

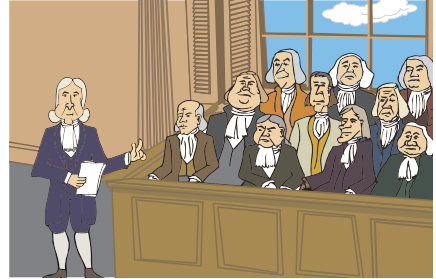
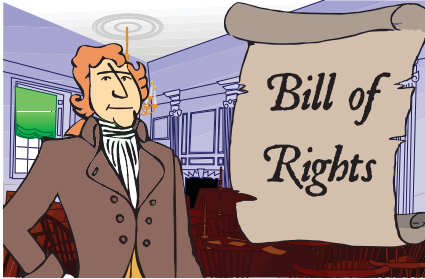


Georgia Bar Journal

October 2008 • Volume 14 • Number 2

Setting the Record Straight:
A Proposal to Save Time and Trees

Trial By Jury: What's the Big Deal?

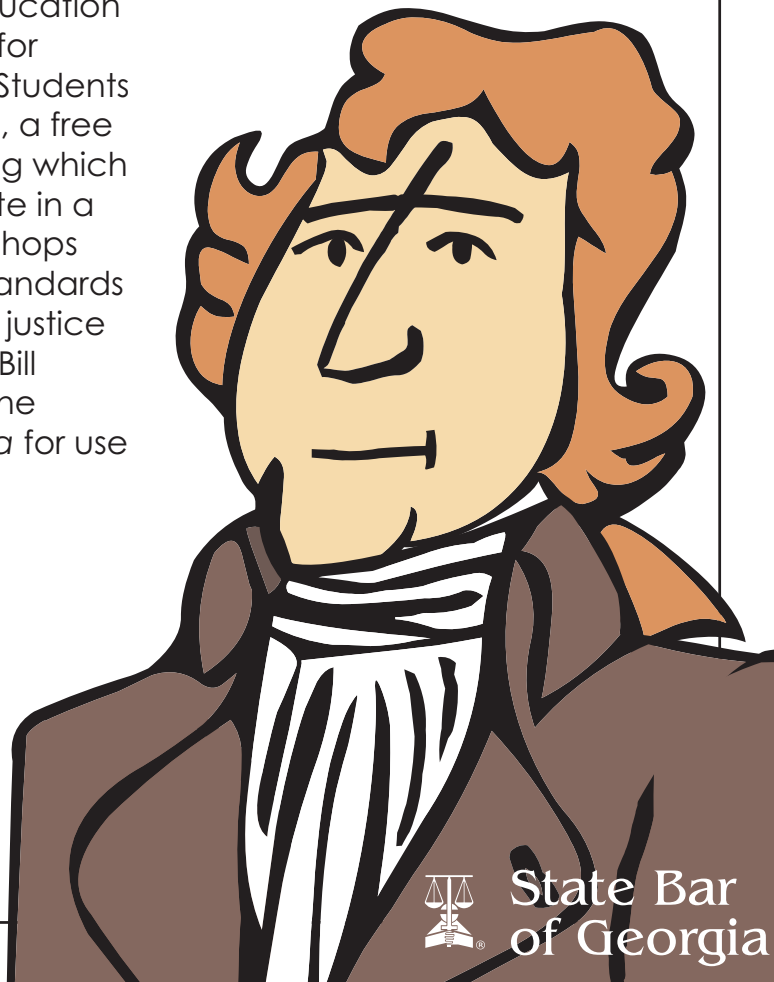


"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics 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/. For a free DVD copy, e-mail stephaniew@gabar.org or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.



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Does CAP assist attorneys as well as consumers?

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

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

What doesn't CAP do?

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

Are CAP calls confidential?

Everything CAP deals with is confidential, except:

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

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

**Call the State Bar's Consumer Assistance Program
at 404-527-8759 or 800-334-6865 or visit www.gabar.org/programs/.**

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State Bar of Georgia

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Law Practice Management Program

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

Consumer Assistance Program

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

Lawyer Assistance Program

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

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

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Manuscript Submissions

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

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

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August *Bar Journal* Arbitration Article

I read with great interest Barry Edwards's article in the August 2008 issue of the *Journal*, "Comprehensive Arbitration of Domestic Relations Cases in Georgia." In that article, the author reflects the impression of the Legislature that the state of Georgia is authorized by law to engage in deciding what can and what cannot be arbitrated. The article even went on to note that the Supreme Court did not decide, nor the legislation address, whether child support can be arbitrated. Let me quote to you from the high(er) Supreme Court:

In enacting § 2 of the federal [Arbitration] Act, Congress declared a national policy favoring arbitration and *withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration*. That Act, resting on Congress' authority under the Commerce Clause, creates a body of federal sub-

stantive law that is applicable in both state and federal courts.

