and warranties.
  38. For the most recent draft of the proposed Uniform Act and the comments thereto, see <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=227>. See also the earlier Preliminary Report, which discusses the desirability for an alternative form of business organization and describes the "flexible, enabling character" of "fourth generation" statutes such as Delaware's, at [www.law.upenn.edu/blj/archives/ulc/UBTA/2005AMTrustReport.pdf](http://www.law.upenn.edu/blj/archives/ulc/UBTA/2005AMTrustReport.pdf).
  39. These are discussed thoroughly in Schloss, *supra* note 5, at 89-90, and have to do primarily with the special valuation rules of Chapter 14 of the Internal Revenue Code.
  40. See O.C.G.A. §§ 14-9-108, 14-11-306 (2003).
  41. See I.R.C. §§ 2703, 2704 (2008).
  42. See O.C.G.A. §§ 14-9-704, 14-11-503 (2003); see also WYO. STAT. ANN. § 17-23-107(d) (2007).
  43. See, e.g., Langbein, *supra* note 5, at 182.
  44. See, e.g., 12 DEL. CODE ANN. § 3809 (2008).

# Comprehensive Arbitration of Domestic Relations Cases in Georgia

by Barry Edwards

In an average year, there are more than 150,000 domestic relations cases filed in Georgia's superior courts. There are more domestic relations cases filed each year than felony prosecutions, and domestic relations cases outnumber general civil cases in the superior courts.<sup>1</sup> Contested domestic relations cases in this area are also fact-intensive. The sheer number of these cases and the time and effort that it takes to bring contested actions to a conclusion inevitably consume a great deal of judicial resources.

Moreover, litigating domestic relations cases often exacts a tremendous emotional and economic toll on the individuals involved. Improving the means of resolving these cases in an efficient and fair manner would make a substantial contribution to the legal sys-

tem in Georgia. Recent legislation in Georgia that authorizes binding arbitration of child custody and other matters affecting children offers such an improvement in the domestic relations area by allowing for the increased use of alternative dispute resolution.

## Status of Domestic Relations Arbitration in Other States

Arbitration has been routinely used by various states to help resolve domestic relations cases. These states differ dramatically as to whether arbitration is available in domestic relations matters involving children.

North Carolina,<sup>2</sup> Michigan,<sup>3</sup> Texas,<sup>4</sup> Colorado,<sup>5</sup> Missouri<sup>6</sup> and New Hampshire,<sup>7</sup> for example, have enacted specific legislation to authorize binding arbitration of issues affecting children. Additionally, in the absence of specific legislation, courts in Pennsylvania,<sup>8</sup> the District of Columbia,<sup>9</sup> Maryland,<sup>10</sup> New Jersey,<sup>11</sup> Massachusetts<sup>12</sup> and Wisconsin<sup>13</sup> have concluded that agreements to arbitrate matters affecting children are enforceable and not contrary to public policy.<sup>14</sup>

On the other hand, appellate courts in Indiana<sup>15</sup> and Ohio<sup>16</sup> have held that agreements to arbitrate matters involving children are unenforceable as contrary to pub-

lic policies that favor protecting the best interests of children. Binding arbitration of matters affecting children is explicitly prohibited by statute in Florida<sup>17</sup> and by rule in California.<sup>18</sup>

Connecticut appellate courts have employed a middle-of-the-road approach, allowing minor parenting matters to be subject to binding arbitration but reserving fundamental issues impacting children for the trial courts.<sup>19</sup> The enforceability of agreements to arbitrate domestic relations matters affecting children has divided appellate courts in New York.<sup>20</sup>

### **Comprehensive Domestic Relations Arbitration Now Permitted in Georgia**

Arbitration, as a general matter, is a favored means of resolving disputes between litigants in Georgia.<sup>21</sup> In accord with this principle, arbitration has been routinely used to resolve domestic relations issues between adults, such as the division of marital property. The authority to decide issues involving children, such as custody, child support and visitation, through binding arbitration was unclear because Georgia courts have historically played a special role in protecting the best interests of children.<sup>22</sup> Thus, in the past, litigants in domestic relations cases involving mixed issues, some of which were arbitrable (e.g., division of marital property) and some of which were not (e.g., custody), likely looked to the courts to resolve all of their domestic relations issues in one proceeding rather than proceed in both arbitration and litigation. Recent legislation that increases an arbitrator's authority with regard to domestic relations issues involving children may make arbitration more attractive.

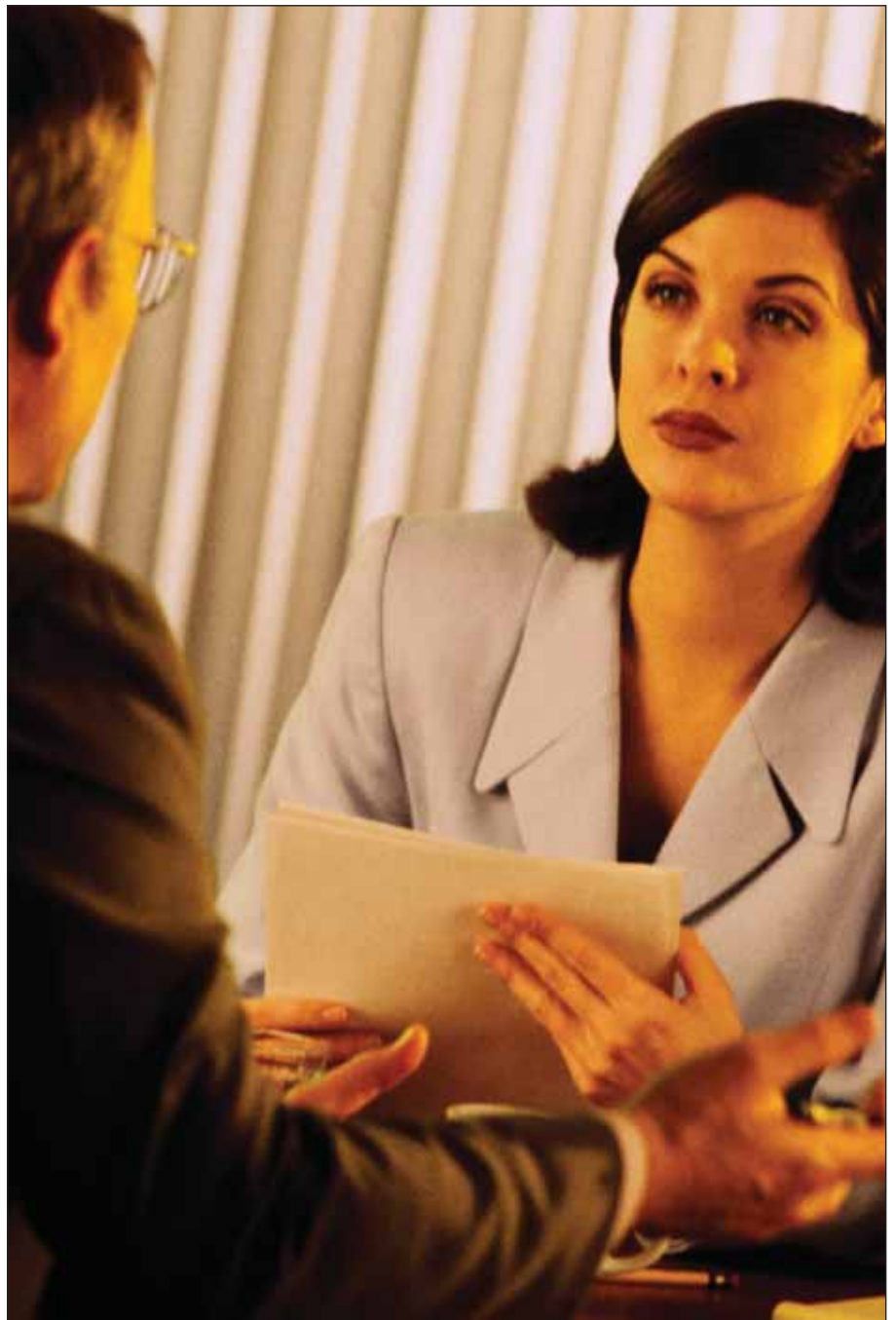
One provision of House Bill 369, signed into law last year, now specifically allows parents to agree to binding arbitration to resolve child custody, visitation and parent-

ing plan issues. O.C.G.A. § 19-9-1.1, effective Jan. 1, 2008, provides:

[I]t shall be expressly permissible for the parents of a child to agree to binding arbitration on the issue of child custody and matters relative to visitation, parenting time, and a parenting plan. The parents may select their arbiter and decide which issues will be resolved in binding arbitration. The arbiter's decisions shall be incorporated into a final decree

awarding child custody unless the judge makes specific written factual findings that under the circumstances of the parents and the child the arbiter's award would not be in the best interests of the child. In its judgment, the judge may supplement the arbiter's decision on issues not covered by the binding arbitration.<sup>23</sup>

In light of this recent legislation, an agreement or order to arbitrate the issue of custody and related





matters cannot be held void as contrary to public policy.<sup>24</sup> Thus, arbitration is no longer a partial solution to domestic relations issues; a Georgia arbitrator may now craft a comprehensive solution in a domestic relations case.<sup>25</sup>

## Applicable Georgia Arbitration Code Procedures

Because the Legislature did not enact a stand-alone domestic relations arbitration act, proceedings relying upon O.C.G.A. § 19-9-1.1 should follow, as much as possible, the generally-applicable Georgia Arbitration Code and the rules and procedures agreed to by the parties.<sup>26</sup> This article will not attempt to thoroughly discuss general arbitration practice, but rather will focus on the procedures most altered in the domestic relations context: confirmation, vacatur and modification.

After an award is issued through arbitration, a party may apply to the trial court for confirmation of the award, which shall be granted unless the award is vacated or modified.<sup>27</sup> If the arbitration award is confirmed by the trial court, it is incorporated into the court's final judgment and decree as provided by statute.<sup>28</sup> Because only a superior court may decree a married couple divorced, confirmation of an arbitration award should be expected in order to issue a final divorce decree.<sup>29</sup>

Under the Georgia Arbitration Code, a party has very limited grounds for moving to vacate an arbitration award.<sup>30</sup> Similarly, the Code also provides narrow grounds to grant a party's motion to modify an arbitration award.<sup>31</sup> Arbitration awards may generally only be vacated or modified based on the grounds enumerated in O.C.G.A. § 9-9-13 and § 9-9-14, respectively. As more fully discussed in the following section, however, when the award involves a child, the trial court is statutorily required to consider the best inter-

est of the child at issue and may vacate or modify an award in light of that interest.

## Superior Court Must Review Award in Light of the Best Interest of the Child

Even where binding domestic relations arbitration is permitted, courts have consistently recognized the trial court's independent duty and authority to protect the best interests of the child.<sup>32</sup> In Georgia,<sup>33</sup> as in Michigan,<sup>34</sup> Texas<sup>35</sup> and North Carolina,<sup>36</sup> the trial court's authority to consider whether an arbitration award is in the best interest of the child is codified. In light of this statutory mandate, the superior court should consider on its own whether the award is in the best interest of the child, even where none of the parties have requested such a review.

The trial court's role in reviewing arbitration awards regarding children is comparable to the court's role in reviewing voluntary settlements affecting children. The Supreme Court of Georgia has recently stated that a trial court has the ultimate duty to determine the propriety of a settlement agreement and must properly review a voluntary settlement agreement prior to its incorporation into a final decree of divorce.<sup>37</sup>

Whether parties reach agreement on their own, through private mediation, court-annexed mediation or by agreeing to an arbitration process, it is desirable to settle domestic relations cases without resorting to trial.<sup>38</sup> No matter how a resolution of issues affecting children is attained, it remains clear that trial courts maintain the authority to set private agreements aside to protect the best interest of the child.<sup>39</sup>

## What Type of Review is Necessary?

Given that trial courts must review domestic relations arbitration awards for the best interest of

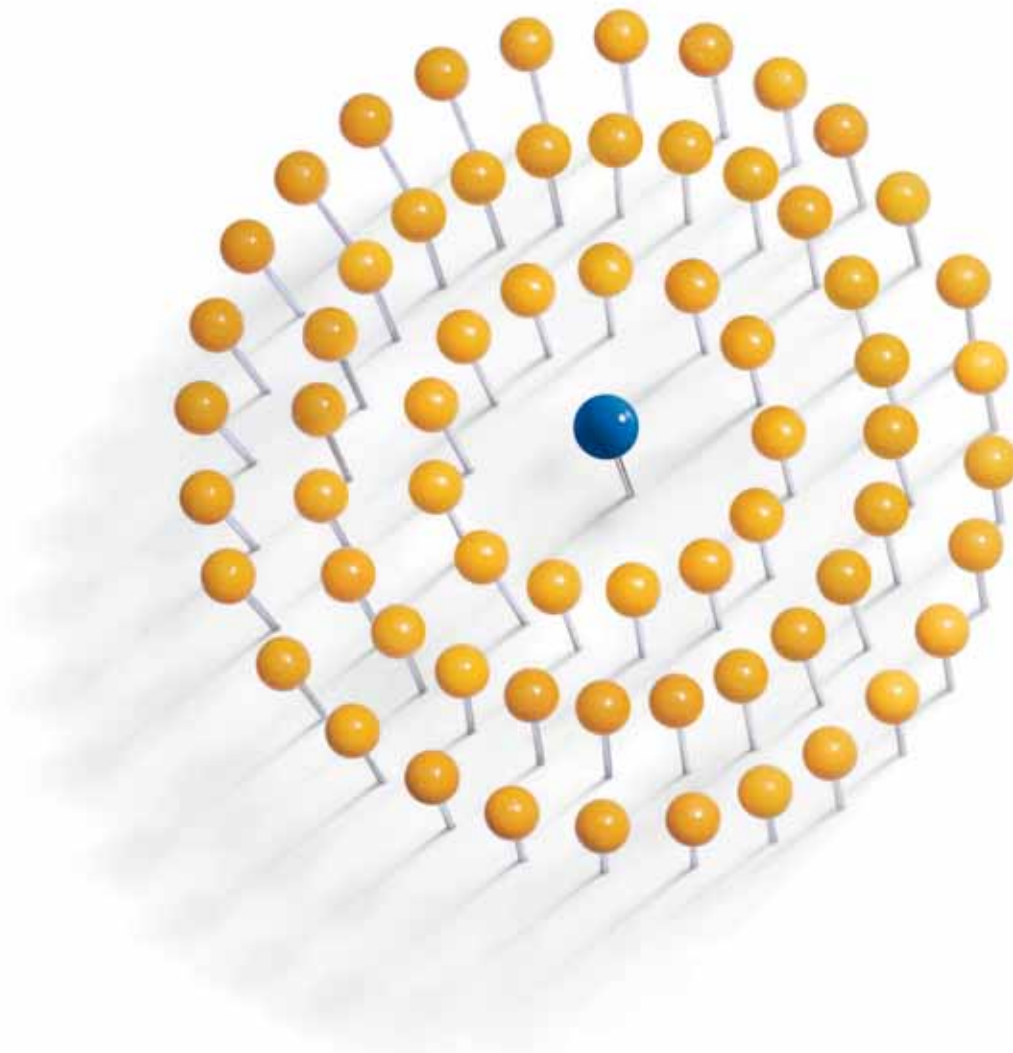
the child, it is important to establish exactly how courts should conduct that review. Because comprehensive domestic relations arbitration is a new development in Georgia and O.C.G.A. § 19-9-1.1 provides sparse instruction, however, it is not altogether clear how superior courts are to proceed. Case law from other states may provide persuasive instruction for Georgia courts considering the issue.

The case of *MacIntyre v. MacIntyre*<sup>40</sup> may be the leading authority on the standard of review that a trial court should give to an arbitrator's domestic relations award affecting a child. In that case, the party who lost custody at arbitration moved to vacate the arbitrator's award and requested a de novo evidentiary hearing to determine the custody issue. The trial court instead conducted a de novo review of the arbitration without conducting an evidentiary hearing and entered a divorce decree consistent with the award. The Michigan Court of Appeals held that the trial court erred and remanded the matter to the trial court to conduct a de novo evidentiary hearing. The Michigan Supreme Court reversed the Court of Appeals and stated:

The parties' agreements may not waive the availability of an evidentiary hearing if the circuit court determines that a hearing is necessary to exercise its independent duty[.] . . . But as long as the circuit court is able to "determine independently what custodial placement is in the best interest of the children" . . . , an evidentiary hearing is not required in all cases.<sup>41</sup>

This rule has been consistently followed in subsequent appellate decisions in Michigan.<sup>42</sup>

Texas also provides some indication of how trial courts should review domestic relations arbitration awards.<sup>43</sup> In the case of *In the Interest of C.A.K.*,<sup>44</sup> the Texas Court of Appeals considered whether a



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trial court erred in confirming an arbitration award that modified child custody without first holding an evidentiary hearing to determine whether the award was in the child's best interests. The challenger did not request a best interest hearing and actually agreed to waive her right to the hearing. The Court of Appeals held that trial courts are not always required to conduct a best interest hearing before confirming an arbitration award. The court emphasized the statutory terms "shall" and "unless" to support its conclusion that conducting an evidentiary hearing is an exceptional procedure, not the general rule.<sup>45</sup>

The conclusion reached in Michigan and Texas has also been reached in other states. For example, in *Reynolds v. Whitman*,<sup>46</sup> the

Massachusetts Appeals Court held that there was no need for an evidentiary hearing where the trial court judge considered the arguments of counsel and received financial statements and other written documents to review the arbitrator's award.<sup>47</sup>

In *Faherty v. Faherty*,<sup>48</sup> the New Jersey Supreme Court used a slightly different approach and held that when a domestic relations arbitration award is challenged, the trial court should first consider the traditional grounds for vacatur. Next, the court "should conduct a *de novo* review unless it is clear on the face of the award that the award could not adversely affect the substantial best interests of the child."<sup>49</sup>

These cases suggest that Georgia superior courts should independ-

ently review arbitration awards to consider the best interests of children affected, but may conduct their review of arbitration awards in the manner that is appropriate in a given case and are not necessarily required to conduct a *de novo* hearing of the evidence.

## Arguments and Evidence at a Best Interest Hearing

Some parties that "lose" an arbitration hearing seek vacatur by arguing that the hearing process itself was flawed.<sup>50</sup> This tactic may be regarded as employing an "appellate parachute." Courts frequently reject such motions, reasoning that the complaining party expressly or impliedly consented to proceed in the manner that they contend was flawed.<sup>51</sup>

Some courts have suggested that where a best interest hearing is required, trial courts "could utilize the proof adduced before the arbitration tribunal, could call for new proof, or could employ a combination of both."<sup>52</sup> Because the rules of evidence are typically relaxed in an arbitration hearing, some of the arbitration record may not be the type of evidence upon which a trial court would ordinarily rely. Because a judge is not required to make factual findings to conduct his or her review to confirm an award, this evidentiary issue may be limited to orders to vacate or modify the arbitration award.

Under the Georgia Arbitration Code, "[u]pon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrators or before new arbitrators[.]"<sup>53</sup> Therefore, if a trial court vacates an award on the grounds that it is not in the best interest of the child, the matter should be sent back to arbitration.<sup>54</sup> The trial court is not permitted to substitute its judgment on matters affecting children in its final decree. Consistently, O.C.G.A. § 19-9-1.1 provides: "In its judgment, the judge may supplement the arbiter's



decision on issues not covered by the binding arbitration.”

## What About Child Support?

Interestingly, O.C.G.A. § 19-9-1.1 does not specifically authorize parents to agree to arbitrate the issue of child support. Thus, one may wonder whether an agreement to arbitrate child support is enforceable under Georgia law. In a recent footnote, the Supreme Court of Georgia narrowly avoided deciding whether an arbitrator can determine child support payments.<sup>55</sup> As a result, there is no definitive guidance on this issue.

O.C.G.A. § 19-6-15(c)(5), however, provides that a voluntary agreement by the parties for child support that is contrary to the presumptive amount of support under the child support guidelines is subject to review by the trial court. If the agreement does not contain findings of fact to support the deviation, the court shall reject it.<sup>56</sup> Because parties

may agree to an amount of support, it follows that parties may agree to a method of determining the amount of support that will be subject to judicial review. Similarly, given that the Georgia Legislature has approved arbitration of child custody, it would follow that the state's public policy also supports arbitrating the related and rather technical matter of child support. Thus, if the arbitrator's support award is contrary to the presumptive amount of support under the guidelines, the factual basis for this departure would likely be subject to review by the trial court. Hopefully, the Supreme Court's Family Law Pilot Project will provide it the opportunity to definitively answer the question of child support arbitration in the near future.<sup>57</sup>

## Cooperation or Antagonism?

One finds in appellate opinions and academic literature a wide-

spread sentiment that it is necessary *either* to decide matters efficiently through arbitration *or* to protect the best interest of children. If a trial court treats a domestic relations arbitration award with the typical deference that it applies to other arbitration awards, these authors maintain, the court's role in protecting children is frustrated. On the other hand, if courts routinely conduct *de novo* hearings questioning arbitrators' findings, the utility of arbitration in the domestic relations context is lost.

This author would suggest that this widespread belief is premised on a false choice between arbitration and children. Does protracted litigation really serve the best interests of children?<sup>58</sup> How can one ascribe inherent features to arbitration proceedings when the choice of rules, procedures and identity of the arbitrator is largely a matter of choice of the individual parties involved? What is the record in states that have permitted domestic relations arbitration?

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As we gain familiarity with domestic relations arbitration in Georgia, we may learn how to better protect the best interests of children *and* use arbitration in the domestic relations context.<sup>59</sup> The experience of other states suggests adopting a review standard that enables judges to safeguard the best interests of children while, at the same time, allowing parties to effectively and efficiently resolve domestic relations issues through arbitration.

If comprehensive domestic relations arbitration is to succeed in Georgia, it is important that the arbitration proceedings cultivate trust and confidence from the courts. To that end, these arbitration proceedings should be conducted under rules that allow thorough consideration of relevant evidence, including proper consideration of the best interests of children. Parties should agree to sound rules and procedures at the outset before parties know who will “prevail.” Arbitrators should also be sure to apply applicable law to the matters in dispute.

Moreover, it is not enough to simply apply these processes during the arbitration hearing; arbitrators must be sure that they also detail them in the arbitrator’s award with sufficient clarity for the court on review. If an arbitrator’s application of law to the evidence presented during the arbitration hearing is not apparent in a detailed award, how can a judge review whether the award is in the best interests of the children and incorporate the arbitrator’s findings into a final judgment and decree?

The Georgia Arbitration Code does not require that a record of proceedings be kept in all cases,<sup>60</sup> but parties and arbitrators should consider making a reviewable record of the testimony and exhibits introduced during arbitration.<sup>61</sup> This will facilitate the court’s review and may also eliminate any need to have further evidence submitted into the record.

## Can Parties Modify Review and Appeal Standards?

An interesting question is whether parties can agree to modify the terms on which their arbitration award is reviewed by the trial and appellate courts. Perhaps allowing parties to appeal a mistaken arbitration award on the same terms that they may appeal a judgment from trial would give parties confidence to proceed through arbitration.<sup>62</sup> Appellate courts in some states have not been receptive to this concept.<sup>63</sup> Other states, however, have embraced modified review standards. In California, “private judges” are becoming an increasingly popular method of resolving celebrity divorces.<sup>64</sup> North Carolina has codified a provision that allows parties to preemptively agree to judicial review for errors of law in a domestic relations arbitration award.<sup>65</sup>

Outside of the domestic relations context, several federal appellate courts have specifically permitted parties to expand the grounds upon which the trial court may vacate or modify their arbitration awards.<sup>66</sup> These federal cases may someday be cited in the domestic relations context. The Supreme Court of Georgia has stated, “Because our state arbitration code closely tracks federal arbitration law, we look to federal cases for guidance in construing our own statutes.”<sup>67</sup>

## Modification Actions

What if parties to a binding arbitration seek to modify an award based on a subsequent material change of circumstances?


Generally, a party has just three months to apply for modification of an arbitration award based on the narrow grounds provided by O.G.C.A. § 9-9-14(b). Certainly, the time limitations on modifying an arbitration award cannot be construed to limit the continuing jurisdiction of Georgia’s superior courts over child custody orders and

other domestic relations issues.<sup>68</sup> Because parties may not restrain the trial court’s authority to review arbitration awards for the best interests of children, it may follow that parties cannot agree to restrict the court’s continuing jurisdiction over modification actions.

Assuming that a party may seek modification of an arbitration award based on a material change of circumstances at any time, the question arises whether the parties must arbitrate the proposed modification. If the initial agreement or order to arbitrate specifically contemplates future modification actions, then the parties would likely be required to arbitrate the modification. In situations where future modification petitions were not addressed, the answer is much less clear. North Carolina addresses modification actions based on substantially changed circumstances through a specific statute that provides parties several options.<sup>69</sup> Georgia provides no such specific guidance. In the absence of a default rule to follow, determining whether the proposed modification is subject to arbitration may require careful interpretation of the arbitration agreement or order.

As a practical matter, if domestic relations arbitration proves a useful method of initially deciding domestic relations issues, it would likely also be helpful in resolving applications for modification. Similarly, family law attorneys may find arbitration a useful method for resolving disputes that arise out of settlement agreements.

## Conclusion

Attorneys who work in the dispute resolution field have an important role to play in the success or failure of this new process. It may require some refinement. The experience of other states suggests that we can expedite the resolution of domestic relations cases and, at the same time, protect the best interests of children. Hopefully, the State Bar of Georgia will embrace this opportunity. 



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## Endnotes

1. Judicial caseload statistics are derived from the Administrative Office of the Courts of Georgia's Annual Reports and Research Reviews, available at <http://www.georgiacourts.org/aoc/>.
2. N.C. GEN. STAT. §§ 50-41 to 50-62 (1999). Passed in 1999, the North Carolina Family Law Arbitration Act was the first state arbitration statute specifically designed for domestic relations cases. The North Carolina Bar Association has published a Family Law Handbook containing model rules and forms for arbitrating family law cases under the Act, available at <http://family.ncbar.org>.
3. Under Michigan's Domestic Relations Arbitration Act, passed in 2001, parties "may stipulate to binding arbitration by signed agreement" of issues including child custody, child support and parenting time. See MICH. COMP. LAWS §§ 600.5070 to .5082 (2001).
4. TEX. FAM. CODE ANN. § 153.0071(b) (2007).
5. COLO. REV. STAT. § 14-10-128.5 (2008) (arbitrator may be appointed to resolve disputes concerning the parties' minor or dependent children); see also *In re Popack*, 998 P.2d 464 (Colo. App. 2000) (stating that issues affecting children may be arbitrated but are subject to de novo review).
6. MO. REV. STAT. § 435.405(5) (2008) (providing for de novo judicial review of arbitration awards that determine issues regarding children of a marriage).