Southland Corp. v. Keating, 465 U.S. 1, 2 (1984) (emphasis added).

Further, the Court stated:

[W]e are mindful of the FAA's purpose "to reverse the longstanding judicial hostility to arbitration agreements"

In light of that purpose . . . we have likewise rejected generalized attacks on arbitration that rest on "suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants."

Greentree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 89-90 (2000).

The fact that the Legislature appears unaware of the federal rule of law, and the fact that the Supreme Court of Georgia has consistently ignored the federal mandate, does not make the federal law less applicable to the issues in the article.

John Longino, MBA/JD

Author's Response

Barry Edwards replies:

Dear Editors,

While I certainly do appreciate a fellow attorney's reading my article on domestic relations arbitration with great interest, I simply disagree with Mr. Longino's assertion that the Federal Arbitration Act preempts Georgia legislation that allows parents to resolve certain domestic relations matters through arbitration as of Jan. 1, 2008.

Under the Federal Arbitration Act, "[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. Therefore, cases that fall under the FAA necessarily involve national or international commerce. For example, the *Southland Corp. v. Keating* case that Mr. Longino cites involved a dispute between a national convenience store franchise and hundreds of its local franchisees. Similarly, the *Greentree v. Randolph* case concerned financial transactions between residents of different states. As the U.S. Supreme Court noted in *Southland Corp.*, the enforceability of the FAA is limited to cases "evidencing a transaction involving commerce."

The FAA and the Commerce Clause *do not* preclude state legislation that imposes no restraint on interstate commerce. State legislatures enjoy the constitutional authority to pass domestic legislation to protect the welfare of their citizens. Domestic relations has traditionally been a matter of state concern. Georgia legislation that authorizes parents to resolve certain domestic relations matters through arbitration presents no obstacle to commerce between the states, maritime or foreign commerce.

Georgia is not the only state where the Legislature and the courts have decided that domestic relations matters can be arbitrated, notwithstanding the exclusive authority that is suggested for Congress. As I noted in my article, state legislatures and courts in North Carolina, Michigan, Texas, Colorado, Missouri, New Hampshire, Pennsylvania, Maryland, New Jersey, Massachusetts, Wisconsin, Indiana, Ohio, Florida, California, Connecticut and New York have "ignored" the FAA and decided that their citizens may arbitrate certain disputes involving children. These state efforts to provide an efficient and fair method for resolving domestic relations matters should continue at the same time that Congress establishes national policies for interstate commerce.

I appreciate the editors providing me an opportunity to address this matter.

Sincerely,
Barry Edwards, Esq.
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by Jeffrey O. Bramlett

Lawyers, Elections and the Right to Vote

In August, I had the privilege of traveling with YLD President Josh Bell and Georgia's Young Lawyer delegation to Austin, Texas, for a joint meeting with the Texas Young Lawyers Association. I commend Josh, his colleagues in YLD leadership and his Texas counterpart, Sylvia Cardona, for their vision and creativity in bringing the future leaders of these two great bars together. I predict that the sparks of inspiration that flew from this meeting will enhance the performance of both bars for years to come.

A highlight of the Texas trip was the opportunity to view an outstanding film created by the Texas Young Lawyers Association, documenting the struggles that have occurred at various junctures in American history over expanding the right to vote. Reflecting on those struggles and the upcoming elections, I'd like to share my thoughts and concerns with you on the essential leadership role of lawyers in American democracy.

Government Of, By and For "the People"
Americans are justly proud of our Constitution and

Bill of Rights. These fundamental governing precepts, drawn "to form a more perfect union," have withstood the test of time for 220 years through a variety of changing and challenging circumstances the Framers could not have imagined. As each American generation has faced its wars, rebellions, territorial expansions, financial catastrophes, waves of immigration, presidential assassinations and scandals and other defining social upheavals, our Constitution and Bill of Rights have provided the necessary architecture to support peaceful and democratic transitions of government in accordance

with the rule of law. To date, as each American generation has attempted to leave a better nation to our progeny than the one we inherited, our Constitution and Bill of Rights have facilitated those aspirations.

Lawyers are justly proud of the role members of our profession have played in designing, defending and, when necessary, amending the Constitution. It comes as no surprise that the majority of

post-Bill of Rights amendments have touched on elections and the right to vote. As our national concept of self-government has evolved, step by step, from an exclusive electorate of propertied white men toward the more inclusive democracy we embrace today, lawyer-leaders have played key roles in each expansion of the franchise.

Lawyer-President Abraham Lincoln framed a fundamental American value when he dedicated the national cemetery at Gettysburg. There, he declared our nation "highly resolve[d] that these dead shall not have died in vain—that this nation, under God, shall have a new

"Bad politicians are [entrusted with the power to govern] by good people who don't vote."—Former U.S. Treasury Secretary William E. Simon

birth of freedom—and that government of the people, by the people, and for the people shall not perish from this earth.”

In the United States, civic participation in “government by the people” is a right and privilege of citizenship. However, participation is optional. As democratic ideals have spread in other places, some societies have taken a different path. Belgium, Argentina, Australia, Venezuela and the Netherlands have all, at some point, enacted laws making voter participation compulsory on pain of fine. From 1945 through 1998, these countries achieved voter turnout rates in national elections north of 70 percent, while, in the United States, our turnout rate over the same half century fell below 50 percent.¹

Consider the current realities of electoral participation in Georgia. According to U.S. Census data, Georgia’s voting-age population exceeds 6.6 million. Of those who are eligible, less than six in 10 are registered. In the 2006 general election, four in 10 persons eligible to vote bothered to cast a ballot.

In Georgia’s general primary elections of July 15, 2008, fewer than 900,000 of us voted. Despite the presence of contested nomination races for U.S. Senate, U.S. House of Representatives, Public Service Commission, numerous state legislative seats and county, municipal and school district officials whose performance most directly impacts the lives of the citizens of Georgia, fewer than one out of seven citizens who were eligible to vote bothered to participate in the process.

Government “by the people” is undermined when, summoned to perform the democratic institution of jury service or faced with the opportunity to select new public officials, half don’t show up. Compulsory voting laws offend my libertarian sensibilities, but the quality of our democracy and the functionality of government are diminished when half the eligible embrace no individual responsibility to discharge the civic duty President Lincoln articulated.

A Leadership Role for Lawyers

The impending elections, we are told by many pundits and all candidates, will be the most important in American history. Like the audience for the boy who cried wolf, we hear that every election cycle. Has cynicism so corroded our faith in self-government that we have lost the ability to discern whether that claim is true? What can lawyers do to address this climate of civic indifference and discouragement that renders some election results government by half the people for some of the people?

We can start by following the example of active civic and political participation modeled for us by the lawyer-framers. Having personally put at risk their lives, fortunes and sacred honor for the right of self-government, is it conceivable that lawyer-patriots Adams, Jefferson or Madison would have neglected to cast an informed vote?

Observation and intuition suggest to me that lawyers are generally conscientious in informing themselves about candidates and issues and exercising their franchise in each election according to their best judgment and conscience. Voting, it seems to me, is only the start.

Lawyers also have an important responsibility to form and to express sound views about candidate elections and the competing policy ideas and issues that shape elections. Legal training and experience have prepared us to conduct the necessary factual analysis. Find me a lawyer who doesn’t relish a meaty political argument.

We should undertake this role with humility, however, acknowledging that no person’s opinion or vote is more valuable than any peer’s. Even when we find ourselves in sharp disagreement about particular candidates or policy choices, we should proceed from the assumption that both sides come at the issue in good faith and give each other’s differences and intentions the benefit of the doubt. In short, we should

model the respectful, civil behavior we would like to see in others and in our civilization as a whole.

Formal legal education, training and experience equip lawyers to do much more than vote and engage in political debate. Our shared skills and experience make us useful community servants in the PTA, in worthy non-profits, on school boards, city councils, county commissions and in the General Assembly.

Traditionally, lawyers have given generously of their time and efforts to engage in each of these forms of public and community service. More recently, the rate of participation has declined. For example, the percentage of lawyer-legislators in Georgia’s General Assembly has fallen below 15 percent. From my conversations with peers in the Southern Conference of Bar Presidents, these trends are not confined to Georgia; in fact, single-digit participation rates in legislatures across our region are commonplace.