7. N.H. REV. STAT. ANN. § 542:11 (1997).
8. See *Miller v. Miller*, 620 A.2d 1161 (Pa. Super. Ct. 1993) (agreements to arbitrate custody disputes are not void but trial court is not bound by arbitrator's award in order to protect best interest of the child).
9. *Spencer v. Spencer*, 494 A.2d 1279 (D.C. 1985) (arbitration of custody and child support is permitted but subject to trial court review for best interest of child concerned).
10. *Kovacs v. Kovacs*, 633 A.2d 425 (Md. Ct. Spec. App. 1993) (arbitration permitted but trial court must exercise its independent judgment to determine whether the best interests of the children are met by the award).
11. *Faherty v. Faherty*, 477 A.2d 1257 (N.J. 1984).
12. *Reynolds v. Whitman*, 663 N.E.2d 867 (Mass. App. Ct. 1996) (arbitration award of alimony and child support must be subject to review by trial court judge).
13. *Cashman v. Huff*, 650 N.W.2d 559 (Wis. Ct. App. 2002) (affirming trial court confirmation of arbitration award modifying custody without questioning the legality of an agreement to arbitrate post-judgment placement disputes).
14. Readers interested in a comprehensive review of the status of domestic relations arbitration on a state-by-state basis are encouraged to consult LINDA ELROD, CHILD CUSTODY PRACTICE & PROCEDURE § 16:4 (Arbitration) (2007) and Elizabeth Jenkins, Annotation, *Validity and Construction of Provisions of Arbitration of Disputes as to Alimony or Support Payments or Child Visitation or Custody Matters*, 38 A.L.R.5th 69 (1996).
15. In *Cohoon v. Cohoon*, 770 N.E.2d 885 (Ind. Ct. App. 2002), the Indiana Court of Appeals held that a settlement agreement term to arbitrate child support, custody and visitation issues was void as contrary to public policy. On appeal, the Indiana Supreme Court did not decide the validity of the binding arbitration agreement. *Id.* at 904.
16. In *Kelm v. Kelm*, 749 N.E.2d 299 (Ohio 2001), the Ohio Supreme Court held that parents could agree to arbitrate child support but held that their agreement to arbitrate child custody and visitation was void as contrary to public policy.
17. See FLA. STAT. § 44.101(14) (2006) (child custody, visitation and child support are not subject to voluntary binding arbitration). But see *Schulberg v. Schulberg*, 883 So. 2d 351 (Fla. Dist. Ct. App. 2004) (parents may arbitrate dispute over child's private school education, despite statutory prohibition of arbitrating matters affecting children).
18. CAL. R. CT. 3.811(b)(5) provides that family law act proceedings, except property division in divorce actions, are exempt from arbitration eligibility.
19. See *Masters v. Masters*, 513 A.2d 104, 112-14 (Conn. 1986) (child support can be arbitrated, but arbitration of child custody is prohibited; arbitration can help resolve "minor decisions relating to the day-to-day upbringing and support of minor children," which the judicial process frequently worsens); *Nashid v. Andrawis*, 847 A.2d 1098, 1101 (Conn. App. Ct. 2004) (order to arbitrate substantive parenting issues is improper delegation of trial court authority).
20. New York's First Appellate Department authorized binding arbitration of custody and visitation issues, subject to trial court review for the best interest of the child, in *Sheets v. Sheets*, 254 N.Y.S.2d 320 (App. Div. 1964), but the *Sheets* decision was called into question by the Second Appellate Department in *Nestel v. Nestel*, 331 N.Y.S.2d 241 (App. Div. 1972), and *Glauber v. Glauber*, 600 N.Y.S.2d 740 (App. Div. 1993). More recent decisions indicate that binding arbitration of matters affecting children is not allowed in New York. See *Stein v. Stein*, 707 N.Y.S.2d 754 (Sup. Ct. 1999).
21. See *Ghertner v. Solaimani*, 254 Ga. App. 821, 825, 563 S.E.2d 878, 881 (2002) (legislature's adoption of Georgia Arbitration Code establishes clear public policy in favor of arbitration).
22. See *Harper v. Ballensinger*, 226 Ga. 828, 830, 177 S.E.2d 693, 694 (1970) (courts must act as parents patriae to protect best interests of children).
23. O.C.G.A. § 19-9-1.1 (Supp. 2007).



24. "What the Legislature allows cannot be contrary to public policy." *NEC Techs., Inc. v. Nelson*, 267 Ga. 390, 394, 478 S.E.2d 769, 773 (1996). Additionally, "[t]hat which the law specifically permits cannot be unconscionable." *William J. Cooney, P.C. v. Rowland*, 240 Ga. App. 703, 704, 524 S.E.2d 730, 732-33 (1999).
25. Parties could still agree to arbitrate particular issues and litigate others.
26. The Georgia Arbitration Code does not apply to "[a]ny other subject matters currently covered by an arbitration statute." O.C.G.A. § 9-9-2(c)(4) (2007) (referring to stand-alone arbitration statutes). Interestingly, the Legislature passed H.B. 369 rather than S.B. 201 for a "Georgia Family Law Arbitration Act." S.B. 201 called for a separate and comprehensive set of statutes to govern domestic relations arbitration akin to the family law arbitration acts in Michigan and North Carolina or Georgia's Medical Malpractice Arbitration Act.
27. O.C.G.A. § 9-9-12 (2007).
28. *Id.* § 9-9-15. For an interesting illustration of these procedures, see *Ciraldi v. Ciraldi*, 280 Ga. 602, 631 S.E.2d 640 (2006), where the trial court incorporated a non-existent arbitration award into its final judgment and decree.
29. Georgia's superior courts have exclusive jurisdiction over divorce cases. GA. CONST. art. VI, § 4, ¶ 1.
30. See O.C.G.A. § 9-9-13(b) (2007). This statute has been strictly construed. See *ABCO Builders, Inc. v. Progressive Plumbing, Inc.*, 282 Ga. 308, 309, 647 S.E.2d 574, 575 (2007) (elaborating the "manifest disregard of the law" standard).
31. O.C.G.A. § 9-9-14(b) (2007). If a party believes that the arbitrator's award is mistaken, O.C.G.A. § 9-9-11 authorizes a party to request that the arbitrator correct mistakes or perfect the form of the award. The grounds for an arbitrator's correcting the award are the same as the grounds for a trial court's modifying the arbitrator's award pursuant to O.C.G.A. § 9-9-14.
32. The Michigan case of *Dick v. Dick*, 534 N.W.2d 185 (Mich. Ct. App. 1995) is the only appellate court opinion that this author has located that would not permit a trial court to review an arbitration award based on the best interest of the child. This may be "bad law" resulting from an "acrimonious" and "vexatious" litigation. *Id.* at 187. The Michigan Domestic Relations Arbitration Code supercedes this decision, and *Dick* is not followed in more recent Michigan cases. See *MacIntyre v. MacIntyre*, 693 N.W.2d 822 (Mich. 2005), and the cases cited *infra* note 42.
33. O.C.G.A. § 19-9-1.1 (Supp. 2007).
34. MICH. COMP. LAWS 600.5080 (1998); see also *Harvey v. Harvey*, 680 N.W.2d 835 (Mich. 2004) (parties cannot usurp trial court's statutory duty to review custody decision by agreement).
35. TEX. FAM. CODE ANN. 153.0071(b) (2004) provides: "If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child."
36. N.C. GEN. STAT. § 50-54(a)(6) (2007).
37. See *Arnold v. Arnold*, 282 Ga. 246, 647 S.E.2d 68 (2007) (affirming where the trial court properly reviewed the evidence and considered the arguments of the parties before incorporating their voluntary settlement into its final judgment and decree); see also *Page v. Page*, 281 Ga. 155, 635 S.E.2d 762 (2006).
38. O.C.G.A. § 19-9-5(b) (Supp. 2007) now provides for ratification of voluntary custody agreements in similar terms to the arbitration statute:

The judge shall ratify the agreement and make such agreement a part of the judge's final judgment in the proceedings unless the judge makes specific written factual findings as a part of the final judgment that under the circumstances of the parents and the child in such agreement that the agreement would not be in the best interests of the child.
39. A number of sources compare trial court review of voluntary domestic relations settlements to arbitration awards on the same subject matter. See *Miller v. Miller*, 620 A.2d 1161, 1164-65 (Pa. Super. Ct. 1993). It would, however, be rather ironic for judges to be more skeptical of a decision reached by an arbitrator (generally a lawyer) based on an adversarial process generally conducted in the manner of a trial than a compromise agreement reached between parents working with a mediator (often a non-lawyer) in an informal setting.
40. 693 N.W.2d 822 (Mich. 2005).
41. *Id.* (citations omitted).
42. See, e.g., *Kirby v. Vance*, No. 136050, 2008 WL 314943 (Mich. June 11, 2008) (trial court must make independent review of arbitration award); *Hartt v. Hartt*, No. 276227, 2007 WL 4731071 (Mich. Ct. App. Jan. 27, 2007) (trial court made independent determination of children's best interests by thorough review of arbitrator's findings; not required to consider transcribed witness testimony); see also Mark Snover, *Recent Case Law's Impact on Family Law Arbitration*, 85 MICH. B.J. 20 (Feb. 2006) (concluding that the prevailing review standard has become "much more user friendly.")
43. In another illustrative case, the Texas Court of Appeals considered a motion to vacate an arbitrator's award regarding the modification of child support. The court observed that a trial court may vacate an arbitrator's award only as (1) allowed by the Texas Family Code, or (2) as allowed under the Texas Arbitration Act. A party moving to vacate an award that "is not in the best interests of the child" bears the burden of proving the award is not in the child's best interest. The trial court conducted an evidentiary hearing and then vacated the arbitration award. The Court of Appeals found that the trial court did not abuse its discretion. See *Stieren v. McBloom*, 103 S.W.3d 602 (Tex. App. 2003).
44. 155 S.W.3d 554 (Tex. App. 2004).
45. *Id.* at 561.
46. 663 N.E.2d 867 (Mass. App. 1996).
47. *Id.* at 871; see also *Bagley v. Bagley*, No. 03-P-907, 2005 WL 549477 (Mass. App. Ct. Mar. 8, 2005) (trial court judge appropriately confirmed arbitration award deciding custody, child support and alimony after hearing arguments by counsel at hearing); *Miller v. Miller*, 620 A.2d 1161, 1165 n.4 (Pa. Super. Ct. 1993) (observing that simply because an arbitration award

- affects a child, it does not necessarily follow that the award adversely affects the child and, thus, a de novo evidentiary hearing is not always necessary) (citing *Sheets v. Sheets*, 254 N.Y.S.2d 320 (App. Div. 1964)).
48. 477 A.2d 1257 (N.J. 1984).
  49. *Id.* at 1263.
  50. *See, e.g., Cashman v. Huff*, 650 N.W.2d 559 (Wis. 2002) (party that fails to participate in arbitration, present evidence at arbitration regarding child's best interest or request court evaluation of child's best interest may be estopped from challenging arbitration award).
  51. *See Deer Creek, Inc. v. Section 1031 Servs., Inc.*, 235 Ga. App. 891, 893, 510 S.E.2d 853, 856 (1999) (where party continues with arbitration with notice of error and without objection, that party cannot later cite error as grounds to vacate award) (citing O.C.G.A. § 9-9-13(b)(4) (2007)).
  52. *Miller*, 620 A.2d at 1165 (quoting *Sheets*, 254 N.Y.S.2d at 324).
  53. O.C.G.A. § 9-9-13(e) (2007).
  54. In *Stieren v. McBloom*, 103 S.W.3d 602 (Tex. App. 2003), the Texas Court of Appeals found that the trial court abused its discretion by ruling on the subject matter of the arbitration, the modification of child support, after it vacated the arbitrator's award. Under the Texas Arbitration Act, "the matter must be sent back to arbitration." *Id.* at 607.
  55. *Page v. Page*, 281 Ga. 155, 156 n.3, 635 S.E.2d 762, 764 n.3 (2006) (parties stipulated to arbitrate all financial issues, including child support, but reached settlement before arbitrating).
  56. Pursuant to O.C.G.A. § 19-5-12(c) (Supp. 2007), in any case involving child support, the court shall include certain specific findings in its final divorce decree.
  57. *See Maddox v. Maddox*, 278 Ga. 606, 607 n.1, 604 S.E.2d 784, 785 n.1 (2004) (noting that under the Pilot Project, the Georgia Supreme Court will grant any non-frivolous discretionary application seeking review of a final decree of divorce).
  58. *See Joan Kessler, Allen Koritzinsky & Stephen Schlissel, Why Arbitrate Family Law Matters?*, 14 J. AM. ACAD. MATRIMONIAL LAW. 333, 342-44 (1997).
  59. The New Jersey Supreme Court has suggested: "As we gain experience in the arbitration of child support and custody disputes, it may become evident that a child's best interests are as well protected by an arbitrator as by a judge." *Faherty v. Faherty*, 477 A.2d 1257, 1263 (N.J. 1984).
  60. O.C.G.A. § 9-9-8(e) (2007).
  61. In Michigan, parties are required to record portions of the arbitration hearing concerning children. *See MICH. COMP. LAWS* 600.5077(2) (1998). The Michigan Supreme Court has recently held that a truly independent review is not possible without a properly recorded arbitration record. *See Kirby v. Vance*, No. 136050, 2008 WL 314943 (Mich. June 11, 2008).
  62. For a compelling argument that parties should be allowed to preserve the right to appeal errors of law in the award by agreement, see Frank L. McGuane, Jr., *Model Marital Arbitration Act: A Proposal*, 14 J. AM. ACAD. MATRIMONIAL LAW. 393 (1997).
  63. *See Dick v. Dick*, 534 N.W.2d 185, 191 (Mich. Ct. App. 1995) (finding no authority for this "hybrid form of arbitration").
  64. A key difference between an arbitrator and a "private judge" is that the latter's award may be appealed directly to an appellate court. *See Sheila Nagaraj, The Marriage of Family Law and Private Judging in California*, 116 YALE L.J. 1615 (2007).
  65. N.C. GEN. STAT. § 50-54(a)(8) (2007).
  66. *See, e.g., LaPine Tech. Corp. v. Kyocera Corp.*, 130 F.3d 884 (9th Cir. 1997) (parties may authorize district court to vacate, modify or correct findings of fact that are not supported by substantial evidence and erroneous conclusions of law); *Gateway Techs., Inc. v. MCI Telecomm. Corp.*, 64 F.3d 993 (5th Cir. 1995) (parties may agree for de novo judicial review of errors of law in an arbitration award). *But see Chicago Typographical Union v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1507 (7th Cir. 1991) (dicta against modified review standards). These conflicting opinions may have been recently resolved by the United States Supreme Court. *See Hall Street Assocs., LLC v. Mattel, Inc.*, 128 S. Ct. 1396, 1403 (2008) (holding that §§ 10 and 11 of the Federal Arbitration Act provide the exclusive grounds for expedited vacatur and modification but other statutes and rules may authorize more searching judicial review of arbitration awards).
  67. *ABCO Builders, Inc. v. Progressive Plumbing, Inc.*, 282 Ga. 308, 647 S.E.2d 574 (2007).
  68. In *Cohoon v. Cohoon*, 770 N.E.2d 885 (Ind. Ct. App. 2002), for example, the Indiana Court of Appeals cautioned that following strict arbitration provisions would strip courts of their continuing jurisdiction to modify custody and support order. *Id.* at 892-93.
  69. N.C. GEN. STAT. §§ 50-56 (2007).

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# 2008 Annual Meeting Returns to Amelia Island

by Jennifer R. Mason

**T**he State Bar of Georgia returned to the Amelia Island Plantation Resort for its 44th Annual Meeting. Those who made the trip found that while many things have changed since the Bar last visited the island, the resort remains constant, providing members with a beautiful setting for business as well as giving all attendees the opportunity to enjoy some well-deserved time with families and friends.

## An Evening of Cirque

As the breeze from the ocean countered the heat from earlier in the day, the area around the upper and lower pool decks of the Amelia Island Beach Club was transformed into a huge outdoor Cirque-themed party for Bar members and their families. The perimeter of the property was lined with inflatable games and craft booths that appealed to the young and young at heart. Dinner was buffet-style and the open-air dining atmosphere was an ideal setting for catching up with old friends. As the sun began to set, the air was filled with the sounds of the circus, and a parade of the Encore Creations Cirque performers wound its way through the crowd to the stage. The troupe's show, entitled "Teatro Storvandre," showcased amazing aerial acrobatic maneuvers blended with grace and symmetry. Five different performances highlighted particular and unique skills of the troupe members. From the response of the crowd, it was clear that this was an opening night event that exceeded expectations.



2007-08 Bar President Gerald M. Edenfield welcomes Bar members, families and guests to the Opening Night Festival.

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





The highlight of the Opening Night Festival was provided by Encore Creations Cirque performers. Members of the troupe pose with the GEICO Gecko before the event.

## On With the Show

With the excitement of the opening night event setting the tone for the weekend, meeting attendees got down to the business at hand. CLE sessions, alumni and section events provided members with the opportunity to expand on their knowledge of the law while sharing breakfast or lunch with colleagues. Various evening receptions celebrated a variety of events, providing guests with a relaxed atmosphere in which they could catch up, network or just enjoy the company of old and new friends. The meeting also provided attendees with a much-needed social outlet through the annual YLD/LFG 5K Fun Run and the tennis and golf tournaments.

## Board Meeting Highlights

Following the presentation of awards at the June 6 plenary session, the Board received a report on Emeritus Members by Robert McCormack, at which time the Board approved proposed changes

to Rule 1-202 and Bylaws Article 1, Section 7. The Board then received reports on Memorials by Gerald M. Edenfield, the Investigative Panel by Chris Townley, the Review Panel by Anthony B. Askew, the Formal Advisory Opinion Board by Edward B. Krugman, the Supreme Court of Georgia by Chief Justice Leah Ward Sears, the Court of Appeals of Georgia by Chief Judge Anne E. Barnes, the State of the Law by Attorney General Thurbert Baker, the Georgia Senate by Sen. Michael Meyer von Bremen (chair of the Senate Special Judiciary Committee), and the Georgia House of Representatives by Rep. Wendell Willard (chair of the Judiciary Committee).

During the plenary session, President Gerald M. Edenfield delivered his outgoing remarks as required by the bylaws of the State Bar. A copy of those remarks can be found on page 38 of the *Bar Journal*.

Jeffrey O. Bramlett presided over the 220th Board of Governors meeting on Saturday, June 7.

Highlights of the meeting included:

- Joshua C. Bell provided a report on the activities of the YLD, including the High School Mock Trial Committee hosting the national tournament in Atlanta on May 8-9, 2009, and recognizing Jonesboro High School as this year's national champions; the Model Juvenile Code release; the work of the Leadership Academy; and the establishments of local YLD affiliate organizations around the state. He also recognized the hard work and dedication Elena Kaplan provided the YLD during her year as president.
- The Board, by unanimous voice vote, approved the following presidential appointments to the State Disciplinary Board:
  - Investigative Panel**
  - District 3: William D. NeSmith (2009)
  - District 5: Hubert J. Bell Jr. (2011)
  - District 6: H. Emily George (2011)
  - District 7: Christopher A. Townley (2011)

## Review Panel

Northern District: Lisa

Strauss (2011)

Middle District: Gregory L.

Fullerton (2011)

Southern District: Jeffrey S.

Ward (2011)

## Formal Advisory Opinion

### Board

*At Large*: James W.

Friedwald (2010)

*Georgia Assoc. of Criminal*

*Defense Lawyers*: Christopher

A. Townley (2010)

*Emory Law School*: Prof.

James C. Hughes Jr. (2010)

*Review Panel*: James B.

Ellington (2009)

- As required by Article V, Section 8 of the bylaws, the Board:

- Authorized the president to secure blanket fidelity bonds for the Bar's officers and staff handling State Bar funds.

- Directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, said depository currently being Merrill Lynch, and that the persons whose titles are listed below are author-

ized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: treasurer, secretary, president, immediate past president, president-elect, executive director, general counsel, and officer manager provided either the president, secretary, or treasurer shall sign all checks or vouchers, and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so as said banks are concerned until they are notified in writing, acknowledge receipt thereof.

- Designated that Jones and Kolb be designated as the independent auditing firm to audit the financial records of the State Bar for the fiscal year 2007-08.

- Following a report by Kent Shelton and Melinda Hart, co-chairs of the State Bar's Section on Military/Veterans Law, regarding a proposal to employ a consultant at a cost not to exceed \$204,000 to design a State Bar program to recruit, train and facilitate the

delivery of pro bono legal services to meet unmet legal needs of veterans, service members and their families, the Board debated a substitute motion embodying the proposal to hire a consultant. On a hand vote of 56 in favor to 58 opposed, the Board declined to pass the substitute motion. Thereafter, a motion specifically authorizing the president-elect's appointment of a volunteer committee to study the issue and bring forth its recommendations on how best to deliver enhanced legal services to veterans and service members without cost to the Bar was approved by unanimous voice vote.

- Following a presentation by Treasurer Lester Tate, the Board, by unanimous voice vote, approved the 2008-09 budget.
- Results of the Executive Committee election were as follows: Nancy J. Whaley, C. Wilson Dubose, N. Harvey Weitz and Phyllis Holmen.
- The Board elected Cliff Brashier as executive director for the 2008-09 Bar year.
- The Board approved the appointments of James W. Boswell III, C. Benjamin Garren Jr., Jennifer Dickinson and Brad J. McFall for two-year terms to the Georgia Legal Services Board of Trustees.
- The Board recommended to the Supreme Court of Georgia that the Transition Into Law

## Corporate Sponsors

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Tort & Insurance Practice

### Gold Level, \$3,000

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Elder Law

Real Property Law

### Silver Level, \$2,000

Bankruptcy Law

Dispute Resolution

Intellectual Property Law

Legal Economics

Labor & Employment Law

Taxation Law

### Bronze Level, \$1,000

Appellate Practice

Eminent Domain

Health Law

Workers' Compensation Law

### Copper Level, \$500

Agriculture Law

Antitrust Law

Creditors' Rights

Entertainment & Sports Law

Environmental Law

General Practice & Trial

Individual Rights

Judicial

### Other

Administrative Law

Military Law/Veterans Affairs

\*GEICO

\*\*Lawyers USA

\*GEICO sponsored the ANITA Dance Club room

\*\*Lawyers USA sponsored the Cigar Bar





Attorney General Thurbert Baker gives the State of the Law address during the Plenary Session of the Annual Meeting.



2007-08 President Gerald M. Edenfield passes the gavel to 2008-09 President Jeffrey O. Bramlett during the business portion of the Presidential Inaugural Gala.

- Practice Program be granted permanent operational status.
- The Board approved a resolution congratulating ICJE on the occasion of its 30th anniversary.
- The Board received a copy of the future meetings schedule.
- Robert Ingram provided a report on the activities of the Supreme Court Committee on Legal Education.
- Len Horton provided a report on the activities of the Georgia Bar Foundation.
- Lauren Barrett provided a report on the activities of the Lawyers Foundation of Georgia.
- Jeff Bramlett recognized the valuable work of Georgia Legal Services in extending legal representation and securing access to civil legal services to low-income citizens of Georgia, and presented Phyllis Holmen a \$516,524 check that represents monies donated by the lawyers of Georgia through the State Bar's 2007 *And Justice for All* Campaign.
- The Board received a copy of the minutes of the April 10, 2008, and April 17, 2008, Executive Committee Meetings.
- Linda Klein provided a report on the activities of the ABA.

- The Board received a written annual report and accounting of expenditures on the State Bar's Cornerstones of Freedom<sup>SM</sup> Program, formerly the Foundations of Freedom Program, during the 2007-08 Bar year.
- The Board received a written annual report from the Unauthorized Practice of Law Program, the Fee Arbitration Program and the Consumer Assistance Program.
- The Board received a copy of the results of the 2008 State Bar Elections.
- The Board received a copy of the Attorney Volunteer Form for the 2008 Law School Orientations on Professionalism.
- The Board received a written annual report on the State Bar's Legislative Activities for 2007-08.
- The Board received written annual reports from the following sections: Appellate Practice Law, Aviation Law, Bankruptcy Law, Business Law, Corporate Counsel, Dispute Resolution, Eminent Domain, Family Law, Fiduciary Law, Franchise and Distribution Law, General Practice and Trial, Government Attorneys, International Law, Labor and Employment Law,

Military/Veterans Law, Real Property Law, Taxation Law, Technology Law and Workers' Compensation.

- Hon. Phyllis Miller noted instances of chronic unexcused absences by certain Board members and requested an inquiry into the operation of the applicable rules, regulations and bylaws to determine what might be done to assure that all Georgia lawyers receive representation on the Board of Governors.

## Annual Awards

During the plenary session, President Gerald M. Edenfield recognized specific Bar members and organizations for the work they have done over the past year.

### Chief Justice Thomas O. Marshall Professionalism Award

The 7th Annual Chief Justice Thomas O. Marshall Professionalism Awards, presented by the Bench & Bar Committee of the State Bar of Georgia, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the **Hon. Leah Ward Sears**, Justice, Supreme Court of





Chief Justice Leah Ward Sears and her mother, Mrs. Onnye Sears, spend time together during the Supreme Court Reception on Saturday evening.



Members of the Georgia Association of Black Women Attorneys celebrate winning three local bar awards: the Award of Merit, Best Newsletter Award and the President's Cup.



Ty Morrison and Sharri Edenfield enjoy the atmosphere at the Opening Night Festival.



Fay Foy Franklin, Board Member Hon. Phyllis Miller and State Bar Past President Jimmy Franklin during the LFG's Speakeasy Casino Night.



(Left to right) Winners of the annual tennis tournament include Mark Thompson, John Corish, Cindy Presto and Kelsey Aho.