Nevertheless, there is cause for optimism. For the past several years, the Young Lawyers Division has conducted a series of Leadership Academies. While these programs focus on preparation for Bar leadership, they consistently provide encouragement to younger lawyers: (1) to explore these public service options and consider offering for elective office; and (2) to support other lawyers for whom public service is a calling. I am confident that these activities will yield a new crop of lawyer-public servants who will reverse the downward trend of lawyer participation in public life and, in the long run, serve the people of Georgia well.

Jeffrey O. Bramlett is the president of the State Bar of Georgia and can be reached at bramlett@bmelaw.com.

Endnote

1. International Institute for Democracy and Electoral Assistance website http://www.idea.int/vt/survey/voter_turnout_pop2-2.cfm.

by Cliff Brashier



Use Speaking Invitations as Opportunities to Educate

With the exception of authors seeking an audience of potential book buyers and politicians wanting free face time with

voters before an election, most of us avoid public speaking invitations like the plague.

It's not that lawyers who are trained to make their cases orally in front of judges and juries suffer from stage fright. Law school pretty much took care of that. Rather, it is the task of preparing a successful presentation for a civic club, student classroom, senior citizens organization or any other group that is often considered a time-consuming burden—just another worry you don't need in a busy law practice.

Yet the requests will continue to come and you won't always have a convenient scheduling conflict. When it

comes to preparing your speech and finding the right words for a particular audience, the State Bar can help save you time and effort, as well as turn that headache into an excellent opportunity to inform members of the public about the legal profession and the justice system.

“When it comes to preparing your speech and finding the right words for a particular audience, the State Bar can help save you time and effort.”

Over the years, under the auspices of the Cornerstones of FreedomSM initiative and other existing programs, the Bar has stockpiled an arsenal of public education resources suitable for presentation to general audiences and others that are tailored for school groups. We have the following audio/visual and written aids that you may use any

time you are called on to speak in your community.

Presentation on CD

A CD is available that includes a sample speech on the American court system and the importance of an independent judiciary, both in narrative and bullet-point form, with accompanying PowerPoint slides. Of course, we encourage you to personalize the speech

with your own experiences or commentary as much as possible.

Juror Education Video

In "Ensuring Fairplay the American Way," U.S. Supreme Court Justices Sandra Day O'Connor and Samuel Alito and Supreme Court of Georgia Chief Justice Leah Ward Sears speak personally about the place of jury service in American democracy. Three former Georgia jurors also share their experiences. There is an 18-minute version as well as a six-minute version, depending on the length of your presentation.

Civics Presentation

"Trial By Jury: What's the Big Deal?" is an 18-minute, animated video directed primarily toward high school civics classes to increase court literacy among young people. It fulfills four specific requirements of the Social Studies, Civics and Government performance standards for Georgia schools.

Television Public Service Announcements

You might want to present and discuss our current series of 30-second television commercials that spotlight lawyers' and judges' roles in defending the Constitution and the Bill of Rights, enforcing the

rule of law and seeing that juries are impartial.


Mock Trials

Our Law-Related Education (LRE) program has developed a series of mock trial scripts, customized for role-playing use with elementary, middle and high school students to lead them through the trial process in both civil and criminal courts. Contact Deborah Craytor at 404-527-8785 or deborahcc@gabar.org to obtain these scripts or for more information about the LRE program.

For any or all of the other presentation tools—including the CD containing the speech and PowerPoint, the juror education video, the civics presentation or TV commercials—contact the State Bar Communications Department at 404-527-8792 and they will be happy to send you any of these public education resources to save you valuable time and enhance your next speaking engagement.

After you see these tools and how effective they are, I hope you will consider volunteering for speaking opportunities. Whether your audience is a group of business leaders, a civic group, a church group, a school class or even an individual client, you will make a positive difference. Your advocacy for our system of justice will be a great service to our profession and very much appreciated.

On a different note, we have received a number of nice calls from members regarding the dues credit that was given on the 2008-09 dues statement. Due to favorable financial results over several years, our annual expenses and required reserves were met and we were left with a surplus. The credit was simply a return of that money to members. In addition to State Bar Treasurer Lester Tate of Cartersville, and four other elected officers, there are five groups of volunteer lawyers that oversee the State Bar's finances. They are the Finance, Personnel, Program and Executive Committees, plus our 150-member Board of Governors. They deserve our appreciation for their hard work and for the State Bar's favorable financial performance. If you have questions or comments about the financial health of the Bar, feel free to contact either Lester Tate or me and we would be happy to speak with you.

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

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



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by Joshua C. Bell

There is No Tomorrow...

On Aug. 23, my good friends lost their son. I wish I could tell you that it was expected; it wasn't. With all the rain that Hurricane

problems. Lost, confused and helpless are not feelings I enjoy. I felt those on Aug. 23 and I hated it. There is nothing I can do to make everything better for the Crutchfields. All I can do is try to make the future better.

Fay produced, he along with another boy were curious as to all the water running into the drainage ditch near his house. He fell in and drowned. The irony is that Mac Crutchfield was an excellent swimmer.

Mac woke at 4 a.m. nearly every morning for his parents to shuttle him 30 miles each way so he could train to be the best swimmer he could possibly be. He had college coaches already calling on him to look at their swim program. Now he's gone.

There are not many times that I feel helpless. As a lawyer I am empowered with the knowledge, skill and opportunity to help people with most of their

"There are not many times that I feel helpless. As a lawyer I am empowered with the knowledge, skill and opportunity to help people with most of their problems."

Their loss, my loss, made me think of all the people I have turned away from help I could give. It makes me ashamed. I have turned my back on so many. So many who feel as I did when I heard the news of this loss: Helpless. Can I go back in time? No. Can I help those people now? Probably not. Can I do something about the future? Yes.

We have so many of our citizens who have no access to courts. I have heard the

argument, "people can represent themselves, it is their constitutional right." True, yet I have nine years of higher education and 10 years experience and I still need help navigating my way through our justice system.


The legal profession does so much to help people who need legal representation. I say we can do more. Someone told me a couple of weeks ago they were tired

of being asked for money from Georgia Legal Services. I simply responded with the question "when was the last time you offered to help by taking a case pro bono?" Come to find out, this lawyer had never taken a case for Georgia Legal Services. If the 40,000 plus lawyers in the state of Georgia took one case a year for Georgia Legal Services they wouldn't need to ask for any more money.

As you read this article I ask you, as a *lawyer*, to take a look in the mirror. Help someone who is helpless. Help someone who needs your help. As you read this article I ask you, as a *person*, to take a look in the mirror. Help someone who is helpless. Help someone who needs your help.

Each and every day lawyers are empowered to change a life, to right a wrong and to bring justice to an unjust situation. Don't wake up tomorrow, 10 years or even 50 years from now wishing you had done more.

Through my service to the Bar, I have encountered many lawyers across the state of Georgia and beyond. Many of these lawyers are happy with their job; happy with what they do everyday. There are many lawyers who are not happy. Some of them wish they weren't practicing law at all. As hard as it sounds for those of you who are unhappy, I urge you to make the change. Make the change for yourself. Just as important, make the change for the world around you. Your gifts as a person, which ALL of us have, lie elsewhere. Don't wait, because for some there is no tomorrow.

Be a better lawyer tomorrow than you were today. Be a better person tomorrow than you were today. 

This article is dedicated to the memory of Thomas McLane "Mac" Crutchfield.... June 24, 1996 - August 23, 2008.

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.