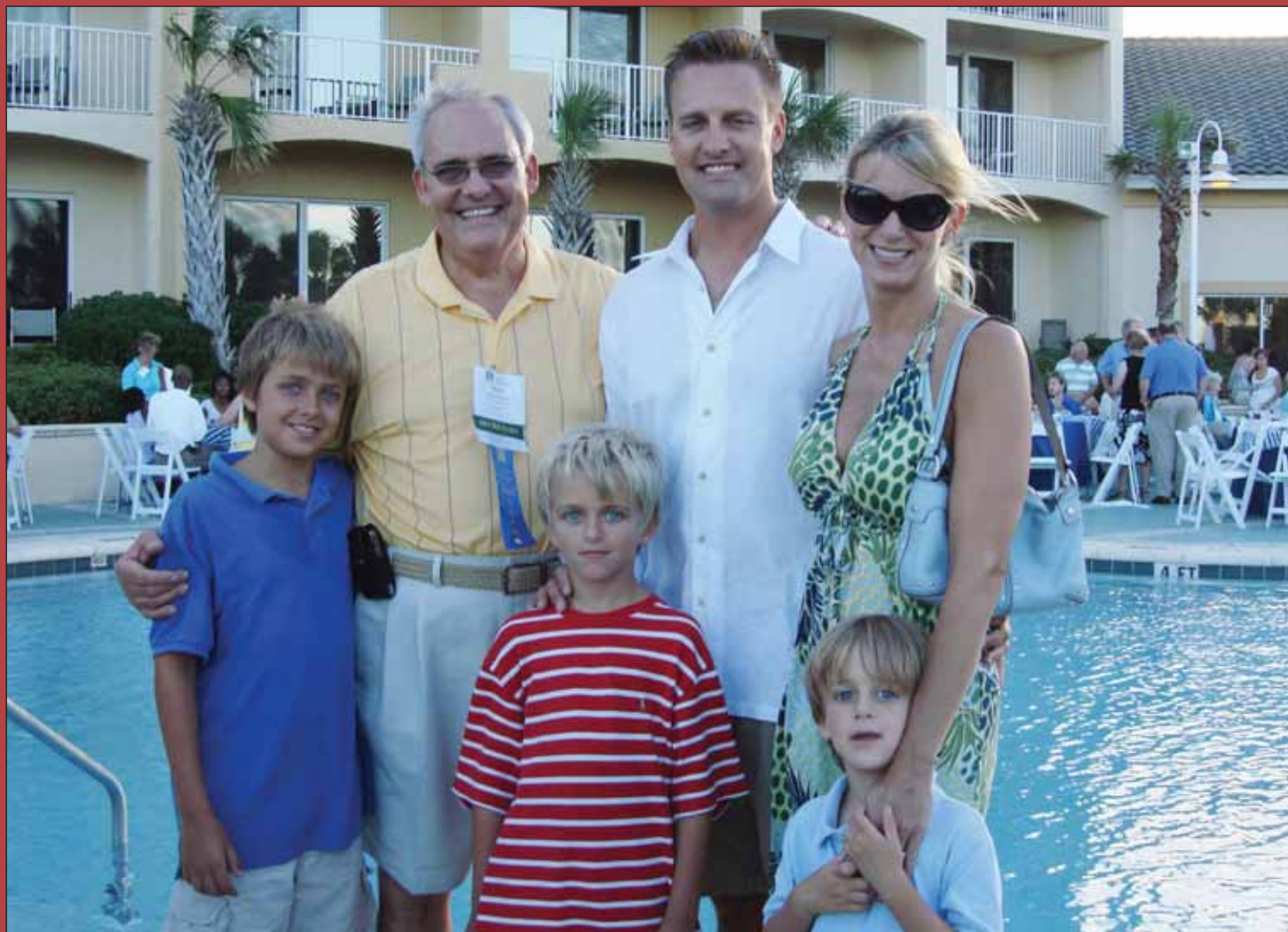




President Edenfield presents the Best New Entry Award to Jennifer Dorminey, president of the Tifton Judicial Circuit Bar Association.



2008-09 YLD President Joshua C. Bell and YLD Past President Kendall Butterworth at the Inaugural Gala.



President-Elect Bryan Cavan and his family at the Opening Night Festival. (Back row) Jake, Bryan, Mike and Melissa. (Front row) Alex and Chandler.



2007-08 President Gerald M. Edenfield presents the Employee of the Year Award to Steve Kaczkowski, director of the Unlicensed Practice of Law Program.

Georgia, Atlanta.; and **N. Harvey Weitz**, Weiner Shearouse Weitz, Savannah.

### Georgia Association of Criminal Defense Lawyers Award

The Georgia Association of Criminal Defense Lawyers presented the 2007 GACDL Indigent Defense Award to **Christine A. Koehler**.

### Voluntary Bar Awards

The **Thomas R. Burnside Jr. Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient was **Janet G. Watts**, Clayton County Bar Association, Inc.

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

- Under 50 members: **Tifton Judicial Circuit Bar Association**
- 51 to 100 members: **Georgia Asian Pacific American Bar Association**

- 101 to 250 members: **Georgia Association of Black Women Attorneys**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Cobb County Bar Association, Inc.**

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

The **Best Newsletter Award** is presented to voluntary bars that provide the best informational source to their membership, according to their size.

- 51 to 100 members: **Georgia Asian Pacific American Bar Association**
- 101 to 250 members: **Georgia Association of Black Women Attorneys**
- 251 to 500 members: **DeKalb Bar Association**
- 501 members or more: **Atlanta Bar Association**

In 1961, Congress declared May 1 as Law Day USA. It is a special time for Americans to celebrate their liberties and rededicate them-

selves to the ideals of equality and justice under the law. Every year, voluntary bar associations plan Law Day activities in their respective communities to commemorate this occasion. The **Law Day Awards of Achievement** are also judged in size categories:

- 51 to 100 members: **Blue Ridge Bar Association**
- 101 to 250 members: **Dougherty Circuit Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Atlanta Bar Association**

The **President's Cup Award** is a traveling award that is presented annually to the voluntary bar association with the best overall program. This year's recipient is the **Georgia Association of Black Women Attorneys**.

### Pro Bono Awards

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

The H. Sol Clark Award is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project. The 2008 award was presented to **Elizabeth Leigh Anne Garvish**, who has demonstrated outstanding professionalism and commitment to the delivery of legal services to the poor in her work to organize legal assistance to immigrants on the path to United States citizenship.

The **William B. Spann Jr. Award** is given each year either to a local bar association, law firm project or a community organization in Georgia that has developed a pro bono program that has satisfied previously unmet needs or extended services to underserved segments of the population. The



award is named for a former president of the American Bar Association and former executive director of the State Bar of Georgia.

The 2007 William B. Spann Jr. Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to **Troutman Sanders, LLP**, and the **Savannah Bar Association** for their strong pro bono commitment to providing high quality legal services, as well as their dedication to professionalism through pro bono service.

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

The 2008 Dan Bradley Award was presented by the Access to Justice Committee of the State Bar of Georgia to **Margaret Hayman**, for tireless dedication and professionalism in the delivery of exemplary services to the poor.

## Section Awards

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

- **Section of the Year**  
**Fiduciary Law Section**, Adam Gaslowitz, chair
- **Awards of Achievement**  
**Bankruptcy Law Section**, Shayna Steinfeld, chair  
**Business Law Section**, Walter Jospin, chair  
**Taxation Law Section**, Edward Maginualt, chair

## Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members who have reached the age of 50 in recognition for their commitment of service to the

public, to Bar activities and to civic organizations. The 2008 recipients are: **Judge Aaron Cohn** (judicial), **Michael J. Bowers** (general practice), **Edward D. Tolley** (defense) and **Don C. Keenan** (plaintiff).

## Young Lawyers Division Awards

Award of Achievement for Outstanding Service to the Profession: **Ashley Harris** and **Ben Vinson**.

Award of Achievement for Outstanding Service to the Bar: **Sharri Edenfield**, **Elizabeth Fite** and **John Jackson**.

Award of Achievement for Outstanding Service to the Public: **Jennifer Blackburn**, **Melissa Carter**, **Leigh Cummings**, **Hon. Sharon Hill**, **Amy Howell**, **Stephanie Kirijan**, **Ari Mathé**, **Whitney Mauk**, **Prof. Lucy McGough**, **Soledad McGrath**, **Beth Reimels**, **Curtis Romig**, **Hon. Velma Tilley** and **Lea Thompson**.

Award of Achievement for Outstanding Service to the YLD: **Deborah Craytor**, **Jeff Daxe**, **Terie Latala**, **Sherry Neal** and **Rep. Wendell Willard**.

Dedication to the YLD Award: **Sharon Bryant**, **Sarah Coole**, **Michelle Garner**, **Jennifer Mason**, **Johanna Price** and **Stephanie Wilson**.

The Distinguished Judicial Service Award was presented to the **Hon. Robin Nash**.

The Ross Adams Award was presented to **Kendall Butterworth**.

The recipient of the YLD Ethics and Professionalism Award was **David Mincey III**.

## Passing of the Gavel

Prior to the swearing-in ceremony, 2007-08 President Gerald M. Edenfield presented two important Bar awards. The Employee of the Year Award was presented to **Steve Kaczkowski** for his dedication and exemplary work since being employed at the Bar in 1994. Kaczkowski serves as the director of the Unlicensed Practice of Law Program.

Edenfield also presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of Georgia, to **Judge Lamar W. Sizemore** (See page 48.) Sizemore was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

Following the award presentations, Chief Justice Leah Ward Sears swore in Jeffrey O. Bramlett as the 46th president of the State Bar of Georgia. Bramlett placed his left hand on the Bible and repeated the following:

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

Once the business portion of the evening concluded, the attendees moved out into the conference center to find food, fun and entertainment set up throughout the facility. Strategically placed food stations provided a wide variety of items that tempted even the most discriminating tastes. The ever-popular scotch and cigar bar took up residence in the courtyard where guests could savor a single malt scotch and hand-rolled cigar while feasting on fresh antipasto. The martini bar, complete with glowing martini glasses, offered members the opportunity to relax to the sounds of a piano while enjoying delectable sushi offerings. The dance club once again provided high-energy entertainment as ANITA took the stage, belting out dance hits and personal favorites long into the night. 



**Jennifer R. Mason** is the assistant director of communications for the State Bar of Georgia and can be reached at [jenniferm@gabar.org](mailto:jenniferm@gabar.org).

# End of Year Report

by Gerald M. Edenfield

*The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from 2007-08 President Gerald M. Edenfield on his year, delivered June 6, at the State Bar’s Annual Meeting.*

**T**hanks primarily to the dedicated efforts of our tremendous Board of Governors, Cliff Brashier and every member of our outstanding staff and the 40,000 Georgia lawyers and judges who believe in our profession and our justice system, the State Bar of Georgia has just concluded a year of accomplishment.

As the 45th president of this great organization, I was fortunate to have had a front-row seat from which to witness the expertise and commitment to excellence that exists among our membership across this state. I am more proud than ever to serve along with you.

For the purpose of reviewing the 2007-08 Bar program, I would like to summarize the past year under three main headings:

- Building relationships
- Raising awareness
- Serving the public

## Building Relationships

For too long, the legal profession and justice system have been under attack from many directions . . . the business community complaining about “junk law-



Photo by Sarah I. Coole

2007-08 Bar President Gerald M. Edenfield addresses Board of Governors members during the Plenary Session at the State Bar’s Annual Meeting.

suits” . . . politicians in the executive and legislative branches who feel threatened by “activist judges” . . . and, of course, the joke tellers for whom lawyers are such an easy target . . . just to name a few.

Well, we might not ever win over the comedians, but going it alone against these attacks has not worked in the court of public opinion. This year, we made a major effort to establish new working relationships and strengthen existing ones—not only to neutralize the opposition but to enlist the support of these groups to enhance the Bar’s position on issues of policy and judicial independence.

For example, during the legislative session, the State Bar hosted a luncheon for Superior Court and State Court Judges and members of the Georgia General Assembly. This luncheon followed Chief Justice Leah Sears' State of the Judiciary Address to a joint session of the Legislature. Nearly 300 judges and legislators were in attendance, certainly the most successful event of its kind ever hosted by the State Bar. Although many groups lobby their legislators on behalf of their policy agenda, this was a unique opportunity for Georgia judges.

The value of a gathering where members of separate branches of state government can communicate on a personal level is so great that we plan to make this an annual event. The House members and Senators were very pleased to see "their" local judges at the Capitol and were impressed by the turnout from the judiciary.

We must keep up the positive momentum with regard to our Legislature. I want to encourage you to take every opportunity to communicate with your lawmakers, either face-to-face or perhaps by dropping them a thank-you note for their service. This ongoing interaction goes a long way toward fostering good government and sound public policy for our justice system.

We also were able to broaden the scope of support for legislation that would have given Georgia's judges a much-needed increase in their salaries by asking the Georgia Chamber of Commerce to join us on the judicial salary legislation, helping result in overwhelming, bipartisan victories in both the House of Representatives and the Senate. Working with—instead of against—the business community was received positively by the members of the General Assembly and made our job much easier.

Apparently there is one other relationship at the State Capitol we need to work on a little harder. While we are extremely disappointed over the governor's veto, passing this legislation was a major step forward on the judicial compensation issue.

I've always been told you can catch more flies with honey than with vinegar. Throughout my term as president, I tried to convey a positive message—whether through proactive advocacy on behalf of the justice system, or in response to an outside attack. We left the confrontational style to others, and I believe this was well received by our elected officials, the news media who were helpful in delivering this positive message and the public at large.

Just as important as these external relationships, is the internal

interaction between the State Bar and the lawyers and judges who make up this great organization.

To that end, we tried to be more inclusive than ever by keeping our members informed at all times. We were open to ideas and suggestions from all members. We involved more members in the decision-making process by making our Executive Committee meetings more accessible to more members—holding them at locations around the state.

These meetings were all well attended with participation by local State Bar leaders, judges, legislators, reporters and others—again, strengthening internal and external relationships.

## Raising Awareness

In this, the third full year of our renewed emphasis on the newly named Cornerstones of Freedom<sup>SM</sup> initiative, we stepped up our efforts to remind our fellow citizens how important a fair and impartial court system is. It was a very busy year of strengthening public awareness in communities all over Georgia.

The new TV and radio messages that went on the air in February were extremely well received. A tremendous amount of time and effort went into the creative process before a finished product



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was ready to air. We conducted focus groups in south Georgia, metropolitan Atlanta and north Georgia, resulting in public input that led to substantial changes before and during the final editing phase. The bottom line is, we wanted a positive message about the judiciary and how it connects with the public. From the considerable feedback we have received, it is clear that part of the mission was accomplished.

Thanks to your support of the Legislative & Public Education Fund (formerly known as the Legislative and Advocacy Fund), we were able to reach a much larger audience than ever before. This year's comprehensive schedule—approved by the Communications Committee—included broadcast and cable networks and allocated 65 percent of the air time to the state's population center in the Atlanta market.

And I can personally attest that our "Access to Justice" message resonated with the public. I even received letters from prisoners who saw the ads and complained they did not have access to justice before they went to jail. Others who have issues with the judicial system wrote me with the same complaint.

Our message is getting out.

Our print media outreach generated more than 110 distinct editorials, op-ed columns, letters to the editor and news articles in Georgia's largest and smallest media markets—making a total of at least 3.7 million reader impressions.

The new juror education video, "Ensuring Fairplay the American Way," received much acclaim and has been requested by federal judges and other state bar associations. "Ensuring Fairplay the American Way" is being used not only in the courtroom for members of jury panels, it is also approved for use in public school classrooms and functions as an informative presentation for lawyers and judges invited to address civic clubs. Bar members may obtain free DVD copies from the Bar's communications department.

Our "Journey Through Justice" and Law-Related Education program was enhanced through a new brochure, "Come Inside the Law." We also completed a new video presentation, "Trial By Jury: What's the Big Deal?", which has been approved by the Georgia Department of Education for use in high school civics classrooms and for summer training for civics teachers.

"Trial By Jury: What's the Big Deal?" is an animated presentation that reviews the history and importance of trial by jury as it pertains to 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.

## Serving the Public

One of our major initiatives throughout the past year was the effort to protect the public by strengthening our enforcement against false and misleading lawyer advertising.

Since appointing and implementing our Lawyer Advertising Task Force last July, the Office of the General Counsel has reviewed 47 advertising matters referred by district committee members and other attorneys—more than twice the number reviewed in the previous six years combined.

The continued work of this task force will not only protect the public's interests but help restore public confidence in the legal profession in the long run. Thank you to all of our task force members for your dedication to the mission.

In February, an explosion and fire occurred at the Imperial Sugar refinery in Port Wentworth near Savannah, resulting in substantial loss of life and injuries. That tragedy was followed by reports that some members of the legal profession may have acted in violation of State Bar rules of conduct through the alleged

initiation of contact with victims and their families at the hospital.

The Bar took immediate action, launching an investigation by the Office of the General Counsel and releasing to the news media the toll-free number that victims could call to report unethical behavior by an attorney—with an assurance that all complaints would be taken seriously and appropriate discipline administered if and when warranted.

We also took advantage of an opportunity to protect the public in our response to an invitation to report to the Supreme Court of Georgia Committee on Legal Education, which was appointed to consider the educational requirements for applicants for admission to the State Bar. We appointed a special committee, co-chaired by Judge Mary Staley of Marietta and former Judge William Hill of Atlanta, to draft and deliver the Bar's report, which reflected the Bar's support for continuing the present requirement of graduation from an ABA-accredited law school prior to taking the bar exam.

Another area of public protection this year was our creation of a Committee on Aging Lawyers. This committee will study and recommend guidelines and protocols to respond to and assist age-impaired lawyers, including proposing solutions and best practices for attorney grievance committees, the courts and the Bar.

Finally, in the area of serving the public, this year afforded me the opportunity to become aware of many, many positive contributions our State Bar members are making—not only through pro bono legal work but after office hours as well.

Many times over the past 12 months, I have quoted Thomas Jefferson, who said, "The study of law qualifies a man to be useful to himself, his neighbors and to the public." Whether working with local youth programs, holding elected office, helping build Habitat


for Humanity houses or serving in the U.S. armed services overseas, Georgia lawyers are living up to Jefferson's standard—serving their communities, our state and our nation.

Yes, this has been a great year. I am reminded of the old story of the turtle sitting on top of the fence post and someone wondering how he got there. The answer: not by himself.

I have so many people to thank for making 2007-08 such a rich and rewarding experience that space will not permit me to start naming names. But I do want to salute my fellow officers, members of the Executive Committee and the Board of Governors for the many hours and in some cases, days that they take away from their own law practices and travel at their own expense to work on behalf of a stronger legal profession and court system. I appreciate your efforts and applaud your commitment to service.

And, once again, in no certain order, to my predecessors, the talented and dedicated State Bar staff, you the members of this great organization, my law partners and associates in Statesboro and certainly my wife Sharon and my entire family—thank you from the bottom of my heart.

At the Annual Meeting, it was my honor to turn the presidential gavel over to the capable hands of Jeff Bramlett. I know that by continuing to build strong relationships, raise public awareness and serve the people of Georgia and our justice system, with your help, Jeff will take our State Bar to new heights in the year ahead.

Finally, as I leave this office, I have to tell you: I have never been prouder to be a Georgia lawyer! 



**Gerald M. Edenfield** is the immediate past president of the State Bar of Georgia and can be reached at [gerald@ecbcpc.com](mailto:gerald@ecbcpc.com).

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# Bramlett's 2008-09 Bar Program

by Jeffrey O. Bramlett

*The following is excerpted from Jeffrey O. Bramlett's presidential speech at the 2008 Annual Meeting in Amelia Island, Fla.*

## Maintaining Unity of the Bar and the Judicial Branch

One of the most important functions of the Bar is to stand up for fair and impartial courts and the role of the jury trial in American democracy. These are the cornerstones of our American justice system. They reflect our constitutional values.

Starting the Cornerstones of Freedom<sup>SM</sup> initiative several years ago is one of the most important decisions the Bar has made. The rule of law and the limits on governmental power inherent in our system of three coequal branches of government depend on the support of the public.

A continuation of Bar members' generous support of the voluntary Legislative and Public Education Fund will enable the Bar to maintain a strong institutional public education presence to defend the judicial branch from unwarranted attacks and to remind the public of our shared constitutional commitment to the rule of law.

An ongoing, consistent focus on Cornerstones of Freedom<sup>SM</sup> issues will help bring lawyers and the judicial branch of government together in support of constitutional values protected by fair and impartial courts. The same is true for our Law-Related Education and "Journey Through Justice" programs.

Georgia is home to the two-time National High School Mock Trial Competition championship team from Jonesboro High School. In the coming year, Atlanta will host the national competition—a unique public education opportunity for the Bar through our connection to that event.

Effective communication is the key to maintaining the unity of the Bar and the judicial branch. In addition to the Cornerstones of Freedom<sup>SM</sup> public education program, it is essential that we continue to improve our internal communications with Bar members.

It's a two-way street. Gerald Edenfield has made great strides in this area this past year, not only by keep-

ing us informed but also by listening to all sides of an issue as part of an inclusive decision-making process, and I intend to continue and build on that approach.

Maintaining the independence of a robust judicial branch coequal among the three branches of government also depends on effective communications and public education. Our recent experience with the judicial pay raise proposal indicates that while we have successfully improved the Bar's relationships with both houses of the General Assembly, we clearly have work to do in the executive branch.

Unfortunately today, there are far more citizens who can name all three "American Idol" judges than those who can name even one U.S. Supreme Court justice. Randy, Paula and Simon are also paid a whole lot more than all nine justices combined.

Perhaps, over time, an effective public education program will enhance the value Americans place on our justice system. And one day, here in Georgia, our judges will not be denied a five percent salary increase after a 10-year wait.

## Maintaining a Lawyer Discipline System Worthy of Public Trust and Confidence

With the constitutional authority for regulating the legal profession in Georgia, the Bar is charged with protecting the public from unlawful, unethical and otherwise harmful law practices. A system of discipline that earns the public trust will help reverse the erosion of confidence in our profession and our courts.

The Standing Committee on Disciplinary Rules and Procedures will address and make recommendations on pending proposals. The Finance Committee will consider and report on the adequacy of funding for the operations of the State Disciplinary Board.

The Committee on International Trade in Legal Services will continue to address the implications of U.S. participation in GATS and NAFTA on our State Bar's ability to preserve effective licensing of lawyers and regulation of legal services in the public interest.





Photo by Sarah I. Coole

2008-09 Bar President Jeffrey O. Bramlett gladly accepts the position of president.

The committee will continue to seek approaches that support the ability of Georgia lawyers to serve clients on a global basis and maintaining a licensing and regulation system that protects the Georgia public. An optional Board of Governors trip to Toronto, Ontario, in late September will give interested Board members and members of the committee an opportunity to discuss these and other matters of mutual interest with our Canadian judicial and lawyer counterparts.

To further safeguard the public, we will continue to advance existing initiatives, such as our new Lawyer Advertising Task Force, the newly implemented Aging Lawyers Committee, the BASICS program to fight criminal recidivism and our highly successful Unlicensed Practice of Law department.

## Legislative Issues

The 2009 session of the Georgia General Assembly will be another busy one for our Advisory Committee on Legislation and our team of professionals at the State Capitol. In addition to continuing the effort for adequate judicial compensation in Georgia, our agenda will include judicial election and

selection issues, indigent defense funding and evidence code reform.

Also, we need to address the Business Court pilot program that has been a success in Fulton County. We will need to overcome new restrictions on senior judge assignments, work toward a stable and secure funding mechanism, do a comprehensive evaluation of the pilot program and explore expansion of the Business Court to other areas of the state.

## Military/Veterans Pro Bono Initiative

Last year, the Military/Veterans Affairs Section conducted a survey of its members to measure their awareness of unmet legal needs facing Georgia's military service members, veterans of Operation Enduring Freedom and/or Operation Iraqi Freedom and their families.

Response to that survey found a significant degree of unmet legal needs experienced by individual service members, reservists and veterans in our state. As a result, the section expressed enthusiastic support for the creation of a Bar initiative to design a cutting-edge program under which Georgia lawyers would


provide pro bono services to help meet these legal needs.

We owe a significant debt of gratitude to all members of our Armed Forces who have served overseas, and this is a means for Georgia lawyers to express that gratitude. I am proposing we act this year and provide the necessary funding to implement the Military/Veterans Pro Bono Initiative.

## Long-Range Planning & Bar Governance Initiative

The Long Range Planning Committee will be asked to review and make recommendations on long-range funding, securing access to justice, best governance practices, and clear and potentially consolidated financial reporting, for the State Bar of Georgia and related entities (including Georgia Legal Services Program, Institute for Continuing Legal Education, Georgia Bar Foundation, Lawyers' Foundation of Georgia and Commission on Continuing Lawyer Competency).

In addition this year, the Bar agenda will include strengthening and enhancing a number of member benefits and services:

- Health insurance
- Enhancing quality and value of CLE
- Promoting professionalism through Transition into Law Practice Program and outreach to newest members of the profession
- Promoting diversity in the profession
- Support for sections, committees and voluntary bars
- Casemaker services
- Lawyer Assistance Program, especially services on depression
- Law Practice Management services. 



**Jeffrey O. Bramlett** is the president of the State Bar of Georgia and can be reached at [bramlett@bmelaw.com](mailto:bramlett@bmelaw.com).

# New President is a Georgia Lawyer by Choice

by Linton Johnson

**A**ugust 1974 was an extraordinary time to go to work on Capitol Hill in Washington, D.C. The Watergate scandal took down a presidency. An unpopular, decade-long war was winding down toward a painful conclusion. Americans were wondering whether they could ever trust their government again. When Gerald Ford was sworn in as president and declared, “Our long national nightmare is over,” Jeff Bramlett, then a newly-minted intern for Texas Congressman Bob Eckhardt, felt he was standing at a major intersection of American history, government and the rule of law.

After graduating high school in Houston, Texas, Bramlett gravitated to the University of Maryland, where Sen. Eugene McCarthy was teaching poetry and former high officials of the Nixon and Johnson Administrations were teaching government and politics. “Poetry and politics; that seemed to me like the right preparation for an aspiring law student,” Bramlett recalls.

“I went to work on the Hill the week Richard Nixon resigned,” he notes. As his internship developed into a legislative staff position, Bramlett put off law school for three years. He recalls living an extended civics lesson as he observed the power struggles between the overwhelming Democratic majority in the 94th Congress, the Ford Administration’s frequent use of the veto power to shape public policy and the Burger Court in the 1974-77 terms.

“Bob Eckhardt was perhaps the best-respected legal mind in a House full of ‘Greatest Generation’ lawyers in those days,” Bramlett says. “The opportunity to observe first-hand how Bob went about analyzing problems and devising solutions with civility in a raucous and partisan time was an education of immense value to me.” Bramlett’s admiration for the legal skills of Eckhardt and the many other lawyers he worked with as a legislative staffer soon made the path to law school irresistible.

Tuition at the University of Texas (UT) Law School in 1977 was \$50 per semester. Eckhardt, a UT law graduate, advised Bramlett it would be “damn foolishness” to go anywhere else. So Bramlett headed for Austin.

A law degree was not Bramlett’s only reward from his time in Austin. A fellow *Texas Law Review* member, Nancy Frakes Price, became his wife. Nancy practiced corporate and securities law until their fourth child arrived in 1990. Their “merger” has endured for 27 years.

Bramlett studied constitutional law under Jerre S. Williams. Williams joined the UT Law faculty in 1946, when the law school denied admission to Herman M.

Sweatt, an African-American, on account of his race. Sweatt brought a lawsuit seeking admission and ultimately prevailed (*Sweatt v. Painter*, 339 U.S. 629, 1950), but the lawsuit dragged on for four years. The lack of interim relief was delaying Sweatt's education and legal career. Williams and a handful of his faculty colleagues volunteered to teach Sweatt at night to mitigate the delay and to accelerate Sweatt's opportunity to earn a UT law degree and begin law practice. Williams and his faculty colleagues endured death threats for doing so.

Thirty years on, the U.S. Senate confirmed President Carter's appointment of Jerre Williams to the U.S. Court of Appeals for the 5th Circuit, just as Bramlett was graduating law school. Williams offered Bramlett a position as one of his first law clerks. Bramlett accepted eagerly.

"Judge Williams was a fine legal scholar whose integrity and quiet courage move me, even today," Bramlett recalled. "I learned some valuable lessons about appellate advocacy and how courts decide cases. And because most of our oral argument sittings were in New

Orleans, I acquired an abiding love for New Orleans cooking and New Orleans jazz. I believe being Jerre Williams law clerk was the best job I'll ever have."

The son of an electrical engineer descended from Bramletts living in Chattooga County since at least the 1850s, and an immigrant mother from Scotland, Bramlett was born in Detroit and lived in seven different states before graduating from high school in Houston.

When Nancy and Jeff were deciding on a place to settle after his clerkship, they were both attracted to Atlanta. "Atlanta was—and is—a beautiful place to live and a wonderful place to raise a family," he says.

He got in on the ground floor of an upstart law firm formed in 1977 named Trotter, Bondurant, Miller & Hishon. "I was lucky to get the job. Two of the five lawyers in my entering class were U. S. Supreme Court clerks. I was the runt of the litter." Bramlett has been with the firm for his entire career in private practice.