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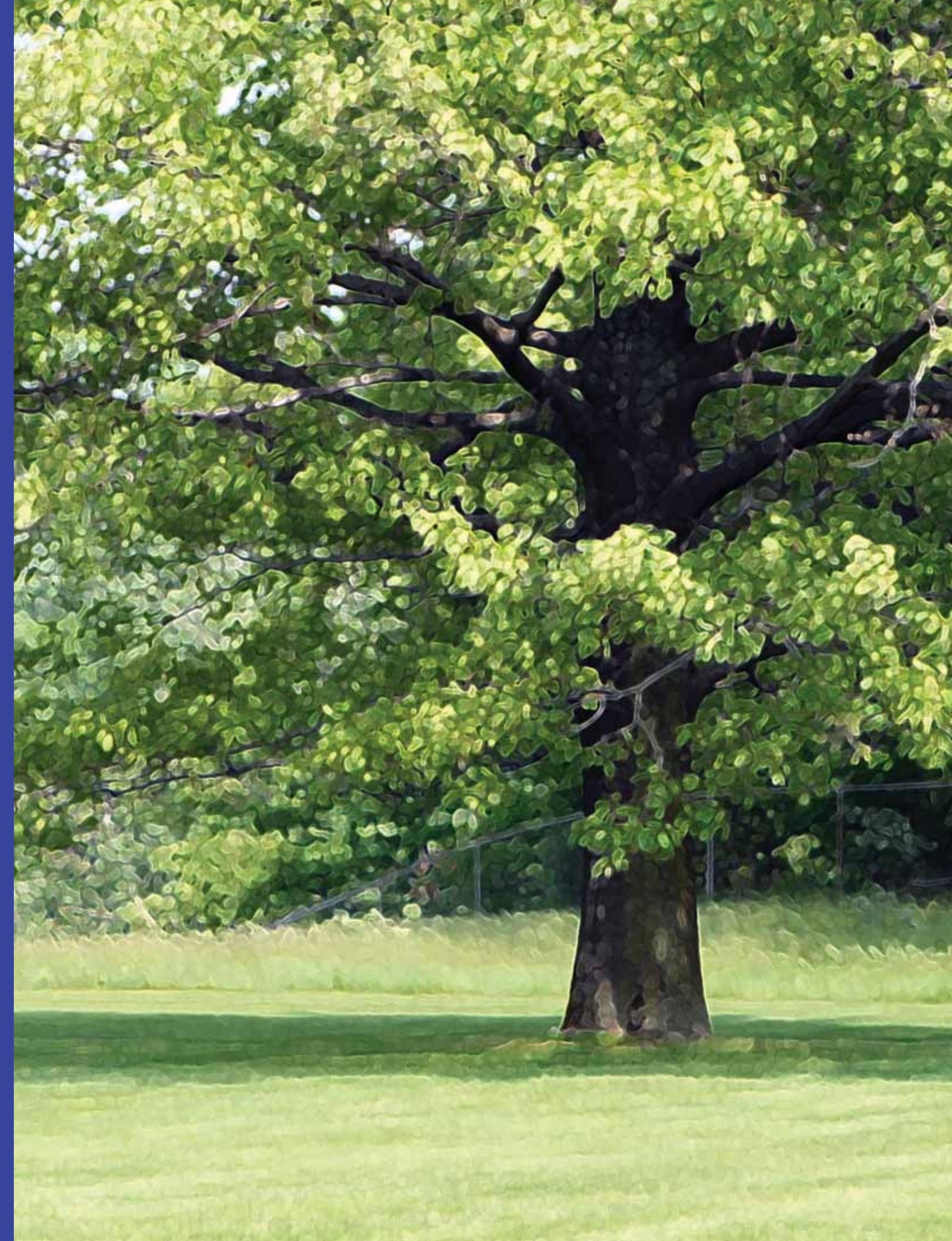
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Setting the Record Straight:

A Proposal to Save Time and Trees

by Jeffrey J. Swart

In the Georgia appellate system, the transmittal of the record to the appellate court is the key event that sets the appellate process in motion. Indeed, the appellate process does not even *start* in any meaningful sense until this happens. All important deadlines in the appellate system run from the date that an appeal is “docketed” in the appellate court.¹ An appeal is not “docketed” in the Court of Appeals of Georgia, however, until the record has been filed in the clerk’s office.²

Although this may sound like a ministerial event of no real difficulty, Georgia appellate practitioners know otherwise. Particularly in the metropolitan Atlanta area, many months—sometimes well over a year—can lapse between the filing of a notice of appeal and the transmittal of the record to the appellate court. The resulting delay is frequently difficult for clients to understand, and it should be. If there is anything to the old saying that “justice delayed is justice denied,” then it is a fair question whether Georgia can improve upon a system that commonly adds months to the disposition of an appeal.

The short answer to this question is “yes.” There are viable alternatives to the current system that are worthy of exploration. The built-in delay that burdens the appellate process is principally the result of the statutory requirement that the trial court clerk’s office transmit a *copy* of the record to the appellate court.³ Given the large records in modern commercial and criminal cases, and in view of the very substantial risks associated with designating less than the entire record for the appeal,⁴ this requirement creates a great deal of work for the photocopy machines and clerical staff in Georgia trial court clerks’ offices. It is hardly

surprising that all of this photocopying is a time-consuming process. Fortunately, there are proven alternatives to wasting all this paper and time.

First, there is the alternative of having appeals on the original record. This system seems to work reasonably well in the U.S. Court of Appeals for the 11th Circuit and in 32 states. Second, there is the alternative of having appeals on a record prepared jointly by counsel. Third, while perhaps more ambitious, there is the alternative of implementing an electronic filing system in Georgia trial courts, so that the use of paper is minimized throughout the entire system. Finally, there are multiple combinations and variations of these alternatives that have been tried successfully in other court systems. Given the volume of litigation that will always be present in a state that is a hub of important commercial activity and the importance of an efficient judicial system in maintaining Georgia as such a hub of commerce, the time has come to consider implementing one or more of these alternatives in Georgia.