In the summer of 1985, several name partners and a number of associates departed what had been

a full-service operation for larger firms. Those who did trial and appellate work reconfigured as a litigation boutique and changed the firm name to Bondurant, Mixson & Elmore. "We have attracted an outstanding group of people who have earned a collective reputation for integrity and excellence. I am immensely proud to be a part of this firm."

Bramlett's clients have ranged from officers and directors of major international corporations to prison inmates and homeless persons. He aims to maintain a healthy balance between representing plaintiffs and defendants in business disputes "because it gives me better perspective in analyzing how problems can be solved and how cases should be tried."

Although much of his work over the past 10 years has been resolving class actions and complex business disputes, "I'm a trial lawyer at heart. Trials are rarely the best solution for clients embroiled in a business dispute, but there is nothing more fun for a trial lawyer than trying a case to a jury. The fascinating human interaction with clients, witnesses, jurors and judges in the



2008-09 State Bar President Jeffrey O. Bramlett and family at the Presidential Inaugural Gala. (Left to right) Tom and Cynthia Czabala, Jeff and Nancy Bramlett, Melissa Price and Donal Nichols, Sarah Grant and Robert Bramlett.

Photo by Jennifer R. Mason



crucible of jury trial—it just doesn’t get any better than that.”

Bramlett is particularly proud of his pro bono work with Childrens Rights Inc. on behalf of a class of children in public custody as a result of parental abuse or deprivation. In 2005, Georgia entered into a major consent decree promising a wide variety of improvements in the care and treatment of these children while they remain in public custody. Holding the state to these promises is an ongoing struggle.

“Democracy is a splendid form of government if you can vote, lobby and give financial support to the candidate who agrees with your policy priorities,” he said. “My class of kids can do none of these things. I believe Georgia’s policymakers genuinely care for the well-being of these children, but those policymakers face tough choices every year when they have to allocate finite resources among a variety of deserving—or at least politically compelling—options. When those tough choices have to be made, too often the voiceless and the vulnerable end up with the short end of the stick.”

Bramlett first got actively involved with the State Bar of Georgia in the mid-1980s, when he was appointed to a committee exploring whether Georgia should update its then-existing Code of Professional Responsibility in light of the American Bar’s adoption of the Model Rules of Professional Conduct. The committee was co-chaired by Bob Oliver of Jonesboro and Charlie Lester of Atlanta.

“The committee studying the model rules was packed with experienced lawyers of high intellect and sound judgment,” Bramlett said. “They did their homework and came thoroughly prepared. I was so impressed with their dedication to making a contribution for the benefit of our profession. Working on that committee educated and inspired me, no doubt about it.”

The committee’s work product, which took several years to com-

plete, went before the Board of Governors. It was rejected by the Board on a close vote.

“I thought the committee had done an excellent job and produced a recommendation worthy of adoption,” he said. “The Board’s action in rejecting it kind of spurred me to become more active in Bar governance.”

In the intervening years, Bramlett chaired the Section on Individual Rights and Responsibilities, served as a trustee of the Client Security Fund, and served on (or chaired) numerous committees, including the Advisory Committee on Legislation and the Business Courts Committee. In 1994, he won a contested election for a Board of Governors post from the Atlanta Circuit. President George Mundy of Cedartown appointed a special committee co-chaired by Bramlett and Judge Lamar Sizemore Jr. of Macon to address a variety of issues regarding the Board of Governors, including apportionment and diversity. In 2000, the Board of Governors unanimously adopted a version of the Model Rules of Professional Conduct. And, in 2001, the Board adopted the special committee’s recommendations on reapportionment and diversity.


“While frustration with the Board’s rejection of our work on the Model Rules Committee triggered my involvement, over the years I have come to hold a deep respect for the Board of Governors and the way it operates,” Bramlett said. “The Board ponders things slowly and carefully, but almost always gets to the right result. Some of the Board’s spirited debates—including the debate over whether to buy the Bar Center, whether to support sweeping indigent defense reform, and the June meeting over whether to spend mandatory dues money to fund the veterans/service members pro bono proposal I’ve advanced—have been of exceptional quality.”

Bramlett’s rise to the presidency was not without one bump in the road. In 2003, he lost a contested statewide race for treasurer. He recalls being consoled by former Georgia Gov. Roy Barnes, who had lost his bid for re-election two months earlier.

“We were working on an Atlanta Legal Aid case together and I came in the morning after I received the negative election results. I said, ‘Roy, 54-46; sound familiar?’ And he replied, ‘Jeff, at least you didn’t spend \$20 million losing.’”

For 2008-09, Bramlett says his broad objective is to maintain strong unity within the Bar and to continue the Bar’s close and mutually supportive relationship with the judicial branch of state government. He points to the ongoing Cornerstones of Freedom<sup>SM</sup> public education initiative as a high priority and will urge Bar members to continue supporting the Legislative and Public Education Fund that funds this initiative through voluntary contributions.

“One of the most important functions of the Bar is to stand up for the judicial branch,” he said. “We must strengthen our efforts to communicate with the legislative and executive branches, opinion leaders in our state and the public.”

Bramlett’s priorities include the work of a special committee appointed to design and implement a program to recruit and train Georgia lawyers to provide pro bono legal services for military members, reservists and their families. “Our veterans and service members are experiencing significant unmet needs for legal services,” he said. “This is an opportunity for Georgia lawyers to express tangible thanks to folks who have earned our gratitude and respect for their public service and sacrifice.” 



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

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# Macon Judge Receives State Bar of Georgia Distinguished Service Award

by Derrick W. Stanley

**S**uperior Court Judge Lamar W. Sizemore Jr. of Macon was honored with the State Bar of Georgia Distinguished Service Award, presented during the State Bar's Annual Meeting June 7 at Amelia Island, Fla. The Distinguished Service Award is the highest honor bestowed by the State Bar of Georgia for "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

The award was presented at the inaugural gala where over 600 attendees gave a standing ovation to Sizemore as he was presented his resolution. Working

closely with his staff ensured he was in attendance at the ceremony without any knowledge that he would be receiving such a prestigious award.

"Judge Sizemore has devoted more than 30 years of tireless and selfless service to the legal profession, the justice system and the State Bar organization," said Gerald M. Edenfield, State Bar president, in making the presentation. "Over the years, the State Bar has resolved numerous challenging issues thanks to the determined leadership and direct involvement of Judge Sizemore. His long record of service is a credit to the profession and an inspiration to us all."

Sizemore is a graduate of Mercer University's Walter F. George School of Law. For 27 years, he was in private practice with the firm of O'Neal, Brown & Sizemore before his appointment as a superior court judge in the Macon Judicial Circuit in 2001. He designed and has taught the course on insurance litigation at Mercer University's Walter F. George School of Law since 1981.



Seizmore has served on the State Bar's Board of Governors since 1985 and is a past president of the Macon Bar Association and the Middle Georgia Trial Lawyers Association.

Sizemore has a long record of community service in the Macon area, including positions of leadership at Vineville United Methodist Church, Mount de Sales Academy, Mercer University and the Piedmont District of Boy Scouts of America. He has also served as a volunteer baseball and soccer coach in the Vine-Ingle Little League and Freedom Park.

With the assistance of Charles R. Adams III, he helped write and edit the GTLA Trial Practice Manual, which was published in 1993 by the Georgia Trial Lawyers Association.

On the occasion of Law Day 2007, Sizemore received the Outstanding Alumnus Award from the Walter F. George Law School at Mercer University.

In January 2001, he was appointed to the Superior Court for the Macon Judicial Circuit by Gov. Roy Barnes and continues to serve as a superior court judge.

In his service to the Bar, Sizemore led the Board through the controversial issue of reapportioning the representation on the Board of Governors and, after much hard work and deliberation, delivered a solution that was acceptable to all sides of the debate. He has steered the Bar's development of a juror education video, and because of his dedication and encouragement, the recently finished product, "Ensuring Fairplay the American Way," is being used in courtrooms, civic clubs and classrooms across the state of Georgia and receiving critical acclaim by state and federal judges, lawyers, edu-




Photo by Sarah I. Coole

2007-08 President Gerald M. Edenfield presents Judge Lamar W. Sizemore Jr. with the 2008 Distinguished Service Award for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia."

cators and members of the public. The juror education video is a vital part of the Cornerstones of Freedom<sup>SM</sup> program, and its completion is due in large part to Sizemore's essential input.

In addition to serving on the Board of Governors, he served a two-year term on the Executive Committee, and has chaired and been a member of a number of Bar committees, including Advisory Committee on Legislation, Bench & Bar, Foundations of Freedom, GLSP Funding Task Force and Personnel.

Sizemore's contributions to the profession throughout his career provided the measurements for this award; however, it was his tireless and continuous dedication that earned him the decree. Judge Lamar W. Sizemore Jr. is not only a valued resource in Macon, but has been an asset for the State Bar, his community and the legal profession. Congrat-

ulations to Sizemore on embodying the spirit of the Distinguished Service Award. 



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

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# Lawyers Foundation Achieves Success at the Annual Meeting

by Lauren Larmer Barrett

**A**melia Island Plantation was as beautiful as ever for the fellows of the Lawyers Foundation when they returned there this year as part of the State Bar's Annual Meeting. The foundation's events during the week included the silent auction and fellows meeting in addition to the dinner and annual Fun Run.

The Lawyers Foundation of Georgia's 8th Annual Silent Auction was a rousing success, grossing more than \$13,000 to benefit the Challenge Grant Program. (Information about the Challenge Grants can be found on page 51.) Thanks go out to everyone who worked so hard this year finding items for us—we appreciate your hard work! Of course, our thanks goes out to all those who made bid after bid on the merchandise as well.

The annual Fun Run, jointly sponsored with the YLD, was held on the beach in front of the resort. Lawyers must be defying the national statistics, as there were more participants than ever this year. It was a perfect day for a run, and once again, every participant crossed the finish line. As in years past, all finishers received the coveted t-shirt and a much appreciated bottle of cold water.



(Left to right) Lester Johnson, Dawn Jones, Patrise Perkins-Hooker, Phaedra Parks and Avarita Hanson during the LFG's Speakeasy Casino Night.

The fellows meeting, held each year to provide the fellows with an update on the foundation and to elect the officers and trustees, was held on Thursday afternoon when many people may have preferred to be on the beach, in the pool or on the links. In spite of the numerous potential for distractions, we had a good turnout of great people.


The dinner took on a different form as fellows and their guests were transported back into the Prohibition-era at the Speakeasy Casino Night. All those who attended enjoyed great food and various



(Left to right) Ron Lowry, Helen and Justice P. Harris Hines and Michael McRae enjoy their time at the LFG Dinner.

forms of entertainment. Special thanks goes out to Tony Myers, our singer extraordinaire!

Thank you to all of our sponsors, including Silver Level Sponsors Georgian Bank and CocaCola, Bronze Level Sponsor Mauldin & Jenkins and event sponsors IKON and George Mundy.

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



**Lauren Larmer Barrett** is the executive director of the Lawyers Foundation of Georgia and can be reached at [lfg\\_lauren@bellsouth.net](mailto:lfg_lauren@bellsouth.net).

## 2008 Challenge Grants

This year, the Lawyers Foundation of Georgia will award its 9th Annual Challenge Grants. These grants have been awarded to a variety of organizations around the state since 2000. In all, 50 grants have been awarded, totaling more than \$250,000. In addition, they have been used to generate at least \$250,000 more in contributions to the organizations that received the grants.

Challenge grants have served to inspire and motivate lawyers around the state to reach out to their community and their profession, resulting in direct and indirect benefits to everyone involved.

The program will match, dollar for dollar, up to an amount to be determined, funds raised by state, local and voluntary bars of Georgia, including Bar sections and other law related organizations for projects that meet the criteria of the foundation.

There will be at least three such grants, and the recipients will be identified by Dec. 1, 2008. One-half of the Challenge Grants will be paid out at the time of the award notice. The balance will be paid out shortly after the recipients meet the challenge and raise the required funds. Twenty-five percent of the challenge must be met by March 1, 2009, and the entire amount of the challenge must be raised within one year of receipt of the award notice.

The deadline to apply is Sept. 30, 2008. Please contact the LFG for more information: [lfg\\_lauren@bellsouth.net](mailto:lfg_lauren@bellsouth.net), 404-659-6867, or [www.gabar.org/related\\_organizations/lawyers\\_foundation](http://www.gabar.org/related_organizations/lawyers_foundation).



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## Information

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



# Georgia's First Rule of Law Conference

by Sarah I. Coole

A distinguished crowd of more than 100 participants gathered at the Bar Center on April 24 to convene the State Bar of Georgia's first Rule of Law Conference. Opinion leaders from a diverse array of occupations and disciplines met together to contemplate the challenges that exist to the rule of law and to exchange ideas on how individuals might work across occupational and disciplinary lines to sustain the rule of law in Georgia and elsewhere.

The conference was inspired by American Bar Association President William Neukom, who challenged state and local bars across the country to convene multidisciplinary meetings to explore and to promote the rule of law. President Neukom's Rule of Law Initiative "is a public service project of the American Bar Association dedicated to promoting rule of law around the world. The Rule of Law Initiative believes that rule of law promotion is the most effective long-term antidote to the pressing problems facing the world community today, including poverty, economic stagnation and conflict."



Photos by Sarah I. Coole

Co-Keynote Speaker Dr. Randall Williams discussed his experience over the past four years as a leader in the Medical Alliance for Iraq, a group of British and American physicians who have engaged in volunteer efforts to help the people of Iraq rebuild a functional health care system in lawless and violent conditions.

State Bar President Jeffrey O. Bramlett, then president-elect, accepted Past President Gerald Edenfield's request to coordinate a Rule of Law

Conference for the State Bar of Georgia. “I was pleased that Gerald asked me to do it because I agree with President Neukom’s premise that we need to reach beyond the legal profession for support in the ongoing struggle—here and abroad—to promote peaceful conflict resolution. Lawyers alone cannot sustain the rule of law; it is a hard-earned, priceless gift that belongs to all.”

Chief Justice Leah Ward Sears began the conference by welcoming all those in attendance. “Each and every generation has to play their part of protecting the rule of law,” Chief Justice Sears said. Edenfield also gave a few remarks and said that he was “delighted to join with the judicial branch for this first-ever conference in Georgia.”

Judge Janis Gordon delivered the first of two co-keynote addresses. She discussed her experience as a former federal prosecutor detailed to Eastern Europe after the Bosnian/Serbian conflict to serve as an advisor to emerging governments in the former USSR in the process of building a functional criminal justice system to protect women from exploitation and sexual slavery.

“In training participants, I explained search warrants and wire taps with regards to our rules and regulations to protect the individual rights of the public,” Gordon said. “Many of the participants were convinced that the rule of law would work in their countries, but many also dismissed the notion.”

Gordon went on to say, “By vigilantly protecting the rule of law in the United States, we protect our rights and liberties and set an example for the rest of the world.”

The second co-keynote speaker, Dr. Randall Williams, a North Carolina gynecologist, discussed his experience over the past four years as a leader in the Medical Alliance for Iraq, a group of British and American physicians who have engaged in volunteer efforts

to help the people of Iraq rebuild a functional health care system in lawless and violent conditions.

“We need to figure out a way to get along,” Williams said. “And I firmly believe that the way to do this is the rule of law.”

Following the co-keynote addresses, a panel of speakers weighed in on rule of law issues from diverse perspectives. Moderator R. William Ide called on each panel member to discuss perceived challenges to the rule of law and opportunities for its improvement. Jack A. VanWoerkom, executive vice president and general counsel of Home Depot, spoke from the perspective of a seasoned international businessman with experience conducting a national and international business headquartered in Georgia. He noted the special challenges posed by governmental corruption and undeveloped civil and criminal legal systems in emerging nations such



Chief Justice Leah Ward Sears welcomed the Rule of Law Conference attendees.

as Brazil, Russia, India and China. Pat Willis, executive director of Georgia’s Voices For Children, spoke from the non-profit per-

**“The rule of law is not the sole province of lawyers and judges. It affects people from all walks of life and in all fields of endeavor: clergy, teachers, business people and their employees, physicians, journalists, architects, public safety officials, environmentalists and others. Public understanding and support for the rule of law—and openness on the part of the legal profession to the insights and concerns of all affected elements of our society—are essential to assuring that the rule of law is fairly administered.”**

**— Chief Justice Leah Ward Sears**



Co-Keynote Speaker Judge Janis Gordon discussed her experience as a former federal prosecutor detailed to Eastern Europe after the Bosnian/Serbian conflict to serve as an advisor in the process of rebuilding a functional criminal justice system to protect women from exploitation and sexual slavery.



(Left to right) Panelists included the Hon. Kasim Reed, Pat Willis, David E. Nahmias, Jack A. VanWoerkom and R. William Ide (moderator). Each spoke on the importance of the rule of law in their discipline.


spective, especially as it relates to the wellbeing of Georgia's children. David E. Nahmias, U. S. Attorney for the Northern District of Georgia, spoke about rule of law issues both locally and globally from his perspective as the chief federal law enforcement official in the Northern District and his former role as a Justice Department official. State Sen. Kasim Reed, an elected public

official representing a district lying within the city of Atlanta and an announced candidate for the office of Atlanta's mayor, spoke from the perspective of an elected public official and a member of Georgia's General Assembly.

In the discussion, Nahmias pointed out that it is "impossible to solely depend on lawyers and judges to protect the rule of law.

Everyone needs to believe in it and value it. If cultural beliefs stray from the rule of law, no matter how many courts you have, it won't matter."

After the panel discussion, the attendees broke out into smaller discussion groups to engage each other on ways to build appreciation and support for the rule of law in their various communities and to discuss the possibility of periodic multi-disciplinary rule of law conferences in the future. Discussion group moderators included State Bar officers and Executive Committee members: Phyllis J. Holmen, executive director, Georgia Legal Services Program; Elena Kaplan, Jones Day; S. Lester Tate III, Akin & Tate, P.C.; Bryan M. Cavan, Miller & Martin PLLC; Jonathan A. Pope, Hasty Pope LLP; Jay Cook, Cook, Noell, Tolley & Bates, LLP; C. Wilson DuBose, Winkler & DuBose, LLC; and A. Thomas Stubbs, attorney at law.

"We hoped for greater participation outside the legal profession and the judicial branch of government but, for an initial effort, we were very pleased with the diversity of those who attended. We had educators, clergy, business community leaders, leaders of non-profits and enthusiastic participation from lawyers and judges," Bramlett noted. "The strong support of Chief Justice Sears, the invaluable advice of Sherri Lydon of Columbia, S.C., who coordinated South Carolina's first-in-the-nation Rule of Law Conference, and the excellent performances of all of our speakers and panelists made this outstanding exchange of ideas possible." 



**Sarah I. Coole** is the director of communications for the State Bar of Georgia and can be reached at [sarahc@gabar.org](mailto:sarahc@gabar.org).



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# Supreme Court's Legal Needs Study

## Changing Georgia's Civil Justice System

by Len Horton

Some problems seem never to be solved but merely talked about over years that can extend into decades. The reality is that talk is typically far easier than bringing about the fundamental change often necessary to solve an important problem. In facing the problem of providing access to civil justice for poor Georgians, the Supreme Court of Georgia, under the leadership of Chief Justice Leah Ward Sears, is focusing on the actions necessary to effect fundamental change.

The Court was aware of the need for poor Georgians to have improved access to justice in civil legal matters. For years this problem had been discussed, but, if anything, the problem had gotten worse. The Court realized that fundamental change was needed if "with liberty and justice for all" is to be more than mere words. Just as the Court had taken on the problems of Georgia's criminal indigent defense system under the leadership of former Chief Justices Robert Benham and Norman Fletcher, the Sears-led Supreme Court of Georgia decided to take on the problem of ensuring civil justice for Georgia's disadvantaged.

In 2005, the Court, by unanimous vote, established the Committee on Civil Justice. The committee was charged with strengthening "Georgia's civil justice system by developing, coordinating and supporting policy initiatives to expand access to the courts for poor and vulnerable Georgians." Its co-chairs are Anne Lewis, a partner at Strickland, Brockington & Lewis, and Teri McClure, senior vice president, general counsel and corporate secretary of United Parcel Service. Jill Radwin, an attorney with the Administrative Office of the Courts, serves as the committee's executive director.

The committee decided that the first issue it would have to tackle would be to understand the nature and extent of the problem. In 1994, a study was conducted to try to answer the question, but those results were clearly out of date. Moreover, several important questions had not been asked by that survey.

The A.L. Burruss Institute of Public Service and Research at Kennesaw State University, headed by Dr. Carol Pierannunzi, was chosen to conduct a study of Georgia's legal needs. She worked very closely with Radwin throughout the process to ensure that the results were comprehensive. By the time it was finished, a mountain of information was collected that will take years to analyze thoroughly. As part of the study, a survey was conducted of difficult to reach people including the homeless, deaf persons, recently incarcerated persons, the elderly, Latino persons and non-English speaking people. In addition, a separate survey and focus groups were conducted of civil legal service providers and court personnel; and a survey of

Georgia attorneys regarding their pro bono practices was conducted by telephone. The largest component of the study was a random digit dial public telephone survey of more than 1,500 low and moderate-income Georgians.

Preliminary results were presented for the first time at a CLE program at the State Bar's Annual Meeting. The personal presence of Chief Justice Sears signaled the importance the Court has placed on making access to justice a reality for all Georgians.

Chief Justice Sears welcomed the program's participants. She decried the fact that every year thousands of Georgians are denied access to civil justice because they cannot afford to hire an attorney to represent them.

In a handout made available at the session, Supreme Court of Georgia Public Information Officer Jane Hansen illustrated the importance of this committee's work by telling the story of Haley

Schwartz's efforts to help a woman, named Janis, in hospice care. Schwartz, who runs Atlanta Legal Aid's Breast Cancer Legal Project, was able to provide a will and guardianship papers so Janis could be assured that her sister would become guardian of Janis's 11-year-old daughter. The example dramatized the importance of civil legal assistance to the poor. Perhaps the most moving point was that finally Janis could be at peace with herself near the end of her life because her legal concerns were resolved.

Chief Justice Sears brought home the importance of access to justice when she said, "These are fundamental human rights issues."

With access to justice clearly defined as a fundamental human right, the CLE program turned to the study, which I am proud to say was funded in part by a Georgia Bar Foundation grant. The rest of the money was secured through the fundraising efforts of "retired" Sutherland lawyer Charlie Lester



Panelist Dr. Carol Pierannunzi addresses the program participants.



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(Left to right) Judge Wayne Purdom, Judge Brenda Weaver and State Bar Pro Bono Director Mike Monahan participate on a panel at the State Bar's 2008 Annual Meeting.

and the generosity of numerous Georgia law firms, State Bar sections and local bars.

A few specifics of the study will explain its scope. More than 1,500 people were surveyed about several hundred variables including gender, home ownership, income, age and areas of legal need. The study was so exhaustive that the data collected is too large to attach to an e-mail. Scores of Ph.D. dissertations and master's theses will be generated as fresh eyes see new hypotheses to test. The study is a veritable gold mine of information about Georgia's current civil justice system and the Georgians who need to use it.

The survey of lawyers revealed that about 40 percent of attorneys reported that they provide pro bono legal services. While age, gender, income and years in the practice of law were not good predictors of whether an attorney would volunteer for pro bono work, it was found that attorneys in firms with more than 25 lawyers were less likely to do pro bono work. About 25 percent of those large firm attorneys did pro bono versus 48.5 percent who did pro bono in firms with five or fewer attorneys.

Another interesting fact was that only 21 percent of lawyers who work in-house did pro bono work versus about 50 percent of the lawyers in private practice.


A sense of professional responsibility was given as the number one reason attorneys do pro bono work. Furthermore, lawyers working in law firms that are deeply committed to pro bono work are more likely to do pro bono work themselves. Lack of familiarity with a specific area of the law was listed as the greatest hindrance to taking pro bono work.

According to information from legal service providers, housing and utility problems were the biggest concerns of clients (11.6 percent) followed closely by family law and domestic relations issues (11 percent). Consumer issues including credit concerns were a close third at 9.8 percent. Additional facts will be forthcoming as study data and findings are scrutinized over the coming months.

The program then added a panel discussion of the current civil legal delivery system. Committee members Rita Sheffey, Hunton & Williams; Mike Monahan, director, Pro Bono Project; and Phyllis

Holmen, executive director, Georgia Legal Services Program, discussed the implications of the survey for the future delivery of services. In another program segment, committee Co-Chair Anne Lewis led a brainstorming session on possible ways to improve the system in Georgia. This session included lively presentations from Judge Brenda Weaver, who discussed the new self-help center for the Appalachian Circuit, and Judge Wayne Purdom, who explained limited scope representation.

Steve Gottlieb, executive director of Atlanta Legal Aid, made a presentation of how Georgia compared with the national average in funding civil legal assistance for poor people. He reported that, in virtually every category, Georgia funding per poor person lagged the national average. The one exception was direct contributions from lawyers, which was about 10 percent greater than the national average. This serves as an advantage by illustrating the commitment that Georgia's lawyers have to solving this problem. Even the Legal Services Corporation (LSC) reports funding per poor person in Georgia was slightly below the national LSC average.

While it is too early to tell with certainty, this new effort to expand access to justice to disadvantaged Georgians had an excellent new beginning with the reports of the legal needs study. Fundamental change is clearly on the minds of our Court as suggested in the strong words of Chief Justice Sears. If she can convince enough people that access to justice is a fundamental human right, then the fundamental change required to implement access to justice for all will surely follow. 



**Len Horton** is the executive director of the Georgia Bar Foundation. He can be reached at [hortonl@bellsouth.net](mailto:hortonl@bellsouth.net).

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# 2008 High School Pipeline Project

by Marian Cover Dockery

**O**n May 27, the State Bar of Georgia Diversity Program partnered with the Leadership Institute for Women of Color Attorneys, Inc., (LIWOCA) and Atlanta's John Marshall Law School (JMLS) to launch the High School Pipeline Project for Minority Students. This summer program targets high school students and has two primary objectives: improve students skills in grammar, writing and speech to assist them in college and law school; and provide mentoring sessions with members of the judiciary and attorneys who can inspire, educate and motivate students to consider law as a career.

A recent report by Columbia University revealed a disturbing decline in applications of minority college students to law school. At a time when diversity is a priority for law firms and law offices, this trend must be reversed with the help of the Pipeline project.



Photos by Marian Cover Dockery

Winners of the written and oral competition at Sutherland. (Left to right) Brianna Bogan, 3rd place, oral; Danielle Hayes, 1st place, written and oral; Rodtanae Richardson, 3rd place, written and oral; and Chelsey Parks, 2nd place, written and oral.

The 2008 Pipeline students included 13 10th-12th graders and three college freshmen. The following Georgia and Illinois high schools were represented: South Atlanta School for Law and Social Justice, Columbia; South Cobb Magnet, Pebblebrook; Cahokia (Cahokia, Ill.); Cedar Grove, Stephenson; DeKalb Early College Academy and Greater Atlanta Adventist Academy.



From May 27 through June 6, the 16 students had a curriculum that kept them involved from 8:45 a.m. to 4 p.m. Atlanta's John Marshall Law School hosted a majority of the events which were instructed by an Atlanta City School teacher, JMLS professors and attorneys from Atlanta firms. There were academic courses and workshops that instructed students on etiquette, image building, budget and credit management, the college application process, how to finance a college education, resume writing and interviewing skills.

During the afternoon sessions, students visited law firms and the corporate law offices of companies including Equifax, Georgia-Pacific and Cox Communications. The host law offices provided the Pipeline participants with catered lunches and held informative mentoring sessions with law partners, general counsels, associates and summer law clerks. Students enjoyed one-on-one mentoring sessions at Alston & Bird LLP and Arnall Golden Gregory LLP. Group mentoring sessions were conducted at Adorno & Yoss, Cox Communications and the City of Atlanta. At Equifax, students learned credit and budget management skills from Rick Goerss, chief privacy officer. Goerss presented a mini-course entitled "Credit 101." He explained what credit is, how to handle credit and how to maintain a good credit record.

The Pipeline syllabus also included visits to City Hall, the Court of Appeals of Georgia, the Supreme Court of Georgia and the State Bar of Georgia.

While at Nelson Mullins Riley & Scarborough LLP, the students were introduced to Nekia Hackworth who related her humble beginnings in South Atlanta. As a student at Therell High School, Hackworth participated in the mock trial program where Anita Wallace Thomas served as a judge. Because of her academic achievements, she was accepted to Harvard Law School. Later Hackworth inter-



Pipeline students visit the offices of Arnall Golden & Gregory LLP for a mentoring session and lunch. (Left to right) John Love, Jeremy Carnes, Rashaud Bell, Travon Riggins, Cierra Davis, Tianna Conway, Chidonna Stephens, Bianca Mahoney, Rodtanae Richardson, Ciara Carnes, Danielle Hayes, Brianna Bogan, Kerry Moses and Chelsey Parks.

viewed with Nelson Mullins Riley & Scarborough. Thomas, a partner at the firm, remembered Hackworth's outstanding oral presentation that set her apart from the other candidates. She shared with the participants the importance of always putting your best foot forward because contacts that you make today can be important to you in the future.

At the State Bar, students showcased their acting abilities by assuming the roles of jurors, bailiff, attorneys and witnesses during the "Journey Through Justice" program, led by Marlene Melvin.

Two judges from the Court of Appeals of Georgia had an impact on the students; the Hon. John Ruffin and the Hon. Yvette Miller, exceeded the students' expectations with their warmth, humor and genuine concern for their future. Judge Miller advised them to stay out of trouble, stay focused on their goals and study hard in school. While visiting the Court of Appeals of Georgia, Judge John Ruffin entertained the participants with some of his war stories. He told a story that occurred early in his career involv-

ing a judge in South Georgia who ruled against him. These rulings forced him to appeal cases to the higher courts, and ultimately, he argued before the Supreme Court of Georgia. This invaluable experience taught the Pipeline students that what one may perceive as an obstacle may become a stepping stone.

The program concluded at Sutherland with an oral and written competition judged by: Jim Johnson, counsel at Sutherland; Gregory Fatovic, associate general counsel at Lockheed-Martin; and Jadine Johnson and Deepthy Kishore, summer associates at Sutherland. Sutherland presented certificates to all students who completed the program. Danielle Hayes, South Adventist Academy, won both competitions and was awarded \$200 by the LIWOCA. The three college freshmen, Rodtanae Richardson, Atlanta Christian College; John Love, Georgia Perimeter; and Cierra Davis, Southern Illinois University at Carbondale, each received scholarships in the amount of \$1,000. Arnall Golden Gregory LLP also awarded one student a summer internship.


**A recent report by Columbia University revealed a disturbing decline in applications of minority college students to law school.**



Pipeline Students visit Judge John Ruffin's courtroom. (First row, left to right) Rodtanae Richardson and Chelsey Parks. (Second Row, left to right): Brianna Bogan, Cierra Davis, Danielle Hayes, Chidonna Stephens, Judge John Ruffin, TiAnna Conway, Latisha Belgrove, Tamika Beatty, Travon Riggins and Kerry Moses.

One student who had never met an attorney prior to the program wrote:

"This experience inspired me in more ways than anyone could ever know. I enjoyed being exposed to different types of attorneys within the field of law. The best part of this program for me was learning how to become a better writer, as well as speaker. I truly believe you all want us to succeed. I know this because you invested precious time and money for this purpose."

For more information about the High School Pipeline Project designed to encourage minority students, contact Marian Cover Dockery at [mariand@gabar.org](mailto:mariand@gabar.org). 



**Marian Cover Dockery** is an attorney with a background in employment discrimination and the director of the State Bar of

Georgia Diversity Program. For more information, go to [www.gabar.org/programs/georgia\\_diversity\\_program/](http://www.gabar.org/programs/georgia_diversity_program/).

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# The Pike County Courthouse at Zebulon

## The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Only two years after the Creek Indians ceded the vast tract between the Ocmulgee and the Flint Rivers to the state of Georgia in 1821, Pike County was cut from Monroe County. The new county established its first county seat at Riley's Crossroads, a place later called Newnan (not to be confused with Newnan in Coweta County). A log courthouse was erected there, but in 1824, when Upson County was creat-

ed from Pike, the site at Newnan was abandoned in favor of a more central location. A new county town was laid out in 1825 and called Zebulon. A two-story frame courthouse was erected, and it stood until a fine Greek Revival courthouse rose in 1844. By then, the original county town of Newnan was only a memory.

In antebellum times, Zebulon prospered on the success of her cotton growers and on the strength of a robust wagon trade. But with the completion of The Atlanta and West Point Railroad in 1853 and the spur



Built in 1894, James Wingfield Golucke, architect.

Photo by Wilber W. Caldwell

of The Upson County Railroad from Barnesville to Thomaston in 1857, Zebulon's thriving wagon trade was eclipsed, and the town settled back into obscurity. In 1860, Adiel Sherwood would write in his updated *Gazetteer of the State of Georgia*, "Since the railroad brings everything to Griffin and Barnesville, Zebulon out of the way is rather in decline." When The Atlanta and Florida Railroad arrived in Zebulon in 1888, the town counted only about 300 residents, and as a fine depot rose, agitation for a new courthouse simultaneously surfaced.

Finally in March of 1894, county leaders viewed the plans for Atlanta architects Bruce and Morgan's newly completed courthouse at Talbotton as well as a locally drawn design while paying only lip service to the far reaching financial woes which surrounded the tiny village

and her failing railroad. Even though its planners were, "... aware of the great depression that exists in all branches of industry and trade," the new courthouse was to go forward.

Nonetheless, it may have been a spirit of frugality that moved county leaders in Zebulon to select a design by Atlanta's newest architect, James Wingfield Golucke, over the work of preeminent Southern architectural firm of Bruce and Morgan. Golucke, who in 1890 was listed in an Atlanta City Directory as an employee of the Woodward Lumber Company, became an "architect" in the 1891 edition. We know little of his early commissions. Golucke's almost identical Johnson County Courthouse at Wrightsville and the Emanuel County Courthouse at Swainsboro rose in the same year as his design at Zebulon, and these three court buildings mark the beginning of a remarkable career. Golucke would go on to design 26 courthouses in Georgia and four in Alabama.

The building we see today on the square in Zebulon has lost much of its original charm. Gone is Golucke's grand classical tower. Gone also is the colorfully painted pressed tin decoration which once adorned broad entablatures with decorative scrolling motifs. The original building with its central tower was a picture of classical symmetry. The ingenious square plan combined four equal cubic modules to create the four mirror-image elevations, each composed of two identical bays flanking a recessed entrance. As was usual in almost all of Golucke's court buildings, the second floor contains great arched windows that press down on the segmentally arched fenestration of the story below. This original form was much altered over the years as a series of natural disasters transformed the once stunning building into the simple structure we see today.


In 1898, only three years after its completion, lightning struck James Golucke's Pike County Courthouse, damaging the grand

tower, which, with its delicate lantern, originally rose from the exact center of the structure. An inspection of the damage revealed that the structural members were inadequate to support the tower's weight. Atlanta architects, Bruce and Morgan, whose designs had been considered by the county leaders back in 1894, were called in to fashion a replacement clock tower. The new tower was a stunning mix, recalling both early Second Empire Style designs of the 1880s and the popular Romanesque Revival Style, which had earned Bruce such acclaim in the early 1890s. We find this kind of ornamental Classicism in much of Bruce's late work. The clean lines of Golucke's design at Zebulon called for a classical approach, and Bruce responded with the Parisian elegance of an earlier era. Although the new tower moved the building a long distance indeed from Golucke's original intent, the result was strangely compatible and unquestionably monumental.

Over the years, a number of James Wingfield Golucke's court buildings have evidenced structural design flaws. The original towers of both the Union County Courthouse of 1899 and the Baker County Courthouse of 1907 are gone, and the tower of the 1900 Schley County Courthouse at Ellaville developed a disturbing lean. The citizens of Wrightsville found similar structural deficiencies in the 1895 Johnson County Courthouse, the nearly identical twin of Golucke's Pike County Courthouse. Golucke's tower at Wrightsville was removed in 1938 owing to its unstable condition. The original towers, both at Wrightsville and at Zebulon, were supported by two enormous wooden beams that spanned an incredible 74 feet. Hip trusses were added (probably by the builder in an effort to compensate for Golucke's folly), but these carry only a small percentage of the weight. Undoubtedly it was this structural

shortcoming that compelled Bruce and Morgan to relocate the 1888 tower to the south elevation of Golucke's building at Zebulon.


It is little wonder that James Golucke's engineering know-how was lacking, for as far as we know, the architect had no formal training. Nonetheless, his artistic skills were well honed, and in fairness, many shaky buildings rose in the era before sound engineering principles were codified. Even the buildings of the well-respected firm of Bruce and Morgan were not always a match for the forces of nature. Only two years after its completion, the tower blew off Alexander Bruce's 1883 Walton County Courthouse at Monroe.

The last, and surely the most devastating event, in the history of James Golucke's Pike County Courthouse occurred in 1949, when a tornado struck the building, completely destroying the upper portion of Alexander Bruce's fine tower. By this time, Pike County's population had dwindled to less than half its 1900 level, and the remodeling of the old building was a sadly half-hearted affair. Thus, the building we see today at Zebulon is a dim reflection of the art of Georgia's two most prolific courthouse architects, James Wingfield Golucke and Alexander Campbell Bruce. 

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.


## Kudos

> In January 2008, **Morris, Manning & Martin, LLP**, co-hosted the **2008 China Summit** for International Trade Standards, Environmental Protection, Packaging, Safety, Quality Inspection, Quarantine, Certification, Technical Barrier and Related Product Liability Issues Involved in Export Trade in Beijing, China. Presenters from the firm who spoke included **Tim Tingkang Xia**, **Jeffrey L. Schulte**, **Robert Alpert** and **Seslee S. Mattson**, whose expertise encompasses intellectual property, corporate practice and product liability, respectively.

>  Attorney **Rachel C. Young**, a member of **HunterMaclean's** business litigation practice group, was recently inducted into the **Order of the Coif**, a prestigious honor society for U.S. law school graduates. In order to qualify for inclusion in the organization, an attorney must earn a J.D. degree and graduate in the top 10 percent of his or her class.

> **Arnall Golden Gregory LLP** congratulated **Neil C. Gordon**, a partner in the firm's bankruptcy, reorganization and restructuring practice group, on being one of the country's 20 lawyers selected for induction as a **fellow** into the **American College of Bankruptcy**. Gordon was inducted in March in Washington, D.C.

**Abe J. Schear**, partner and co-chair of the firm's real estate practice group, was inducted as a **fellow** into the **American College of Real Estate Lawyers**. Established in 1978, membership to the American College of Real Estate Lawyers is extended, by invitation only, to those attorneys with established real estate law expertise, high professional standards and who have a minimum of 10 years experience in real estate law.


>  **Mason S. Weiss** was promoted to rank of **major** in the **U.S. Army**. Weiss has served on active duty as a judge advocate since 2000. He has been deployed to Baghdad, Iraq, since September 2007 and is assigned to the Law and Order Task Force, a joint-service and inter-government agency dedicated to restoring the rule of law to Iraq.

> **Rachel Anderson Snider** was granted **fellowship** in the **American Academy of Matrimonial Lawyers**. She is a partner in the Atlanta firm of Levine & Smith, LLC, and practices exclusively in the area of family law litigation including divorce,

division of property, allocation of support, child custody and child support.

> **HunterMaclean** recently launched the first phase of **HunterMaclean University**, an innovative new training initiative designed to meet the individual training needs of each of the law firm's team members. When complete, HunterMaclean University will offer personal technical coaching, staff mentors, technical training, learning management systems, 24-hour electronic learning and much more.


In addition, the firm's **MRM Pro Bono Project**, a streamlined effort to provide legal assistance and volunteers to address critical needs in the community, reached out to students at East Broad Elementary School. As part of the pro bono program, firm staff and attorneys visited the school every Thursday morning to read to third and fourth grade classes.

>  **Hon. Gregory A. Adams** received the **Distinguished Leadership Award** from The Community Leadership Association in April. The award was presented at the 28th Annual Leadership Conference held in Denver, Colo. The Distinguished Leadership Award recognizes individuals who have made significant and notable contributions for the betterment of their communities.

>   **Carlton Fields** associate **L. Monty Garside** spoke in this year's **American Bar Association Business Law Section's Spring Meeting**. Attorneys from across the country participated in the three-day event held in Dallas, Texas, in April. The programs covered breaking issues and new developments in all aspects of the global practice of business law.

Associate **Catherine Salinas** was recently appointed to the **Georgia Association of Women Lawyers (GAWL) Foundation Board**. The GAWL Foundation is a non-profit organization dedicated exclusively to charitable and educational causes. It awards scholarships to deserving women law students, and it spearheads all community service projects on behalf of GAWL by focusing on those in need in the community and working with other charitable organizations to sponsor events and donate funds.



>  **Hon. Maurice H. Hilliard Jr.** received the **2008 President's Award** from the **North Fulton Bar Association** at its April meeting. President Forrest K. Clinard presented Judge Hilliard with the inaugural award, given to a person who has provided the association or the North Fulton community with outstanding service.

>   **Kilpatrick Stockton and Muldoon Murphy & Aguggia** announced the merger of their firms, effective May 2008. The combined firm is known as Kilpatrick Stockton.

Additionally, the firm announced that partner **Ray Chadwick** was appointed to the **executive committee** of the **Dispute Resolution Section** of the **State Bar of Georgia**; **Mort Aronson** and **Rupert Barkoff** were named **Legal Eagles** in *Franchise Times'* annual listing of the nation's top franchise attorneys; **Chuck Rice**, a senior attorney on the firm's labor & employment team, was selected to serve on the **Board of Directors** of Actor's Express; and **Katharine Field**, an attorney on the firm's labor & employment team, was selected to serve on the **Board of Directors** of Out of Hand Theater. Out of Hand was founded in 2001 to create work by, for and about the current generation of younger adults.

>   The partners at **Fisher & Phillips LLP** re-elected **Roger Quillen** and **Thomas P. Rebel** to the firm's **management committee**. Quillen was re-elected as chairman. He has served on the management committee since 1997 and has been the firm's chairman since 1999. Quillen also serves as the firm's managing partner. Rebel has served on the committee for nine years and has been with the firm for 30 years.


Firm attorneys **Steven M. Bernstein**, **Douglas R. Sullenberger** and **James M. Walters** were recognized in the Labor Relations Institute's annual listing of **"Top 100 Labor Attorneys"** in the United States.

> **Morris Hardwick Schneider** (MHS) announced that it merged with **Kalish & Associates, P.C.**, a law firm based in Newnan that supports a wide variety of real estate and business transactions.


The merger extends MHS' service area into Coweta County and will help meet a growing demand for the firm to expand its commercial real estate services.

> **J.P. Turner & Company** announced that **Scott Holcomb**, general counsel for the firm, was selected to attend the prestigious **Bucerius Summer School on Global Governance** in Hamburg, Germany. Holcomb was one of 250 applicants from 56 countries chosen for the 60 available spots.

> Attorney **Angela Cirina Kopet**, of the law firm **Allen, Kopet & Associates**, has been selected as a fellow of the **Litigation Counsel of America**. Kopet currently handles the firm's Southeast Georgia litigation. She is also a certified instructor and provides seminars on general liability and coverage issues throughout the United States.

>  **Carol V. Clark**, principal of the firm **Carol Clark Law**, received the **2008 George A. Pindar Award** from the Real Property Law Section of the State Bar of Georgia. The award is given to a member of the real estate section whose lifetime contribution has been significant to the real estate bar. Clark is the youngest honoree and the first woman to receive the award.


> **Locke Lord Bissell & Liddell LLP** was ranked as the **No. 1 law firm** in the United States in the categories of **regulatory, policy drafting** and **insurance-linked securities** by *Reactions* magazine in its 2008 legal survey. Locke Lord was the only U.S. firm that received commendations in all seven specific practice areas surveyed.

>  **Rodney G. Moore**, of counsel in the Atlanta office of **Greenberg Traurig, LLP**, was sworn in as **president** of the **National Bar Association (NBA)** on Aug. 1. He is the first Georgia lawyer ever elected to serve as the NBA's president in its 82-year-history. Moore was also named to *The National Law Journal's* list of the "50 Most Influential Minority Lawyers in America."

> **The Criminal Justice Coordinating Council** presented **Gregory W. Edwards**, chief assistant district attorney in the Dougherty County District Attorney's Office, with an **Eagle Award**. The Victim Service Awards program recognizes outstanding individuals in four categories, including advocacy,

courts, law enforcement, and volunteerism. Edwards was recognized in the courts category.

- > **Cindy Adams**, chief assistant solicitor-general of the State Court of Bibb County, received the **Jerry Thompson Law Enforcement Partnership Award** in March. The award is presented to a Georgia prosecuting attorney who has demonstrated excellence in implementing innovative techniques in assisting law enforcement with the prosecution of DUI.

- >  **Amy Alcock Quackenboss**, counsel at Hunton & Williams LLP, was elected as **president-elect** of the **Georgia Association for Women Lawyers**. Quackenboss is a member of Hunton's bankruptcy, restructuring and creditors' rights practice group.


- > **Sonnenschein Nath & Rosenthal LLP** announced that partner **Jonathan Vogel** was named by the *Charlotte Business Journal* as a **"40 Under 40."** It identifies 40 people under the age of 40 in Charlotte, N.C., who are making major strides in their careers and impacting their communities. Vogel practices in the area of government investigations and litigation.

- > **Parker, Hudson, Rainer & Dobbs LLP** announced that attorneys **Bobbi Acord, Armando L. Basarrate, Ronald T. Coleman Jr., C. Edward Dobbs, Rufus T. Dorsey, Charles E. Elrod Jr., William J. Holley II, Paul L. Hudson Jr., Kenneth H. Kraft, John H. Parker Jr., J. Marbury Rainer, Jonathan L. Rue, David G. Russell, and J. Alston Thompson Jr.** were named as **2008 Georgia Super Lawyers**.

- > **Balch & Bingham LLP** announced that the U.S. Green Building Council and the Green Building Certification Institute have designated **Scott E. Hitch**, a partner in the firm's environmental and natural resources group, as a **Leadership in Energy and Environmental Design Accredited Professional**. According to the institute's online directory, Hitch is one of three Georgia lawyers with this accreditation, and only 55 nationwide.

- > **Chris Arnt**, assistant district attorney for the Lookout Mountain Judicial Circuit, was presented with the **J. Roger Thompson Award** during the Basic Litigation Course hosted by the **Prosecuting Attorneys' Council of Georgia**. Each year, the award is presented to an outstanding faculty member in memory of the late J. Roger Thompson, who


was the chief assistant district attorney of the Appalachian Judicial Circuit.

- >  **Hunton & Williams LLP partner Rita A. Sheffey** was elected **treasurer** of the **Atlanta Bar Association**, a 6,000+ member organization, and will also chair the association's litigation section. She was also elected to the Board of Governors of the State Bar of Georgia. Sheffey is a member of the firm's litigation & intellectual property practice group.

- > **The University of Georgia School of Law's Alumni Association** recently presented its highest honor, the **Distinguished Service Scroll Award**, to **Eleanor F. Banister**, King & Spalding, and the **Hon. B. Avant Edenfield**, judge, U.S. District Court, Southern District of Georgia. Given annually, the award goes to individuals whose dedication and service to the legal profession and the law school deserves special recognition. The awards were presented during the Law School Association's annual breakfast held in conjunction with the State Bar of Georgia's Annual Meeting at Amelia Island, Fla.

## On the Move



### In Atlanta

- >  **Lance J. LoRusso** announced the opening of **The LoRusso Law Firm**. The firm offers clients expertise in the areas of business litigation, medical malpractice defense, wrongful death claims on behalf of surviving family members, health care law and representing injured parties in catastrophic personal injury cases. The firm is located at 1827 Powers Ferry Road, Building 8, Suite 200, Atlanta, GA 30339; 770-644-2378; Fax 770-644-2379; [www.lorussolawfirm.com](http://www.lorussolawfirm.com).

- > **Jeff P. Shiver** joined the law firm of **Peter A. Law, P.C.**, as an **associate**. His practice includes personal injury litigation involving catastrophic injuries, wrongful death, tractor trailer accidents, premises liability and product liability. Before joining Peter A. Law, P.C., Shiver was an associate at Peters & Monyak, LLP. The firm is located at Tower Place 100, Suite 1530, 3340 Peachtree Road, Atlanta, GA 30326; 404-814-3700; Fax 404-842-7710; [www.petelawattorney.com](http://www.petelawattorney.com).

- > **M. Kathryn Rogers** joined **The Finley Firm, P.C.**, as an **associate**. Rogers' practice areas focus on civil litigation and workers' compensation. The firm's Atlanta office is located at 2931 N. Druid Hills Road,

Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; [www.thefinleyfirm.com](http://www.thefinleyfirm.com).

- >   **Davis, Matthews & Quigley, P.C.**, announced that **Emily McBurney** and **David Marple** have been named **shareholders**, and **Rett Peaden** and **Mina Elmankabady** have joined the firm as **associates**. McBurney practices primarily in the taxation section as well as the firm's domestic relations and family law section. Marple concentrates in the area of domestic relations and family law. Peaden practices in the firm's taxation and estate planning and probate sections. Elmankabady practices in the firm's business and commercial litigation section. The firm is located at 14th 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).



Adams

Taylor

Gordon

Piatt

**Parker, Hudson, Rainer & Dobbs LLP** announced that associate **Teresa E. Adams** and partner **Eric Jon Taylor** joined the firm's **litigation team**. Adams' practice focuses primarily on complex commercial litigation. Taylor's practice focuses on defense in all aspects of employment, banking, housing, insurance and financial services litigation.

Also, **Jeffrey D. Gordon** and **Lauren E. Piatt** were added as **associates** to the firm's **tax & employee benefits team**. Gordon's practice encompasses all areas of employee benefits and executive compensation. Piatt's practice areas include corporate law and federal tax law. The Atlanta office is located at 1500 Marquis Two Tower, 285 Peachtree Center Ave. NE, Atlanta, GA 30303; 404-523-5300; Fax 404-522-8409; [www.phrd.com](http://www.phrd.com).

- > **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**, announced that **Rebecca L. Sigmund** joined the firm as a **shareholder**. Sigmund formerly was a partner with Powell Goldstein LLP where she served as manager of their immigration team. The firm's office is located at Bank of America Plaza, 600 Peachtree St. NE, Suite 2100, Atlanta, GA 30308; 404-881-1300; Fax 404-870-1732; [www.ogletreedeakins.com](http://www.ogletreedeakins.com).

- >   **Allen Bradley** and **Jeff Woodward** joined **Stites & Harbison PLLC** as **members** in Atlanta, where they serve clients in the firm's business group. Bradley practices corporate law, corporate and partnership tax law, technology law, private securities transactions and estate law. Woodward works primarily with privately held entities in general corporate matters, commercial transactions, private equity investments, mergers and acquisitions, real estate transactions and franchise matters. The office is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; [www.stites.com](http://www.stites.com).

- > **Fisher & Phillips LLP** announced that **Tiffany Harlow** joined the firm's Atlanta office as an **associate**. Harlow comes from King & Spalding LLP, where for nearly four years she represented employers and management in defense of claims brought under various state and federal employment laws and counseled management on sound employment practices. The firm's Atlanta office is located at 1500 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; [www.laborlawyers.com](http://www.laborlawyers.com).

- >  **Kilpatrick Stockton** announced the addition of **Charla Hall** as an **associate**. Hall joins the firm's leading public finance team in the financial transactions, real estate and restructuring department. The firm's Atlanta office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; [www.kilpatrickstockton.com](http://www.kilpatrickstockton.com).

- >   **Hunton & Williams LLP** announced that **G. Roth Kehoe II** joined the firm's global capital markets and mergers and acquisitions practice as **partner** and **Gerry L. Williams** was named **office administrative partner** in its Atlanta office. Kehoe, previously with King & Spalding, concentrates on international and domestic public and private mergers and acquisitions, dispositions, going private transactions, investments and strategic transactions. Williams' primary focus will be on marketing, business development and client appreciation efforts. He will also assist with budgeting



# 2008 Young Lawyers Division Leadership Academy

The YLD Leadership Academy was founded in 2006, bringing together young lawyers from across the state with leaders in various areas of the legal practice. The Leadership Academy begins each January and meets once a month for six months. Each month's program covers a different topic and students receive continuing legal education credits for their participation. The graduation ceremony was held in conjunction with the Annual Meeting of the State Bar of Georgia on June 6 at Amelia Island, Fla.

## 2008 YLD Leadership Academy Graduates

Christopher R. Abrego	Jonathan D. Goins	Joshua M. Moore
Joseph B. Alonso	Samuel Gowin	David S. Moreland
Molly Barrett	Taylor Hanson Haley	Stephanie L. Oginsky
Joshua Bosin	S. Elizabeth Hall	Erika L. Patrick
Robert O. Bozeman	Paul W. Hamilton	Brandon Lee Peak
Christina K. Brosche	Christine E. Harper	Mary Rae Phelps
Natalie M. Brunson	Evan L. Kaine	Emily N. Pittman
Marquetta J. Bryan	M. Anne Kaufold-Wiggins	Mark H. Reeves
JaDawnya C. Butler	Dawn H. Knowles	Mark Alan Rogers
David A. Cole	Brendan Krasinski	Bethany A. Sauls
Benjamin J. Colson	Jason C. Lane	Nedal Saleh Shawkat
Katie Connell	David A. Lester	Christopher Smith
Janna Blasingame Custer	Amy F. Lin	Luanne Bryant Smith
Alexia D. Davis	Kelli Lott	Sara M. Vanderhoff
Thomas V. Duck III	Hope L. Martin	Caroline M. Vann
Greg Feagle	Sean W. Martin	Sarah E. White
Christopher B. Freeman	Whitney D. Mauk	Tamara M. Woodard
Justin E. Giboney	Edward T. McAfee	

and various administrative matters. Williams is a member of the global capital markets and mergers & acquisitions team, and represents companies in several industries, including financial services, food and beverage, and consumer products. The office is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; [www.hunton.com](http://www.hunton.com).