The Current Ground Rules and the Resulting Problem

In Georgia, the procedure for transmitting the record to the appellate court is controlled by statute.⁵ Specifically, O.C.G.A. § 5-6-43(a) provides, in relevant part:

Within five days after the date of the filing of the transcript of evidence and proceedings by the appellant or appellee, as the case may be, it shall be the duty of the clerk of the trial court to prepare a complete *copy* of the entire record of the case, omitting only those things designated for omission by the appellant and which were not designated for inclusion by the appellee, together with a copy of the notice of appeal and copy of any notice of

cross appeal, with date of filing thereon, and transmit the same, together with the transcript of evidence and proceedings, to the appellate court. . . . If for any reason the clerk is unable to transmit the record and transcript within the time required in this subsection or when an extension of time was obtained under Code Section 5-6-39, he shall state in his certificate the cause of the delay and the appeal shall not be dismissed.⁶

Unfortunately, the statute's five-day deadline for copying is honored mainly in the breach, if it is ever honored at all. Indeed, it is not unusual to hear stories of records that take many months—or even over a year—to be copied. During this time, *no* progress is being made toward the resolution of the appeal, and the clock has not even begun ticking on the constitutional “two term” deadline for disposing of the case.⁷ Moreover, because the statutory duty falls on the trial court clerk, there is room for doubt as to whether parties who could afford the expense of employing a professional copy service to assist the clerk in making the copies may be permitted to do so.⁸ Accordingly, under the current system, Georgia appellate lawyers are simply obliged to advise their clients that the *initiation* of the appellate process could take several months and that until the record is transmitted to the appellate court, it is impossible to predict with any degree of accuracy when the appeal will be decided. This is not a very satisfactory state of affairs.

In addition to the delay that it builds into every appeal, the requirement that the appellate record be based on photocopies creates additional burdens for the parties and their counsel. Perhaps most notably, the Rules of the Court of Appeals of Georgia require that “[r]ecord and transcript citations shall be to the volume or part of the record or transcript and the page numbers that appear on the appel-

late record or transcript *as sent from the trial court*.”⁹ Similarly, the Rules of the Supreme Court of Georgia provide that “references to the record (R-) and transcript (T-) are essential.”¹⁰ As a practical matter, and even though the original record still on file in the trial court should in theory be identical to what has been sent to the appellate court,¹¹ this means that appellate lawyers from all over the state have no realistic choice but to travel to Atlanta to ensure that the citations in an appellate brief are to the proper volume and page numbers of the record as it actually appears in the clerk's office of the Court of Appeals or the Supreme Court.¹²

Finally, there are environmental consequences associated with the routine photocopying of massive trial court records—essentially doubling the number of pages that no one will want after the appeal is resolved and that must then be disposed of or recycled.

Surely, there must be a better way.

Alternatives to the Current System

Although in theory, the delay associated with copying large records could be reduced by designating in the notice of appeal only those portions of the record that will actually be central to resolving the appeal, experience shows that this is not a solution that works in actual practice. The reason is simple. Parties (and by extension, their counsel) act at their peril when they fail to designate less than the entirety of the record, including all transcripts, as the record on appeal. At the outset of an appeal, it is hazardous to guess what portions of the record ultimately will be relevant to the issues on appeal. Accordingly, and in light of the number of reported Georgia decisions taking attorneys to task for failure to ensure that the entire record necessary for an informed decision was transmitted to the Court of Appeals,¹³ designation of the entire record is a commonplace

practice that seems unlikely to change under the current system.¹⁴

Fortunately, there *are* proven alternatives that seem worthy of further exploration in Georgia.