- **John R. Parker Jr.** was named **senior vice president and general counsel** of **Coca-Cola Enterprises**. Parker has 21-years experience in the Coca-Cola system and previously served as general counsel to Coca-Cola Enterprises and CCE's Europe Group. The corporate headquarters is located at 2500 Windy Ridge Parkway, Atlanta, GA 30339; 770-989-3000; Fax 770-989-3784; [www.cokecce.com](http://www.cokecce.com).
- **Smith Moore LLP** moved to a new location in Atlanta's midtown section. Smith Moore's Atlanta attorneys focus on several practice areas, including litigation, health care, corporate, insurance, life, health and disability, labor and employment, and trusts and estates. The firm's Atlanta office is located at Atlantic Center Plaza, 1180 W. Peachtree St. NW, Suite 2300, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; [www.smithmoorelaw.com](http://www.smithmoorelaw.com).
- **Ballard Spahr Andrews & Ingersoll, LLP**, announced the opening of an Atlanta office with the **addition of Needle & Rosenberg, P.C.**, one of the premier intellectual property law firms in the Southeast. The Atlanta practice focuses on intellectual property and includes a well established and highly regarded national patent prosecution and patent litigation practice. The Atlanta office is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309; 678-420-9300; Fax 678-420-9301; [www.ballardspahr.com](http://www.ballardspahr.com).
- **Lalaine Briones** has been promoted from staff attorney to **deputy director of legal services** for the **Prosecuting Attorneys' Council of Georgia**. The council's main office is located at 104 Marietta St. NW, Suite 400, Atlanta, GA 30303; 404-969-4001; Fax 404-969-0020; [www.pacga.org](http://www.pacga.org).

## Correction

On page 59 of the June 2008 issue of the *Georgia Bar Journal*, the firm of Stites & Harbison PLLC was incorrectly reported as Sites & Harbison. We do apologize for this error.

# Consumer Pamphlet Series

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

Questions? Call 404-527-8792.

## The following pamphlets are available:

Auto Accidents ■ Bankruptcy ■ Buying a Home  
 ■ Divorce ■ How to Be a Good Witness ■ How  
 to Choose a Lawyer ■ Juror's Manual ■  
 Lawyers and Legal Fees ■ Legal Careers ■ Legal  
 Rights of Nursing Home Residents ■ Living  
 Wills ■ Patents, Trademarks and Copyrights ■  
 Selecting a Nursing Home ■ Selecting a  
 Personal Care Home ■ Wills

Visit [www.gabar.org](http://www.gabar.org) for an order form  
 and more information or  
 e-mail [stephaniew@gabar.org](mailto:stephaniew@gabar.org).

- > **Bovis, Kyle & Burch, LLC**, announced its move to **new offices** located at 200 Ashford Center North, Suite 500, Atlanta, GA 30338; 770-391-9100; Fax 770-668-0878; [www.boviskyle.com](http://www.boviskyle.com).

## In Bogart

- > **J. Michael Lavender Jr.** and **John H. Baker** announced the opening of **Lavender Baker, Attorneys at Law**. The firm handles cases involving real estate law, non-profit organizations, foreclosures, leases, personal injury, estate planning, business law, criminal law, contracts, guardianships, and wills and trusts. The firm is located at 1551 Jennings Mill Road, Suite 2400-B, Bogart, GA 30622; 706-208-1514; Fax 706-208-1939; [www.lavenderbaker.com](http://www.lavenderbaker.com).

## In Canton

- > **Ballinger & Associates** announced the addition of **Erin M. Fortney** as an **associate**. Fortney practices in the area of family law. The firm is located at 211 E. Main St., Canton, GA 30114; 770-479-2020; Fax 770-479-2055; [www.ballingerlaw.com](http://www.ballingerlaw.com).

## In Cordele

- > **J. Mitchell Gibbs** joined the law firm of **Rainwater & Harpe, LLP**, as an **associate**. Gibbs is involved in all aspects of civil litigation with an emphasis on real estate, domestic practice and personal injury litigation. The firm is located at 109 E. 14th Ave., Cordele, GA 31015; 229-273-5202; Fax 229-273-1175; [www.swgalaw.com](http://www.swgalaw.com).

## In Savannah

- >   **McCorkle & Johnson, LLP**, announced that **Mathew M. McCoy** was named **partner** and **Thomas M. Gore** joined the firm as an **associate**. Both practice in the areas of construction and real estate litigation. The firm is located at 319 Tattnall St., Savannah, GA 31401; 912-232-6000; Fax 912-232-4080.

- >   The law firm of **Boyd & Jenerette, PA**, announced the opening of an office in Savannah and the addition of **Catherine M. Bowman** and **Paul A. Gilker** as **counsel**. With these additions, the firm will further its legal expertise in employment law and medical malpractice. The Savannah office is located at 7505 Waters Ave.,

Suite D-3, Savannah, GA 31406; 912-921-8820; [www.boyd-jenerette.com](http://www.boyd-jenerette.com).

## In Valdosta

- > **Roger J. Dodd** and **W. Michael Burnham II** announced the formation of **Dodd & Burnham, P.C.**, specializing in personal injury, wrongful death, criminal defense and divorce. The firm is located at 613 N. Patterson St., Valdosta, GA 31601; 229-242-4470; Fax 229-245-7731; [www.doddlaw.com](http://www.doddlaw.com).

- >  **Langdale Vallotton, LLP**, announced that **Jason Davis** joined the firm's litigation department. The firm is located at 1007 N. Patterson St., Valdosta, GA 31601; 229-244-5400; Fax 229-244-0453; [www.langdalevallotton.com](http://www.langdalevallotton.com).

## In Orlando, Fla.

- >  **Darden Restaurants** announced the appointment of **Cindy Swinson** as **vice president, division general counsel**. In her role, Swinson will provide legal support and counsel to the finance, information technology, government and community affairs departments, as well as Red Lobster and Darden's Specialty Restaurant Group. Darden Restaurants' headquarters is located at 5900 Lake Ellenor Drive, Orlando, FL 32809; 407-245-4000; [www.darden.com](http://www.darden.com).

## In Chattanooga, Tenn.

- > **Dale C. Hetzler** joined **Erlanger Health System**, a non-profit pediatric and adult hospital system and academic teaching center affiliated with the University of Tennessee College of Medicine, located in Chattanooga, Tenn., as **senior vice president** and **general counsel**. Hetzler was vice president and general counsel at Children's Healthcare of Atlanta for the past eight years. Erlanger Health System is located at 975 E. Third St., Chattanooga, TN 37403; 423-778-7000; [www.erlanger.org](http://www.erlanger.org).

## In Knoxville, Tenn.

- >  **Denise Gough**, lead counsel for Scripps Networks' Great American Country cable network, was **promoted** to **vice president, legal affairs** for the company. Prior to joining Scripps Networks, Gough served as senior counsel for America Online, where she focused on interactive, entertainment, marketing, advertising and compliance issues. Scripps Networks Inc. headquarters is located at 9721 Sherrill Blvd., Knoxville, TN 37932; 865-694-2700; [www.scrippsnetworks.com](http://www.scrippsnetworks.com).



# 2008 Chambers USA

Each year, Chambers USA publishes a list of the top law firms and attorneys across the United States. It determines rankings through thousands of in-depth interviews with randomly selected attorneys, clients, and businesses.\*

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# If It Sounds Too Good To Be True...

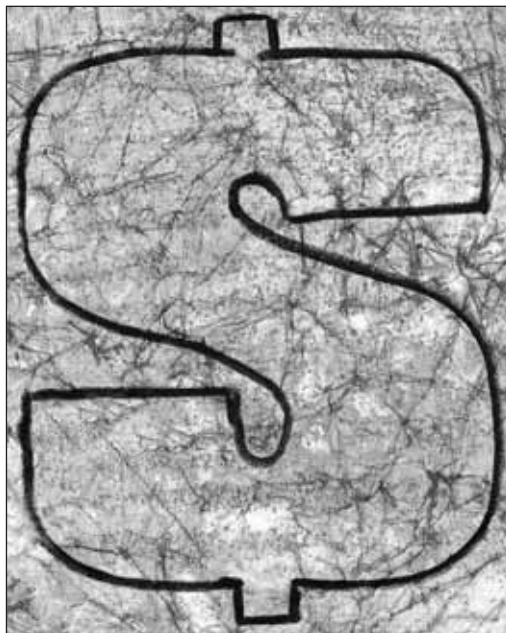
by Paula Frederick

“Looks like that new client was legit after all,” your assistant announces as she enters your office. “I just called the bank, and the funds from their cashier’s check are already available. We can wire the money out like the client asked us to.”

“Thank goodness,” you breathe a sigh of relief and pull the file for BigForeignCo, your newest client. You were skeptical when you got their e-mail; they claimed to be a foreign company with business interests in the United States. They hired you to help them in a dispute with a United States company. While they believed the dispute would likely settle, they wanted a lawyer for additional leverage and to file suit if necessary.

Two days ago you received BigForeignCo’s cashier’s check; they sent the proposed settlement amount to you for transmittal to the U.S. company. You deposited the check into your escrow account and deducted your agreed-upon fee.

Just this morning your contact at BigForeignCo called, wanting you to wire the balance of the money to a third party immediately for another time-sensitive deal the client has in the works.



You send your assistant off to complete the wire transfer, and decide to stop by your partner’s office. When last seen, she was scouring the Internet for information on BigForeignCo, with few results other than an apparently legitimate website. Sure enough, she is hunched over the computer screen scrutinizing a site that appears to be written in Greek.

“Don’t tell me you’re still trying to find dirt on BigForeignCo!” you exclaim. “Can’t you just face the fact that I landed a lucrative client from my listing on that international online directory? I’ll have you know that Tanya talked to the bank, and they’ve already released the hold on the cashier’s check.”

“Wait a minute,” your partner cautions. “Did the bank say the check had *cleared*, or did they just say the funds are *available*?”

“What’s the difference?”

“Well, they might just be making the funds available to us because we’re such good customers,” she explains.

"That doesn't necessarily mean that the check has *cleared*."

A quick call to the bank confirms that your partner is right, and three days later you reluctantly admit that you owe her—big time. "The check was a forgery," you report. "Good thing we didn't wire \$150,000 last week—the money doesn't really exist!"


"I told you so," your partner is small-minded enough to remind you. "What would we have done if that wire had gone through?"

What *does* a lawyer do when she has disbursed against apparently legitimate funds that later turn out to be fraudulent?

Depending on the situation, the Office of the General Counsel may advise the lawyer to deposit personal funds into escrow to minimize the harm to others with outstanding checks on the account.

In extreme situations, the OGC has recommended that the lawyer close the existing escrow account to prevent an avalanche of bounced checks and overdraft fees. The lawyer remains liable to other clients—after all, it was *their* money that went to pay the fraudulent disbursement.

A surprising number of lawyers continue to fall for Internet scams, despite our training and the natural skepticism that seems to come with a law degree. In evaluating whether discipline is warranted in situations like this, the Bar looks for signs that the lawyer acted reasonably under the circumstances. In this case, a reasonably prudent lawyer would conduct some investigation before undertaking the representation, and would certainly wait for the check to clear before disbursing against it!

Remember, when a client turns up with a case that seems too good to be true, it usually is. 



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

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# Discipline Summaries

(April 12, 2008 – June 20, 2008)

by Connie P. Henry

## Disbarments

### William P. Keenan

Albany, Ga.

Admitted to Bar in 1979

On April 21, 2008, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of William P. Keenan (State Bar No. 410750). On Feb. 7, 2008, Keenan pled guilty in the Superior Court of Douglas County to furnishing dangerous weapons to an inmate and conspiracy to commit escape.

### Arthur Hurst English

McDonough, Ga.

Admitted to Bar in 2000

On April 21, 2008, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Arthur Hurst English (State Bar No. 248852). On Sept. 22, 2006, a jury in Lamar County convicted English of theft by receiving.

### Timothy Grant Madison

Jefferson, Ga.

Admitted to Bar in 1979

On April 21, 2008, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of Timothy Grant Madison (State Bar No. 465535). On March 4, 2008, Madison pled guilty to theft by taking item with a value greater than \$500, theft by receiving stolen property with a value greater than \$500, violation of oath by public officer, four counts of using false statements and writings, and conspiracy to defraud a political subdivision.

### Donahue Scott Silvis

Villa Rica, Ga.

Admitted to Bar in 1989

On June 2, 2008, the Supreme Court of Georgia disbarred Donahue Scott Silvis (State Bar No. 646840). The

State Bar filed a Notice of Discipline, but Silvis failed to file a Notice of Rejection despite having acknowledged service. The following facts are deemed admitted by his default:

Silvis represented a client in a Chapter 11 bankruptcy case; the client paid Silvis \$8,000; Silvis received a \$20,000 settlement payment from Wachovia Bank in the bankruptcy case; after the case was converted to a Chapter 7, the Trustee demanded that Silvis account for all property of the estate; including the \$28,000; Silvis did not produce an accounting and did not turn over the estate's property or records; Silvis failed to respond to notices or attend hearings in the bankruptcy case and failed to comply with court orders directing that he turn over money, property and records to the Trustee; and after being arrested on a bench warrant, Silvis appeared for a hearing on a citation for contempt in the bankruptcy case and stated that personal problems were the reason for his failure to respond and that he was no longer in possession of the \$28,000. In aggravation, the State Bar noted that Silvis failed to respond to two notices of investigation, failed to file any response with the Investigative Panel, and that his actions constitute willful and dishonest conduct lasting over two years.

## Suspensions

### Keino Dwan Campbell

Southfield, Mich.

Admitted to Bar in 1998

As reciprocal discipline, on April 21, 2008, the Supreme Court of Georgia suspended Keino Dwan Campbell (State Bar No. 106111) for one year with reinstatement conditioned upon proof that he has been reinstated in Michigan. The Michigan Supreme Court issued an order suspending Campbell for one year for

neglect of legal matters, practicing law in a jurisdiction to which he was not admitted, and failing to respond to disciplinary authorities.

### **Jennifer Nicole Favors**

Atlanta, Ga.

Admitted to Bar in 2001

On June 2, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Jennifer Nicole Favors (State Bar No. 325796) and suspended her from the practice of law for a period of three years. All the justices concurred, except Sears, C.J., Hunstein, P.J., and Melton, J., who dissented.

This disciplinary matter was before the Court pursuant to respondent Favors' amended petition for voluntary discipline. The Court rejected an earlier petition in which Favors requested a two-year suspension.

Favors represented a client with a personal injury claim. The claim was settled for \$7,000. Favors received the settlement funds and deposited them into her escrow account. In May 2004, she advised her client that she had paid \$1,500 out of those funds to a third party on his behalf even though she had not done so. Favors used the \$1,500 for her personal benefit. In response to a Notice of Investigation, she made false statements to the effect that she had twice mailed the payment to the third party and was not aware why it had not been received. She then submitted a copy of an altered bank statement, which she had falsified. She subsequently submitted a \$1,600 check to the third party, which was returned for insufficient funds. She asserted the check was returned due to her failure to take into account bank service charges when she knew that her account had been overdrawn for several months due to the fact that she commingled her personal funds in the account, withdrew money from the account that belonged to her client, and used that money for her own benefit. She did not

make the payment to the third party until September 2005, and in May 2007, she finally admitted her actions.

In mitigation of discipline the Court found that Favors showed remorse; that she repaid the funds; that she has no prior disciplinary history; that personal and emotional factors may have contributed to the behavior; and that she has sought, and continues to receive, counseling to address these personal issues.

### **Timothy Orman McCalep**


Decatur, Ga.

Admitted to Bar in 2003

On June 2, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Timothy Orman McCalep (State Bar No. 481089) and suspended him from the practice of law for a period of three years. McCalep was appointed to represent a 17-year-old female who bonded out of jail and who he met at the jail and drove to a motel. McCalep rented a room for several days and took his client to the room where he waited while she showered. He then photographed his client while she was unclothed but wearing a towel.

In mitigation of discipline McCalep avers that he is extremely apologetic, remorseful and regretful; he has had no previous discipline; he is a citizen in good standing in his community; he achieved a favorable outcome for his client; he did not seek or accept payment; he is willing to pay for counseling for the client if she seeks it; he has had no additional contact with the client; he has been forthcoming in the investigation; and he has not been charged with any crime. Although McCalep knew of a conflict of interest and did not disclose to his client the possible effect of that conflict and that it could cause injury, the Court found that he submitted persuasive mitigating factors. McCalep is directed to pay for counseling for his client should she seek counseling within the first year of this suspension.

## **Interim Suspensions**

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 12, 2008, five lawyers have been suspended for violating this Rule, and three have been reinstated. 



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

For the most up-to-date information on lawyer discipline, visit the Bar's website at [www.gabar.org/ethics/recent\\_discipline/](http://www.gabar.org/ethics/recent_discipline/).



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# Backing Up: A Key to Protecting Your Practice

by Natalie R. Kelly

**B**ackup routines in law firms are at some times religiously followed, and at others, altogether nonexistent. Recent natural and man-made disasters have left many unprotected law firms vulnerable. Consequently, disaster recovery planning and business continuity have become hot topics for law firms in recent years because firms want to ensure they have systems in place to protect their practices from any potential disaster.

Even though many lawyers who are guilty of not backing up their data are in solo and smaller firms, inefficient backup routines and procedures can also be found in larger firms. We will discuss various methods of backing up your practice data, and some of the issues that arise when using these methods. Ultimately, a key way to protect your practice is to make sure your backup systems and procedures are both efficient and tested.

## What to Backup

According to the most recent statistics on document management, over 90 percent of business documents are being born digitally. Therefore, it is vitally impor-

tant to backup all of your electronic files along with your paper files. The scope of this article will stop with backing up electronic data, but we would be glad to assist you in assessing your needs for all other backup routines, as well.

Backing up computer files can be done incrementally or over a full system. With incremental backups, an initial data backup is followed by one that includes any new files and those existing files that have been changed since the initial backup. Full system backups, on the other hand, include a backup of all existing and new data every time a backup is performed. With a full backup, data files are backed up, as well as the program or application files, if you like, so that the entire system is backed up.

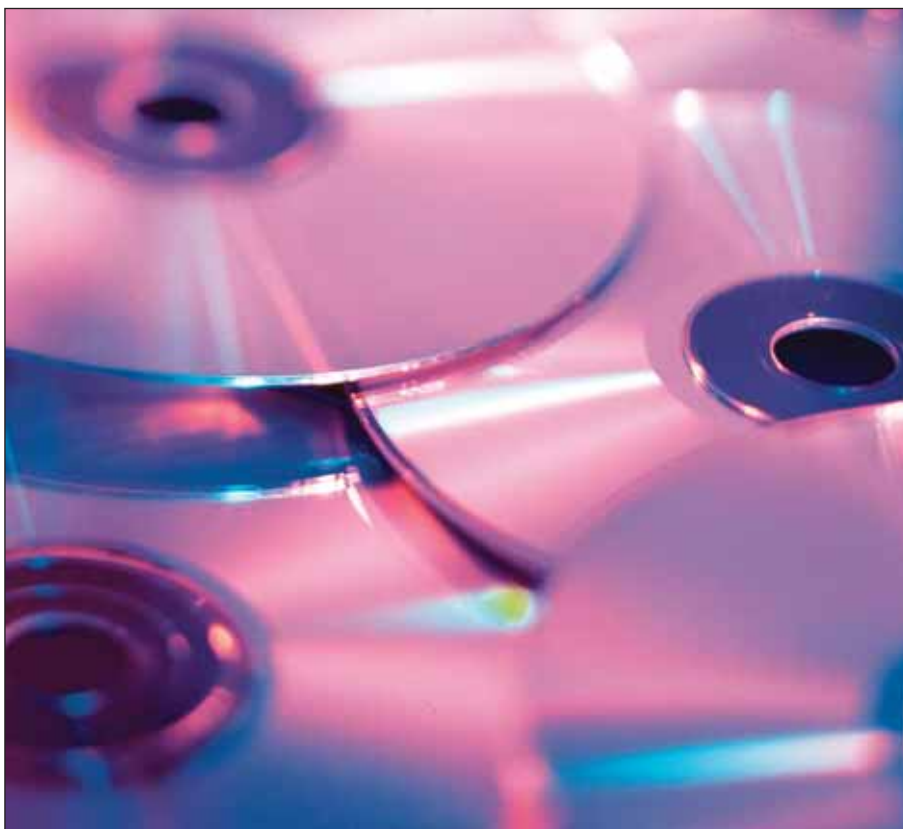
Firms should take care to have a plan in place that ensures all systems and devices are backed up. Networks, workstations, laptops, handheld devices and home systems should all be backed up on a regular schedule. There are many secure and easy ways to backup each of these configurations. For examples of what might work best for your systems, give us a call.

## Backup Options

Backups can be made by copying files to CDs or DVDs. In larger environments, you will find that tape drives are still a popular and viable option. Smaller firms can opt for the more direct, hands-on approaches like CD/DVD copies, external hard drives and thumb or jump drives.

In recent years, personal servers have become more popular, as they provide continuous backup cycles as





you work rather than the backup routine that occurs whenever the user schedules or initiates a backup—usually after working hours. Personal servers also allow for the backed up server to be plugged in at other locales to create a working copy of the backed up network. More firms are also mirroring their hard drives so that if one drive fails the other can kick in to provide uninterrupted access to the systems.

A final backup method that has really come of age recently is an online backup. Remote, online sessions are arranged to do backups to remote servers, making it very convenient because users are not required to be heavily involved in the process. Hundreds of companies provide online backup services. A comprehensive directory and related reviews of online backup service vendors can be found at <http://www.backupreview.info/>. This site also provides a monthly list of its top 25 online backup services.

Regardless of your backup method, there are many questions that should be asked about the process. For example, online back-

up companies should be asked some key questions about how firm data is being stored and secured. You can contact our department to get a comprehensive list of questions for online backup service vendors and more information on backup security issues.

## Routine Basics


At a minimum, firms should be doing daily backups and have periodic rotating routines that provide firms with copies of their work over a period of time that is equal to the amount of time the firm would want to work at recreating work that has been lost. A good rule of thumb is to backup every day so that you would not put yourself in danger of losing more than a day's worth of work.

Just as important, or perhaps even more so, is the need to do test restores on backed up files. A bad backup will be of no help if a disaster was to occur with your system. Do a test restore by copying some files that are a part of the backup routine to alternate locations, and then deleting them from your system to see if they can be restored from your nor-

mal backups. Do test restores on every form of backup you use.

In addition to regular restore routines, firms should also work to ensure that backups are stored both offsite and onsite regularly. This duplication of locales can help with immediate restoration needs, as well as provide protection against not being able to get up and running when access to the offsite backup is not an option.

We have heard several horror stories about backups or the lack thereof in various firms. While it would seem that a single, reliable method of backup would suffice in most situations, we have assisted firms where multiple backup options have failed and resulted in the firm having to recreate months' worth of work despite their backup efforts. So, the moral of this story is to use layered forms of backup and regular restore routines to ensure that you have protected your practice.

If you need any assistance with evaluating your backup routines or additional advice on disaster recovery and planning, do not hesitate to contact us for specific resources. Remember, one of the keys to a well-protected practice is a good backup system. 



**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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# Taking It On: The Amazon River and Peachtree Road

by Bonne Davis Cella

**T**ifton attorney Joe Gray and members of First United Methodist Church recently returned from Peru where they spent a week helping with the Amazon Medical Missions (AMM). Founded by Mike and Susie Dempsey from Gainesville, Ga., in 1997, the AMM provides free medical and dental care, food, clothing and Spanish language Bibles to people living along the Amazon and Nanay Rivers. According to Gray, these people live 10-11 hours from medical services and travel using dugout canoes.

Last year Gray's wife Jane also volunteered to serve with the AMM. While she was at a village, the local pastor was bitten by a highly venomous Bushmaster, the largest pit viper in the world. He was taken to the AMM boat, The Chosen Vessel, which has a small clinic onboard. He was kept alive and transported to a hospital where he eventually recovered. This area also has high incidents of sickness and disease. The AMM has treated pueblos where 100 percent of the population had contracted malaria. None of the volunteers have ever contracted malaria because of vaccinations and extreme precautions.



Joe Gray works with other Amazon Medical Missions volunteers to distribute food to villagers.

Aboard The Chosen Vessel, Gray and his party traveled to four villages. "One place we stopped had not had outside visitors in three years—it was moving to see how they manage to survive in such primitive conditions—they are so isolated from the rest of the world. The core of the trip is to provide medical and dental services. I'm just a flunky and I went to help distribute food, clothing and the Bibles. As we arrived at each village, children ran to the banks of the river and climbed up in trees so they could see us. They were all very kind and appreciative. Although I do not speak their language, I think they understood when I said, 'Cristo te ama'—a smile and a pat on the head seem to be universal," Gray said.

Next year, First United Methodist Church plans on building a small church and possibly putting in a well at






Gray takes a break while on his recent mission trip to Peru to spend some time playing with the village children.

a village in Peru. The cost for the equipment and drilling is only \$1,200 and yields amazing results in a pueblo. "These people are not going to starve but they need medical and dental attention and they need wells for clean water—they wash clothes, bathe and drink from the river and parasitic disease is very common," Gray said.<sup>1</sup> When asked if he will return next year, he stated: "I would like to go back but others in our church want to help and I would not deny anyone the experience."

## The Race Is On

Chief Superior Court Judge and Board of Governors Member R. Rucker Smith of the Southwestern Judicial Circuit has run in the Peachtree Road Race since 1984. He calls it a "celebration of health" and adds: "I plan on doing it for the next 20 years. Since 1984, I have only missed one race and that was in 1992 when I was in a contested election for judge but other than that, I have been there."

This year marked the 39th running of The Peachtree Road Race—the largest 10K event in the world. Rucker recently passed up an invitation to go into the Grand Canyon with friends because he

did not want to miss the July 4 event where 55,000 participants line up at Lenox Square Mall to begin a race through Atlanta. "Getting a number so that you can participate is the most difficult part of the race—they begin advertising the third Sunday in March and it usually closes out in a day—the first 45,000 people are accepted and the next 10,000 applicants go into a lottery so I'm glad that I have been able to participate for so many years," Smith said. And you have our best wishes on your next 20 years: *Run Rucker Run!* 



**Bonne Cella** is the office administrator at the State Bar of Georgia's South Georgia Office in Tifton and can be reached at [bonnec@gabar.org](mailto:bonnec@gabar.org).

## Endnote

1. 80 percent of the health problems start with people drinking from the parasite-infested river. If you would like to contribute money for a well in Peru, contact Joe Gray for more details at [jbgray@friendlycity.net](mailto:jbgray@friendlycity.net).



Rucker Smith proudly displays his Peachtree Road Race T-shirt that will be added to his vast collection.

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# From Atlanta to Amelia Island

by Derrick L. Stanley

State Bar sections have been busy as the fiscal year came to a close. The past few months have seen events from CLEs to judicial receptions and the annual meetings to summer social events.

The **Government Attorneys Section** hosted a program titled: "Whistleblower: What You Should Know About Georgia's 2007 Law and Beyond" on May 21. R. Read Gignilliat of Ellerbee, Thompson, Sapp & Wilson, LLP, and Michael A. Sullivan of Finch McCranie, LLP, reviewed the Georgia Whistleblower Act from who is covered to legal and equitable remedies. Attendees were also given additional resources for locating current information about whistleblower laws. The program yielded one hour of CLE credit for attendees.

On June 4, "The Patent Toolkit: Tools to Keep On Hand to Protect and Enforce Intellectual Property" was sponsored by the **Intellectual Property Law Section's Patent Committee**. Jeff Young of Kilpatrick Stockton LLP moderated a panel including: David Lilenfeld of Manning Lilenfeld LLP; Michael Turton of Kilpatrick Stockton LLP; and Gene Luciani of Anderson Tate & Carr. Wilson White of Kilpatrick Stockton LLP hosted the one-hour CLE at the firm's office.

Two events were held on June 11, one at the Bar Center and one at the offices of DLA Piper, LLP. The **Environmental Law Section** hosted a brown bag lunch program titled "Stormwater-The Second Generation." Rick Porter of Richport Properties, Inc., spoke about designing properties to utilize existing drainage and natural conditions to lessen the environmental impact of new construction. Concurrently, the **Franchise and Distribution Law Section** hosted a roundtable lunch discussion. Richard Greenstein of DLA Piper, LLC, facilitated a discussion titled "Landmines in the Amended FTC Franchise Rule." Attendees ranged from sole practitioners to key brand corporate attorneys. Both events saw above expected attendance.

The **Government Attorneys Section** hosted a judicial reception on June 18. Attendees included Justice



Photos by Sarah I. Coole and Derrick W. Stanley

Government Attorney Section Judicial Reception. (Left to right) Charles C. Olson, Angela D. Woodliff, Justice Robert Benham, Cynthia Cartwright, chair, Marissa Key.

Robert Benham, Judge Brenda Cole, retired Judge Woodrow Tucker, members of the section as well as some local interns.

The **Technology Law Section** and the Advanced Technology Development Center sponsored a CLE program on June 17 at Troutman Sanders LLP. "Right Coast Venture Capital-A Discussion of Trends in Common Terms for Venture Capital Deals on the East Coast, Viable Alternatives, Structure and Valuation" was a well attended event where speakers Sig Mosley of Imlay Investments, Inc., Alan Taetle of Noro-Moseley Partners and Mike Siavage of Siavage Law Group discussed current trends with venture capital transactions.

The **International Law Section** hosted a reception at The High Museum of Art on June 20 during the Friday Jazz event. Section members enjoyed cocktails and a buffet while the music provided a relaxing ambiance for networking and viewing the art exhibits.

On June 23, the **Appellate Practice Section** presented a lunchtime talk with Chief Judge Anne Elizabeth Barnes, Court of Appeals of Georgia. This intimate setting provided section members and interns the opportunity to ask Barnes a variety of questions. The section also used this occasion to discuss section business and install the 2008-09 officers.



Adam Gaslowitz receives the 2008 Section of the Year award from 2007-08 Bar President Gerald Edenfield.



The General Practice and Trial Sections' 2008 "Tradition of Excellence Award" recipients. (Left to right) Don C. Keenan (plaintiff), Michael J. Bowers (general practice), Edward D. Tolley (defense), Judge Aaron Cohn (judicial).

## 2008 State Bar Annual Meeting

The State Bar of Georgia held its Annual Meeting June 5-8, at Amelia Island, Fla., where several sections had meetings and events.

The **Taxation Law** and **Tort and Insurance Practice** sections had breakfast meetings for their members. The taxation section chose to use the time to conduct their annual meeting. A conference call-in number was provided for members who were unable to attend.

The **General Practice and Trial Section** presented the 2008 Tradition of Excellence Awards during a special breakfast ceremony on Friday, June 6. The 2008 recipients were: Judge Aaron Cohn, Columbus (judicial), Michael J. Bowers, Atlanta (general practice), Edward D. Tolley, Athens (defense) and Don C. Keenan, Atlanta (plaintiff). A reception was held in honor of the 2008 recipients later that same evening.

The **Appellate Practice** and **Criminal Law** sections both hosted lunches on Friday, which gave their members an opportunity to reconnect and network. The Criminal Law Section conducted a presentation titled, "Effective PowerPoint Presentations in the Courtroom."

The **Judicial Section** also held their annual meeting in conjunction with the State Bar's meeting.

## In Other News

As usual, several sections had newsletters go out over the past few months. They are available for download by going to [www.gabar.org/](http://www.gabar.org/) sections and navigating to the various section web pages.

The **Intellectual Property Section** and its communications committee, under the direction of Co-Chairs Alison Danaceau and Tina McKeon, unveiled the brand new logo and homepage for the section. The new site, [www.GeorgiaIP.org](http://www.GeorgiaIP.org), is the home for the IP Section. [GeorgiaIP.org](http://www.GeorgiaIP.org) is also the first stop for all things IP in Georgia, including an event calendar, resources, podcasts, news and information about membership and of course, the popular IP Institute. Lauren Fernandez Staley of Gardner Groff spearheaded the redesign efforts by acting as liaison between the committee and the graphic designer, Leyla Compani of MAMA Creative. 



**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).

## Section Awards of Achievement:

- Business Law Section, chaired by Walter Jospin of Paul, Hastings, Janofsky & Walker, LLP
- Bankruptcy Law Section, chaired by Shayna Steinfeld of Steinfeld & Steinfeld
- Taxation Law Section, chaired by Edward Manigault of Jones Day in Atlanta

## Section of the Year Award:

- Fiduciary Law Section, chaired Adam Gaslowitz of Gaslowitz Frankel, LLC

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# Getting the Most Out of Casemaker:

## An Overview of the Advanced Search Features – Part II

by Natalie R. Kelly

In one of our more recent Casemaker articles (GBJ, Vol. 13:6), you learned about performing searches via the “Advanced Search” tab and some of its initial settings. We continue our coverage of Casemaker’s advanced search capabilities here with the Word Forms feature.

Word Forms allow you to search on variations of a word. For instance, you can search for terms by an exact match of the characters typed, by a check of limited alternates of a particular word or by associations of a particular word. As shown here, your options for performing word form searching is simplified in one of Casemaker’s familiar advanced search drop-down menus (see fig. 1).

In Georgia’s library, (remember Casemaker lets you search other states’ libraries, too) you are able to do specific searching as follows:

### None/Exact Match Only

With this default option, Casemaker will look for the exact characters you type in the Full Document Search Query box. In this example, both the words “gross” and “negligence” will be a part of the results whether they occur in the resulting document together or not (see fig. 2).

### Suffix Only

With Suffix Only searches, Casemaker will look for any occurrence of the term you enter with any of its varied endings. The resulting cases for a search on the term “secure” since June 1, 2008 (see fig. 3), show the

terms “secure”, “secured” and “security” in the different cases (see fig. 4).

### Prefix and Suffix Expansion

Using Prefix and Suffix Expansion, Casemaker will find your term along with any varied beginnings or endings for that term. The example here shows how “nuptial” is treated (see fig. 5).


### Any Word Form

Known as the “Thesaurus Tool,” Casemaker uses this selection of Word Forms to look for any term related to or similar to your search term. A key example is “injury” which initially returns results with the word forms “injury,” “cut,” “mistrial” and “abuse” (see fig. 6).

### Wildcard Option

In addition to the drop-down Word Forms selections, Casemaker researchers can also use the “\*” symbol to expand their search terms. This wildcard symbol will help expand searches for terms to include any prefix, suffix or alternate endings or beginning for words.

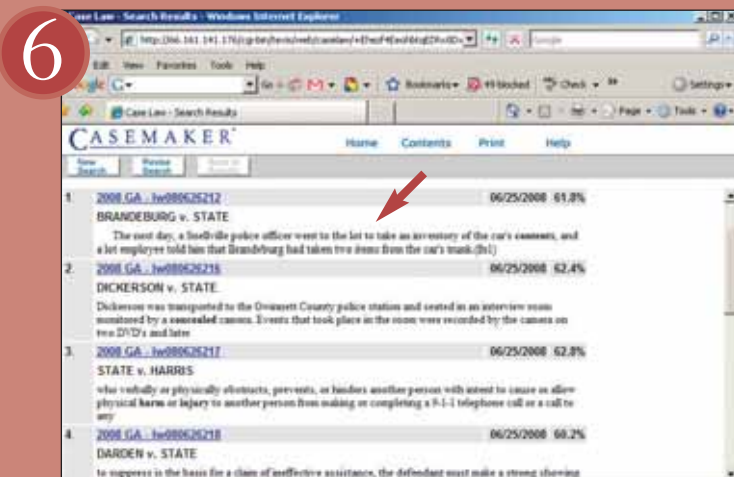
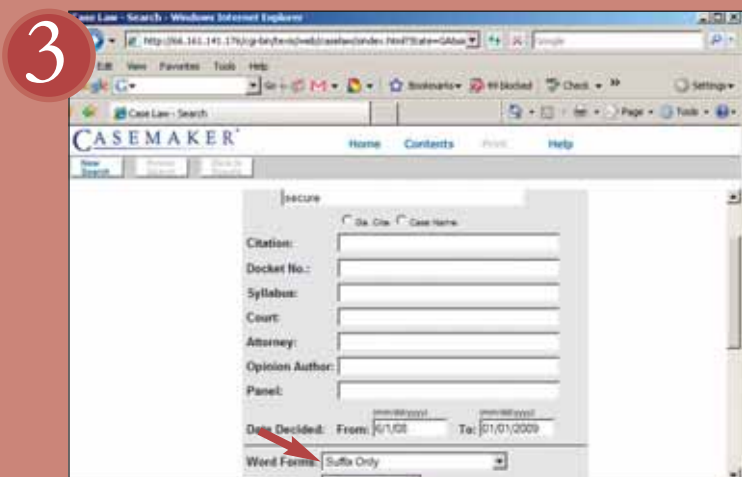
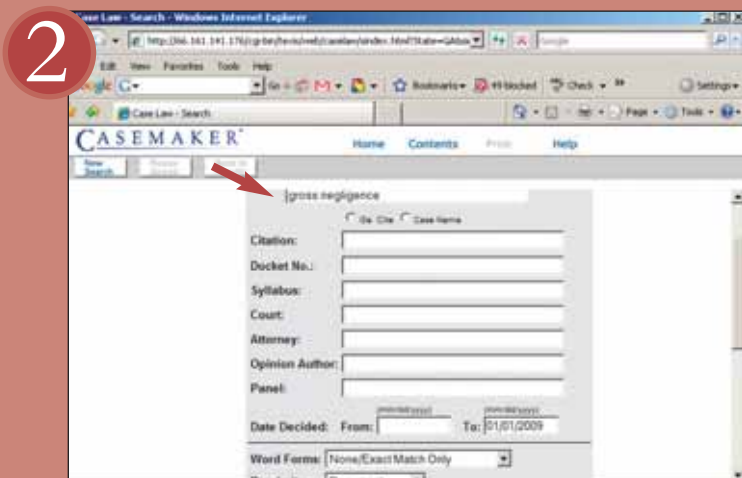
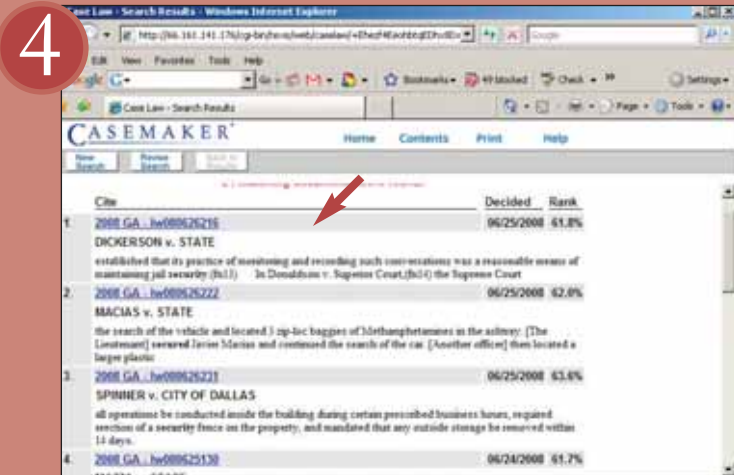
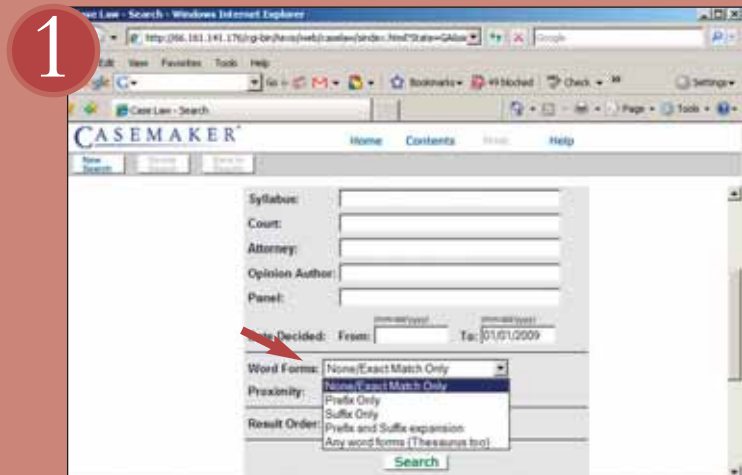
While coming up with exact terms can result in better results with Casemaker, the advance search feature of Word Forms can truly help when you might not have the exact terms in mind.

For more assistance with Casemaker, give us a call at 404-526-8618 or toll free at 800-527-8700. You can also e-mail your questions and comments to us at [casemaker@gabar.org](mailto:casemaker@gabar.org). 



**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).





Free online legal research is available to all Bar members. Learn how to effectively use and navigate the Georgia Casemaker library. Training classes will be offered at the Bar Center on Thursday, Aug. 21 and 28, from 10 a.m. to 12 p.m and 2 to 4 p.m. The sessions are limited to the first 10 attendees. Visit [www.gabar.org/news/casemaker\\_training\\_offered\\_to\\_bar\\_members](http://www.gabar.org/news/casemaker_training_offered_to_bar_members) to sign up.

# Good, Bad and Ugly Legalese

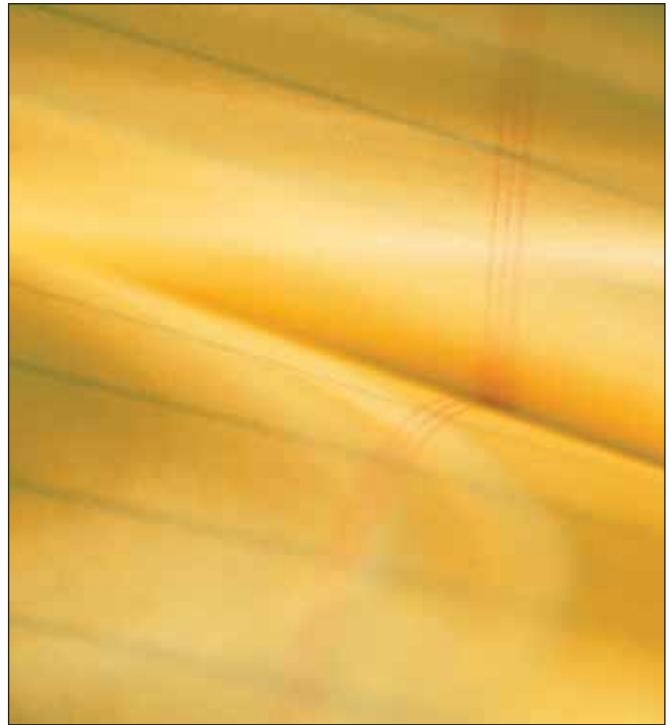
by Karen J. Sneddon and David Hricik

**M**erriam-Webster defines “legalese” as “the specialized language of the legal profession.” Yet the word “legalese” has developed a negative connotation that means the excessive use of archaic, stilted language. Even so, some legalese is vital to the function of a document. The trick is knowing whether the legalese is good, bad or just ugly.

Law school taught us all forms of legalese. Before law school you probably had never heard the words “chat-tel,” “demurrer” or “en banc.” Rather than being legalese, these technical terms are part of our legal vocabulary. This is a form of necessary, if sometimes ugly, legalese.

While law school helped us learn the technical terms of the law, it also encouraged the adoption and use of legalese. Before we attended too many law school classes (and while we were still dutifully briefing cases), the simple “if” morphed into the bloated “in the event that.” Then the word “hereby” stealthily slipped into our everyday conversations. Surely enough, we learned how to speak and write like lawyers—lawyers from the early 1900’s. This is bad legalese.

But sometimes, what looks like bad legalese is in fact good legalese. In certain instances, courts have given



particular words or phrases specific meaning. In that situation, a lawyer should use the “magic language.”<sup>1</sup> As a result, we’re more likely to use legalese in documents with strong historical ties, such as real estate contracts and wills.<sup>2</sup> For example, can “I give, bequeath and devise any automobile that I may own at the time of my death to my daughter Abby, if she survives me” really be replaced with “I give my car to my daughter Abby, if she survives me”? (Admittedly, we sometimes

purposely retain or invoke some legalese for the client's benefit. Clients may not think that "Last Will" has the same ring as the resplendent ring of "Last Will and Testament.") Thus, legal writing will always include some antiquated, foreign and arcane words; though ugly, they're good because they have a known and precise meaning.

Proper use of a technical legal term is one thing; unnecessary use of jargon and legalese, quite another.<sup>3</sup> Fear of cutting good legalese can mean that the writer continues to use legalese when the word or phrase has no function. This is the bad legalese. Careful consideration of each word and the function of each word can help you identify the good, the bad and the ugly legalese.

To brush up on a few examples of the bad and the ugly legalese, see the chart of selective legalese and suggested alternatives to the right.

One of our favorite examples of legalese is on the Internet: "We will

Legalese	Suggested Alternatives
aforesaid, aforementioned	generally can be cut without changing the meaning of the sentence
antecedent to, prior to	before
any	a
beseech	ask
cease and desist	stop
deem	consider, treat
elucidate	explain, inform, tell
firstly, secondly, thirdly, fourthly, fifthly	first, second, third, fourth, fifth
forthwith	immediately
hereby	generally can be cut without changing the meaning of the sentence
hereinafer	generally can be cut without changing the meaning of the sentence
hereof	of this [name/type of document]
hereunder	under this [name/type of document]
in regards, in reference to	about
inasmuch as	can
<i>inter alia</i>	including, among other things
notwithstanding	despite, even though
null and void	void
said	the, that, these
same	it, them
stipulate, assent, undertake	agree
subsequently	later
such	the, that, this, these, those
the case at bar	this case
thereby	as a result, because, if
thereof	until
until such time as	until
whereby	thus
wherein	where
whensoever	whenever
with respect to	with

## Try It:

Can you revise the following sentences without changing their meaning?

- I am of opinion that this action doth lie.<sup>5</sup>
- With respect to the stipulation, whereby, inter alia, you (hereinafter referred to as "the seller") agreed to deliver the goods notwithstanding the delay in payment, said other party (hereinafter referred to as "the buyer") accepted.

## Possible Revisions:

Here are our suggestions, though there are obviously other options:

- This states a claim.
- Among other things, we agreed you would deliver the goods even though I had not paid for them.





# 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 consumers need utilizing its extensive lists of government agencies, referral services and nonprofit organizations.


## Are CAP calls confidential?

Everything CAP deals with is confidential, except:

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

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

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

continue to give priority attention to this matter in order to ensure finalization in a timely manner.”<sup>4</sup> Is this good, bad or ugly legalese? You decide! 



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



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

#### Endnotes

1. See, e.g., *In re Estate of Hendrickson*, 736 A.2d 540 (N.J. Sup. Ct. 1999). For a helpful book about legalese in drafting, see

Howard Darmstadter, *Hereof, Thereof, and Everywhereof: A Contrarian Guide to Legal Drafting* (2d ed. 2008).

2. The opposition by Michigan real estate lawyers to reduce legalese is recounted at [http://www.michbar.org/generalinfo/plainenglish/columns/93\\_dec.html](http://www.michbar.org/generalinfo/plainenglish/columns/93_dec.html). In addition to the pervasive use of legalese, Michigan real estate documents also contain sentences of nearly 100 words.
3. The Internet has been a helpful resource in the fight against bad legalese. One helpful webpage, entitled “Guide to Legalese,” is available at [http://www.msbar.org/guide\\_to legalese.php](http://www.msbar.org/guide_to legalese.php).
4. <http://www.partyofthefirstpart.com/hallOfShame.html>. For an in-depth and humorous examination of legalese, see Adam Freedman, *Party of the First Part: The Curious World of Legalese* (2007).
5. This sentence is excerpted from *Keeble v. Hickeringill*, 103 Eng. Rept. 1727 (Queen’s Bench 1707).

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# Anyone Can Be a Mentor

by Avarita L. Hanson

**T**he Justice Robert Behnam Law Camp, now in its second year, is filling a void in the schedules of children during the summertime.

School is out and suddenly, the programs that kept them busy are missing and working parents have to rework schedules and routines. This three-week camp provided a positive environment to actively stimulate the students.

Selected students committed to actively participate in the program, which exposed them to practicing minority lawyers and judges. They were also given the opportunity to tour various legal institutions like: State and Superior Courts, the Supreme Court of Georgia, the Court of Appeals of Georgia, Juvenile Court, Fulton County District Attorney's Office, Johnson & Freeman, LLC, Coca-Cola Legal Department and the Bar Center.

The curriculum provided instruction on the basics of critical thinking and outlined the different types of law. It also afforded them an opportunity to work in a legal environment during the internship phase of the program.

The 2008 Law Camp was held June 9 - June 20, from 9 a.m. - 4 p.m. Campers were required to come dressed in professional attire. The event was hosted by Georgia State University's College of Law in conjunction with Clark Atlanta University's Educational Talent Search Program. The Gate City Bar Association partnered by providing support to this summer's program. Harold E. Franklin, King & Spalding partner and past Gate City Bar president, served as the Benham Law Camp Director.

Atlanta attorney and camp coordinator Patrise Perkins-Hooker asked me to serve as "Lawyer of the Day," on the last day of the camp. I was charged with the task of telling the students how I became a lawyer and the obstacles and challenges I had to overcome. The opportunity to share my career journey and my professional and personal values with the 26 campers was wonderful. The final day concluded with a mock trial after which several young ladies sought me out for additional pointers. They wanted to know how to calm down and get rid of the butterflies in their stomachs prior to opening statements. As a former trial advocacy professor, I gave them the same tips I used to give my students.

As Justice Thurgood Marshall said, "None of us has gotten where we are solely by pulling ourselves up by our own bootstraps. We got here because



Photo by Avarita L. Hanson

The second Annual Justice Robert Benham Law Camp, sponsored by the Gate City Bar Association in partnership with Georgia State University College of Law and Clark Atlanta University's Educational Talent Search Program was held June 9-20 at Georgia State.



somebody bent down and helped us." In 2007, the Gate City Bar Association held its first law camp for high school students from around Atlanta. Founded in 1948, part of Gate City's mission has always been "to create in the community a practical appreciation for the legal profession; to encourage persons of outstanding promise to attend first-rate law schools and return to the communities that need their services most . . ." Thus, the law camp furthers the historical mission of Gate City by fueling the pipeline for aspiring lawyers by exposing rising minority students in the 10th, 11th and 12th grades who are interested in pursuing law as a career to the legal profession. It provides guidance and mentoring to the students with the goal of increasing diversity in the legal profession.

Other lawyers of the day included: Justice Robert Benham, Harold Franklin Jr., Thomas "Woody" Sampson Jr., Sterling A. Spainhour Jr., Kimberly Esmond Adams, Thomas Sampson, Nina Hickson, Charis Johnson and Stanley E. Foster. Students attended law classes taught by several practitioners including: Michael Tillman-Davis (Introduction to Law), Prof. Bernadette Hartfield (Juvenile Law), Ron Freeman (Criminal Law), Robin Coggsell (Contracts) and Robert Bozeman (Torts). Preparation for their mock trial was given by several other practitioners: Jack Williams (Overview), George Johnson (Trial Strategy & Opening Statements), LaShawn Terry (Introduction to Physical Evidence), Jeffrey Tompkins (Direct and Cross Examination), Rodney G. Moore (Closing Statement), Paula Frederick (Courtroom Ethics and Demeanor) and Natasha Perdew (Appeals).

Students were also given instruction on how to prepare themselves for law school. Programming including an LSAT Preparatory Course taught by Darrick McDuffie and Asha



Photo by Stephanie J. Wilson

(Left to right) Nneka Daniel, administrative assistant for the Chief Justice's Commission on Professionalism and Assistant Director Terie Latala, serve as mentors for the Bar Center's "Journey Through Justice" program and the High School Mock Trial program.


Jennings, Law School Admissions Requirements by Dr. Cheryl George, Dress for Success by David Smith Jr., PhD, and Time Management by Phyllis Wyatt.

Both attorney and instructors made this a truly positive and engaging experience for the attendees. By utilizing their training and mentoring skills, the students were inspired. I challenged the students to aspire and become lawyers, because one day, I would like one of them to be my legal representative.

The Justice Robert Behnam Law Camp was started by a local bar association with the inspiration of a Supreme Court of Georgia justice. This program could be replicated all over Georgia and throughout the country. This opportunity to mentor students has proven to be a positive experience for all involved.

Next year, the Young Lawyers Division of the State Bar of Georgia will host the 2009 National High School Mock Trial Competition in Atlanta May 8 - 9. I am sure one of the participating teams will be from Jonesboro High School, whose most recent team won the school's second national title earlier this year. Attorneys can become a resource to local mock trial teams by volunteering their time as mentors to the students.

The staff of the Chief Justice's Commission on Professionalism supports aspiring attorneys through mentoring. Assistant Director Terie Latala was honored by the YLD at the 2008 Annual Meeting of the State Bar of Georgia for her support, over the last 16 years, of the Georgia High School Mock Trial Competition. Latala has been a positive influence on the high school students she has mentored over the years. Additionally, Administrative Assistant Nneka Harris Daniel is a volunteer tour docent with the State Bar's Law Related Education Program for students who visit the Bar's "Journey Through Justice" program.

Mentoring is simply passing on our knowledge, skills and values to the next generation of attorneys. They can be law school students, or high school students. The knowledge and experience we have to share will only strengthen our profession. The ability to mentor a student or peer is a benefit and privilege. Anyone can, and should, be a mentor. 



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

Ahanson@cjcpga.org.

**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.

**Joel Morris Allen**

Decatur, Ga.  
Atlanta Law School (1949)  
Admitted 1949  
Died November 2007

**Woodrow W. Bledsoe**

Stone Mountain, Ga.  
Emory University School of Law  
(1949)  
Admitted 1949  
Died May 2008

**Tammy L. Bowen**

Savannah, Ga.  
Mercer University Walter F.  
George School of Law (1984)  
Admitted 1984  
Died June 2008

**Paul Matthew Carruthers**

Greenville, S.C.  
University of North Carolina  
School of Law (1954)  
Admitted 1962  
Died July 2007

**Anne Marie Drescher**

Naples, Fla.  
Fordham University School  
of Law (1953)  
Admitted 1980  
Died August 2007

**Louis J. Fortuna**

Gainesville, Ga.  
George Washington University  
Law School (1942)  
Admitted 1948  
Died May 2008

**John Derrick Gatch**

Savannah, Ga.  
John Marshall Law School (1995)  
Admitted 1996  
Died March 2008

**Lee H. Henkel Jr.**

Alpharetta, Ga.  
Duke University School of Law  
(1952)  
Admitted 1952  
Died May 2008

**Alvin Hitt**

Savannah, Ga.  
John Marshall Law School  
Admitted 1974  
Died April 2008

**George L. Hoyt Jr.**

Alma, Ga.  
Mercer University Walter F.  
George School of Law (1966)  
Admitted 1966  
Died October 2007

**Robert N. Klein**

Fort Pierce, Fla.  
Emory University School of Law  
(1984)  
Admitted 1984  
Died May 2008

**George Kushinka**

Warner Robins, Ga.  
Mercer University Walter F.  
George School of Law (1958)  
Admitted 1958  
Died December 2007

**E. R. "Roy" Lambert**

Madison, Ga.  
University of Georgia School  
of Law (1950)  
Admitted 1950  
Died February 2008

**Charles Lokey**

Atlanta, Ga.  
University of Georgia School  
of Law (1948)  
Admitted 1947  
Died May 2008

**David C. Moss**

Cumming, Ga.  
University of Georgia School  
of Law (1991)  
Admitted 1991  
Died May 2008

**Sue K. "Totsy" Nichols**

Atlanta, Ga.  
Woodrow Wilson School of Law  
(1982)  
Admitted 1983  
Died December 2007

**Russell Paul Reach**

Greenville, S.C.  
Harvard Law School (1985)  
Admitted 1987  
Died November 2007

**Richard M. Sbaratta**

Dunwoody, Ga.  
New York University School  
of Law (1978)  
Admitted 1996  
Died August 2007

**Ann H. Schnur**

Atlanta, Ga.  
Emory University School of Law  
(1979)  
Admitted 1979  
Died November 2007

**Norman M. Schved**

Augusta, Ga.  
Woodrow Wilson School of Law  
(1962)  
Admitted 1976  
Died November 2007

**John Robert Smith**

Colquitt, Ga.  
University of Georgia School  
of Law (1953)  
Admitted 1952  
Died December 2007

**Karen Mignon Tanner**

Austell, Ga.

Mercer University Walter F.

George School of Law (1998)

Admitted 1998

Died April 2008

**Charles P. Taylor**

Warner Robins, Ga.

Mercer University Walter F.

George School of Law (1983)

Admitted 1983

Died June 2008

**Peter Garrett Williams**

Columbus, Ga.

Emory University School of Law

(1969)

Admitted 1970

Died December 2007



**Roy Lambert**, who lived in the house on North Main Street in Madison, Ga., where he was born, died February 2008. With

the exception of service in the U.S. Navy during World War II, and while he was getting a college education, his life was centered in Madison and Morgan County.

A graduate of the University of Georgia, where he earned both a business degree (1947) and a law degree (1950), and was a member of the Phi Alpha Delta law fraternity and Phi Delta Theta social fraternity, Lambert passed the bar in 1950 and hung his shingle in Madison. He recalled, "I was living at home during those early days, so I knew that there would be a roof over my head and food on the table while my fledgling career grew."

Soon after starting his practice, a young lady in Atlanta, Christine Davis, entered the picture. Lambert remembered, "Some mutual friends arranged a blind date for Chris and me. They told her that I was nearly deaf, and I was told that she had hearing problems. We went to dance in Covington. After several numbers on the dance floor, we realized the practical joke. One thing about it, we got the attention of each other." In May 1954, they

married, and in 2004 celebrated their 50th wedding anniversary. They have three children, Leigh Goff, Anne Trulock and Ezekiel Roy "Leke" Lambert III.

Although Lambert's father passed away when he was a small boy, he had heard about his father in the Georgia Legislature. When Sen. C. R. Mason decided not to run again, Lambert decided to run for state senator. He won a close race and served the 1955-56 term. Because Morgan, Putnam and Jasper County senators had to rotate every two years, he had to wait through the senatorial rotation and was re-elected for the 1961-62 term.


By this time, Lambert was making a name in legislative circles as an up-and-coming public servant. He was encouraged to run in 1963 for the Georgia House of Representatives. He won the election and held his seat until retiring from politics in 1985. Lambert earned prestigious appointments during his political career such as chairman of the House Democratic Caucus, chairman of the powerful House Rules Committee and eight years as the floor leader to help guide legislation favored by the governor.

Lambert retired from politics in 1985 when the Board of Directors of the Bank of Madison asked him to be president. He served as president of the Bank of Madison for many years, and was recently serving as vice chairman of the bank's Board of Directors. Lambert also managed to maintain a very successful law practice. He was a member of the Ocmulgee Judicial Circuit Bar Association (president, 1968-69); American Bar Association; State Bar of Georgia; and the Georgia Trial Lawyers Association. He was admitted to practice in the Supreme Court of Georgia, Court of Appeals of Georgia, 11th Circuit U.S. Court of Appeals, and the U.S. District Court, Middle District of Georgia and Northern District of Georgia.

While reflecting on his days in public life, Lambert said he is fond-

est of the many initiatives and legislation that helped to bring industry and jobs to Georgia. His efforts did not stop there. As a private citizen he left a mark in Morgan County economic development with helping recruit companies such as Wellington, Bard Manufacturing, Denon, Flambeau, Sieman and North American Art, and more recently, Sovis, Amtico and C. R. Bard.

Lambert said, "I'm enjoying a wonderful life, thanks to my family and friends. I trust that I have made a contribution to help improve our community and prepare it for the next generation. The next 20 years will be our greatest opportunity. With good leadership, we can preserve and protect our beautiful community, and have quality growth while creating job opportunities for our young people."

Lambert was very active in his community. He was a member of Madison First United Methodist Church, served as vice president of economic development for the Madison-Morgan County Chamber of Commerce, past president of the Madison Kiwanis Club, member of the American Legion and Veterans of Foreign Wars, past president of the Georgia Trust for Historic Preservation, and a member of the Gridiron Society. 

### *The Lawyer Assistance Program of the State Bar of Georgia*

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number at 800-327-9631.**



# August-October

<b>AUG 1-2</b>	ICLE <i>Environmental Law Summer Seminar</i> Hilton Head, S.C. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 8 CLE Hours	<b>AUG 22</b>	ICLE <i>Eminent Domain</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 3 CLE Hours
<b>AUG 4</b>	NBI, Inc. <i>Drafting Commercial Real Estate Leases</i> Atlanta, Ga. 6 CLE Hours	<b>AUG 26</b>	NBI, Inc. <i>Rules and Procedures for Federal Court Success</i> Atlanta, Ga. 6 CLE Hours
<b>AUG 6-7</b>	ICLE <i>Real Property Law Institute Video Replay</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours	<b>AUG 29</b>	ICLE <i>Selected Video Replays (Tentative)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>AUG 7</b>	NBI, Inc. <i>Resolving Problems and Disputes on Construction Projects</i> Savannah, Ga. 6 CLE Hours	<b>AUG 29</b>	ICLE <i>Common Carrier Liability</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>AUG 14</b>	NBI, Inc. <i>Top 10 Estate Planning Techniques</i> Atlanta, Ga. 6 CLE Hours	<b>AUG 29-30</b>	ICLE <i>Urgent Legal Matters</i> St. Simons Island, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours
<b>AUG 19</b>	NBI, Inc. <i>The Legalities of Doing Business in China</i> Atlanta, Ga. 6 CLE Hours	<b>SEPT 4</b>	ICLE <i>N&amp;B of Real Property Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>AUG 22</b>	ICLE <i>Contract Litigation</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>SEPT 4-5</b>	ICLE <i>City &amp; County Attorneys Institute</i> Athens, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours
<b>AUG 22</b>	ICLE <i>Nuts &amp; Bolts of Family Law</i> Savannah, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours		

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



<b>SEPT 5</b>	ICLE <i>Health Care Fraud</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6.5 CLE Hours	<b>SEPT 12</b>	NBI, Inc. <i>Advanced LLC Issues</i> Atlanta, Ga. 6.7 CLE Hours
<b>SEPT 5</b>	ICLE <i>International Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>SEPT 15</b>	ICLE <i>Government Attorneys</i> Cartersville, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 5</b>	ICLE <i>Professionalism, Ethics &amp; Malpractice</i> Kennesaw, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 4 CLE Hours	<b>SEPT 16</b>	CT Corporation System <i>LLC Law in 2008 and Beyond</i> Atlanta, Ga. 2.8 CLE Hours
<b>SEPT 10-11</b>	ICLE <i>Civil Collaborative Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours	<b>SEPT 18</b>	NBI, Inc. <i>Mixed Use Development From A to Z</i> Atlanta, Ga. 6 CLE Hours
<b>SEPT 11</b>	ICLE <i>Long-Term Disability</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>SEPT 18-19</b>	ICLE <i>Georgia Diversity Program</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 11</b>	NBI, Inc. <i>Advanced Probate – Information Ideas and Legal Updates</i> Atlanta, Ga. 6.7 CLE Hours	<b>SEPT 18-20</b>	ICLE <i>Insurance Law Institute</i> St. Simons Island, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours
<b>SEPT 12</b>	ICLE <i>Successful Trial Practice</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>SEPT 19</b>	ICLE <i>Million Dollar Practice</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 12</b>	ICLE <i>Hot Topics in Guardianship</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>SEPT 25</b>	ICLE <i>Employment Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours

# August-October

<b>SEPT 25</b>	ICLE <i>Punitive Damages (Tentative)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 2</b>	ICLE <i>Admissibility of Expert Testimony</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 25</b>	ICLE <i>Georgia Law of Torts (Tentative)</i> Macon, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 2</b>	ICLE <i>Title Standards</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 25</b>	NBI, Inc. <i>Handling a Social Security Disability Case</i> Atlanta, Ga. 6 CLE Hours	<b>OCT 3</b>	ICLE <i>Keep It Simple</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 26</b>	ICLE <i>Agriculture Law</i> Macon, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 3</b>	ICLE <i>Class Actions (Tentative)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>SEPT 26</b>	ICLE <i>Materialmen's Liens Law Update</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 6</b>	NBI, Inc. <i>Advanced Family Law</i> Atlanta, Ga. 6.7 CLE Hours
<b>SEPT 26</b>	ICLE <i>Anatomy for Lawyers</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 10</b>	ICLE <i>Professional &amp; Ethical Dilemmas</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 3 CLE Hours
<b>OCT 1</b>	ICLE <i>Beginning Lawyers Program</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 10</b>	ICLE <i>Milich on Georgia Evidence</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 2-4</b>	ICLE <i>Workers' Compensation Institute</i> St. Simons Island, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours	<b>OCT 10</b>	ICLE <i>Drivers License Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours

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





<b>OCT 10</b>	NBI, Inc. <i>Introduction to Trust &amp; Estate Taxation</i> Atlanta, Ga. 6.7 CLE Hours	<b>OCT 22</b>	ICLE <i>Family Law</i> Augusta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 14</b>	NBI, Inc. <i>Land Use Law – Current Issues in Subdivision</i> Atlanta, Ga. 6 CLE Hours	<b>OCT 22</b>	ICLE <i>Child Welfare Attorney Training</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 15</b>	ICLE <i>Entertainment Law Basics Boot Camp</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 23-24</b>	ICLE <i>ECAPI #2 (11th Circuit Court of Appeals)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 12 CLE Hours
<b>OCT 16</b>	ICLE <i>Technology Law Institute</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 8 CLE Hours	<b>OCT 23</b>	ICLE <i>Liability of Local Governments (Tentative)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 16</b>	ICLE <i>Zoning</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 23-24</b>	ICLE <i>Bankruptcy Law Update</i> Pine Mountain, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 16-17</b>	ICLE <i>Business Law Institute</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 8 CLE Hours	<b>OCT 24</b>	ICLE <i>Georgia Personal Injury Practice</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours
<b>OCT 17</b>	ICLE <i>Advanced Health Care Law</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 27</b>	NBI, Inc. <i>Overcoming Challenges in Planning for Large Estates</i> Atlanta, Ga. 6 CLE Hours
<b>OCT 17</b>	ICLE <i>ADR Institute &amp; Neutral's Conference</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours	<b>OCT 30</b>	ICLE <i>Premises Liability</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for locations 6 CLE Hours

# Notice of Filing of Formal Advisory Opinions in Supreme Court

## Second Publication of Proposed Formal Advisory Opinion No. 05-1 Hereinafter known as "Formal Advisory Opinion No. 05-1"

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 August 15, 2008.

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 simultaneously 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. 05-1

STATE BAR OF GEORGIA  
ISSUED BY THE FORMAL ADVISORY OPINION BOARD  
PURSUANT TO RULE 4-403 ON JUNE 7, 2008  
FORMAL ADVISORY OPINION NO. 05-1 (Redrafted Version of Formal Advisory Opinion No. 87-6)

### QUESTION PRESENTED:

Ethical propriety of a lawyer interviewing the officers, employees, or other constituents of an organization

without consent of the organization's counsel when that organization is the opposing party in litigation.

### SUMMARY ANSWER:

An attorney may not ethically interview an employee or other constituent of an organization which is an opposing party in planned or pending litigation without the consent of the attorney representing the organization in the matter where the employee or constituent is either:

- (1) a person having managerial responsibility on behalf of the organization; or
- (2) a person whose acts or omissions may be imputed to the organization in relation to the subject matter of the case for the purpose of civil or criminal liability; or
- (3) a person whose statement may constitute an admission on the part of the organization in the sense that the statement will bind the organization.

## **OPINION:**

Correspondent asks when it is ethically proper for a lawyer to interview the officers and employees of an organization, when that organization is the opposing party in litigation, without consent of the organization's counsel.

The question involves an interpretation of Rule 4.2 of the Georgia Rules of Professional Conduct that provides as follows:

A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by constitutional law or statute. The maximum penalty for a violation of this Rule is disbarment.

The no-contact rule's restriction on a lawyer directly communicating with persons represented by other counsel about the matter that is the subject of the representation serves important public interests as set out in Comment [7] to Georgia Rule 4.2. These interests include:

- (a) protecting against misuse of the imbalance of legal skill between a lawyer and a layperson; (b) safeguarding the client-attorney relationship from interference by adverse counsel; (c) ensuring that all valid claims and defenses are raised in response to inquiry from adverse counsel; (d) reducing the likelihood that clients will disclose privileged or other information that might harm their interests; and (e) maintaining the lawyers [sic] ability to monitor the case and effectively represent the client.

At the same time, there are important competing considerations. These include permitting a lawyer to meet his or her obligation to conduct a reasonable inquiry before asserting a claim, defense, or position in litigation as mandated by O.C.G.A. § 9-15-14 or Federal Rule of Civil Procedure 11. These interests

weigh against interpreting the no-contact rule so broadly that it blocks all access to information helpful to the litigation from employees or constituents of a represented organization except with the consent of the organization's counsel or through formal, costly discovery. See *Niesig v. Team 1*, 76 N.Y.2d 363, 372, 558 N.E. 2d 1030, 1034, 559 N.Y.S. 2d 493, 497 (1990) (Foreclosing all direct, informal interviews of employees of a corporate party "closes off avenues of informal discovery of information that may serve both the litigants and the entire justice system by uncovering relevant facts, thus promoting the expeditious resolution of disputes.").

Comment [4A] to Georgia Rule of Professional Conduct 4.2 seeks to balance these interests and sets the parameters for applying Rule 4.2 to a represented organization. It prohibits communications by a lawyer for another person or entity concerning the matter in representation with an employee or other constituent of the organization who is either:

- (1) A person having a managerial responsibility on behalf of the organization;
- (2) Any other person whose act or omission in connection with that matter may be imputed to the organization for the purposes of civil or criminal liability; or
- (3) A person whose statement may constitute an admission on the part of the organization.

As Comment [4A] sets out, persons "having a managerial responsibility on behalf of the organization" should not be contacted. This includes officers of the organization as well as those lower-ranking employees who have managerial responsibility on behalf of the organization. Comment [4A] should be read in conjunction with Comment [4B], which explains that prior to beginning an interview, an interviewing lawyer may not possess sufficient information to determine whether a lower ranking employee who is not an officer of the organization falls into the "represented" category. In assessing whether the employee exercises managerial responsibilities, the interviewing lawyer should consider the employee's title and job description.

It is important to note that in this respect Georgia Comment [4A] differs from the current Comment [7] to the American Bar Association's Model Rule 4.2. The revised language of ABA Comment [7] places off limits a person "who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter." The American Law Institute's Restatement (Third) of the



Law Governing Lawyers § 100 similarly limits contact with a current employee or other agent “if the employee or other agent supervises, directs, or regularly consults with the lawyer concerning the matter or if the agent has the power to compromise or settle the matter.” RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100 (2000). Thus, in recent years, both the ABA and ALI have narrowed the scope of the no-contact rule to only those managers who have close, regular, or supervisory contact with the organization’s counsel. Because the language of Georgia Comment [4A] does not mirror that used in ABA Comment [7], it should not be read as narrowly as the ABA’s Model Rule. Unlike ABA Model Rule 4.2, Georgia Rule of Professional Conduct 4.2 applies to a wider group of persons having “managerial responsibility on behalf of the organization” and is not limited just to those officers or managerial personnel who supervise, direct, and have close contact with the organization’s lawyer.

Consistent with both Model Rule 4.2 and Restatement (Third) § 100, Comment [4A] also places off limits an employee or agent whose act or omission may be imputed to the organization for the purposes of liability, such as under a theory of *respondent superior*.

The third type of constituent who should not be contacted according to Comment [4A] is any person “whose statement may constitute an admission on the part of the organization.” Courts around the country have differed over whether the “admission” language should be construed broadly, by reference to Federal Rule of Evidence 801(d)(2)(D), or more narrowly, as is the modern trend, to include only those persons whose statements bind the organization in the matter in the sense that the admissions cannot be impeached, contradicted, or disavowed at trial. The so-called “managing-speaking agent test,” adopted by the New York Court of Appeals in *Niesig supra*, has been endorsed by the Restatement (Third) of the Law Governing Lawyers. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100, Reporter’s Note, cmt. e (2000). It does not apply the no-contact rule to any employee of the organization whose statement may be admissible in evidence. Instead, it applies the no-contact rule to “those officials, but only those, who have the legal power to bind the corporation in the matter.” 76 N.Y.2d at 374, 558 N.E.2d at 1035, 559 N.Y.S.2d at 498.

Broadly interpreting the phrase in Georgia Comment [4A] of “person whose statement may constitute an admission” to mean any employee whose statement may be admissible in evidence as an exception to the hearsay rule goes beyond the purpose of protecting the client-lawyer relationship of a represented person and

prevents informal inquiries of potential fact witnesses who are employees of an organization. Hence, the admissions language should be understood to protect against uncounseled “admissions” from those who can obligate or bind the organization. This interpretation is consistent with the ALI’s position in Restatement (Third) § 100(2)(c), which states that a “represented non-client includes...a current employee or other agent of an organization represented by a lawyer...if a statement of the employee or other agent, under applicable rules of evidence, would have the effect of binding the organization with respect to proof of the matter.” RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100 (2000).

According to the Reporter’s Note to the Restatement (Third), binding statements are those to which “no evidence contrary to the admission may be offered” in court. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 100, Reporter’s Note, cmt. e (2000).

If the employee or constituent of an organization does not fall into any of the foregoing categories, a lawyer may contact and interview the employee without the prior consent of the organization’s counsel.

Before a lawyer conducts any interview with a constituent of the opposing party presumably permitted under Georgia Rule of Professional Conduct 4.2, the lawyer should heed the guidance of Comment [4B], which provides,

[I]t should be anticipated that in many instances, prior to the beginning of the interview, the interviewing lawyer will not possess sufficient information to determine whether or not the relationship of the interviewee to the entity is sufficiently close to place the person in the “represented” category. In those situations the good faith of the lawyer in undertaking the interview should be considered. Evidence of good faith includes an immediate and candid statement of the interest of the person on whose behalf the interview is being taken, a full explanation of why that person’s position is adverse to the interests of the entity with which the interviewee is associated, the exploration of the relationship issue at the outset of the interview and the cessation of the interview immediately upon determination that the interview is improper.

Even after establishing that the person being interviewed may be contacted *ex parte*, there remain limitations on what the attorney may ask the constituent during the course of the interview. Although the constituent is not covered by Georgia’s no-contact rule, the interviewing attorney should not inquire about any conversations the constituent may have had with the organization’s attorneys

regarding the matter. Confidential communications between the corporation's counsel and an employee who is not covered by the no-contact rule can nevertheless be protected by the organization's attorney-client privilege. *See generally Upjohn v. United States*, 449 U.S. 383, (1981); *Marriott Corp v. American Academy of Psychotherapists, Inc.*, 157 Ga. App. 497, 277 S.E. 2d 785 (1981). As a result, care and restraint

must be exercised when questioning any constituent of a represented organization.

This opinion only addresses contacts with *current* employees of a represented organization. Formal Advisory Opinion No. 94-3 allows a lawyer to contact and interview *former* employees of an organization represented by counsel without the consent of the organization's lawyer.

## Notice of Withdrawal of Advisory Opinion No. 28

Members of the State Bar of Georgia are hereby notified that the Formal Advisory Opinion Board has withdrawn State Disciplinary Board Advisory Opinion No. 28.

Advisory Opinion No. 28 was issued by the State Disciplinary Board of the State Bar of Georgia on Nov. 20, 1981. Prior to 1986, the State Disciplinary Board was responsible for issuing Advisory Opinions. In 1986, ultimate responsibility for issuing Formal Advisory Opinions was entrusted to the Supreme Court of Georgia, and the Formal Advisory Opinion Board was asked to review all of the Advisory Opinions that had been issued by the State Disciplinary Board. As a result of that review, some of the pre-1986 Advisory Opinions issued by the State Disciplinary Board proved obsolete under the Standards of Conduct that the Supreme Court had adopted in 1979,<sup>1</sup> and were withdrawn. However, the Formal Advisory Opinion Board concluded that other Advisory Opinions, including Advisory Opinion No. 28, remained valid under the Standards. Those opinions were published with the cautionary language that they were not issued by, or under the authority of the Supreme Court. As with all opinions approved only by the Formal Advisory

Opinion Board, the State Bar of Georgia has treated Advisory Opinion No. 28 as persuasive authority only.

On Friday, April 4, 2008, the Georgia General Assembly passed a bill amending Article 1, Chapter 14 of Title 44 of the Official Code of Georgia Annotated (the "good funds" law). On or about April 17, 2008, the bill was sent to Gov. Sonny Perdue who signed it into law on May 15, 2008.

Provisions of the newly passed "good funds" law, however, conflict with provisions of Advisory Opinion No. 28. The Formal Advisory Opinion Board has reviewed Advisory Opinion No. 28 in light of the new "good funds" law, and determined that Advisory Opinion No. 28 is no longer valid and does not provide accurate guidance to members of the State Bar of Georgia. Accordingly, at the June 7, 2008 meeting of the Formal Advisory Opinion Board, the Board unanimously voted to withdraw Advisory Opinion No. 28.

### Endnote

1. On Jan. 1, 2001, the Georgia Rules of Professional Conduct replaced the Standards of Conduct.

## Amendments to the Rules of the U.S. Court of Appeals for the 11th Circuit

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

A copy of the proposed amendments may be obtained on and after Aug. 1, 2008, from the court's website at

[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov). A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, GA 30303 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by Sept. 2, 2008.

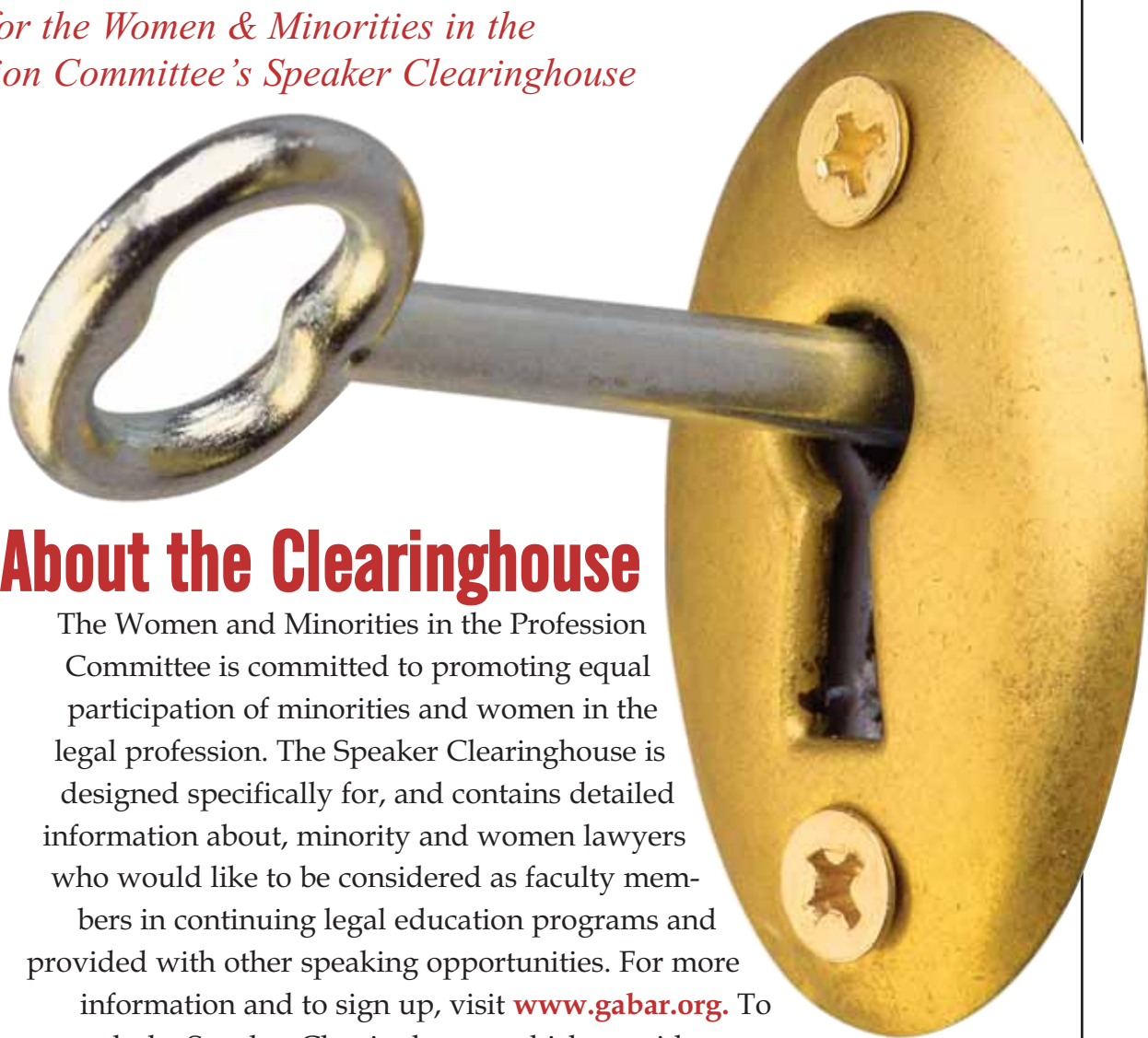
**PLEASE NOTE:** We are in the process of updating the 2008-09 State Bar *Directory and Handbook*. Please update your member information at [www.gabar.org/member\\_essentials/address\\_change/](http://www.gabar.org/member_essentials/address_change/).

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