First, there is the alternative of basing appeals on the original record. This is the norm in the federal system, including the 11th Circuit, as outlined in 11th Circuit Rule 11-2:

The clerk of the district court is responsible for determining when the record on appeal is complete for purposes of the appeal. Upon completion of the record the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers Upon notification from this court that the brief of the appellee has been filed, the clerk of the district court shall forthwith transmit the complete original record. When a document in the record was


electronically filed, and a corresponding original paper document was not filed, the clerk of the district court shall include a paper copy of the electronic document in the record¹⁵

In addition to the federal courts of appeals, preliminary research indicates that no fewer than 32 states rely on a system that bases appeals on the original trial court record (or a designated subset thereof).¹⁶ In addition to the great reduction in delay, transmission of the original record reduces the chance that something important will be miscopied or omitted by the trial court. Errors of this sort, though certainly understandable, consume the time of the parties and the appellate courts with motions to supplement the record with missing materials. Moreover, for a limited class of cases (habeas corpus appeals after criminal convictions), the Supreme Court of Georgia already requires transmit-

tal of the original trial court record.¹⁷ Accordingly, moving to such a system in Georgia hardly seems radical.¹⁸

Second, there is the alternative of having appeals based on a record prepared jointly by counsel, with primary responsibility falling on the appellant. This is the system that generally seems to be in place in New York.¹⁹ Of course, this alternative raises the potential for questions (and perhaps ancillary motion practice) concerning whether the materials submitted by counsel are true and correct, or were part of the record in the trial court.

Third, there is the alternative of implementing an electronic filing system in Georgia trial courts, so that the use of paper is minimized throughout the entire system. As with the option of basing appeals on the original record, Georgia need look no further than the 11th Circuit for a roadmap for implementing such a system. Admittedly, the up-front costs of initiat-



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ing such a system could be considerable, but over the long run, those costs may be justified by the efficiencies that they would generate through the reduction of photocopy costs and clerical staff time. Given the number of courts moving toward electronic filing and the rate at which our society is replacing paper with electronic data, it is only a matter of when Georgia's state courts will adopt such a system.

Finally, there is the option of combining components of the above alternatives. For example, rules could be implemented requiring the parties to assemble a joint appendix designed to collect the documents that seem most relevant to deciding the appeal, but *without* putting the parties and their counsel at grave risk for inadvertent omissions. New Jersey employs just such a system. In New Jersey, the record on appeal is *defined* to be the entire trial court record (thus eliminating the *in terrorem* effect of a rule that harshly punishes underdesignation), but the parties are required to prepare an appendix including such parts of the record that are anticipated to be "essential to the proper consideration of the issues" on appeal:

Contents of Record. The record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court. The portions of the record that must be included in the appendix filed by appellant are set forth in Rule 2:6-1(a).²⁰

....

The appendix prepared by the appellant or jointly by the appellant and the respondent shall contain [in addition to assorted enumerated items] such other parts of the record

... as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised.²¹

In the event that the jointly prepared appendix ultimately proves to be inadequate for the appeal, a new appendix may be ordered by the court.²² Alternatively, the court or the parties may request that the needed portions of the original record be delivered to the appellate court:

Use of Record by Court. On the request of a party or of a judge of the appellate court, the clerk of the court or courts below or the agency from which the appeal is taken shall deliver to the clerk of the appellate court for use by counsel at the argument or for the personal inspection by the judges thereof such portions of the record as may be designated.²³


Without doubt, creative minds could pull together the most attractive features of the record designation and transmittal systems in place in other jurisdictions, but the point is this: the record transmittal system currently in place in Georgia is inconsistent with the system in place in most of the other states and in the federal courts. Proven alternatives exist and are readily available for further study. Given that the current system of extensive photocopying by trial court clerks causes unnecessary delay and is environmentally questionable, the time has come for Georgia to take a serious look at implementing some kind of alternative.

Necessity of Legislative Action and Involvement of the Bar

If a change is to be made to the record transmittal system in this

state, it is important that the Bar and the General Assembly be involved in that change. As noted earlier, the current system is mandated by statute, meaning that to the extent that the system is problematic, a legislative fix is required.

Equally important, members of the Bar should not expect the luxury of relying entirely on non-lawyer members of the General Assembly to press for the legislative action necessary to bring about reform of the current system. The brunt of the inefficiencies, delays and burdens of the current methodology falls on the participants in the system, and in the absence of pressure by the practicing bar, most members of the General Assembly have no particular reason to focus on this problem—a problem that seems incalculably mundane unless and until you have a client who experiences it firsthand.

Instead, if there is to be a serious effort toward ridding the Georgia appellate system of the delay and inefficiency caused by needless photocopying of extensive trial court records, that effort will have to be organized and led by members of the State Bar of Georgia, with appropriate involvement by and support from members of the Georgia appellate judiciary. Although it is only human nature to tend to continue with a familiar system, however inefficient, there comes a time when the burdens of familiarity become too great. For the record transmittal system in Georgia, that time has arrived. 



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appellate practice. He served as chief editor of the most recent edition of the *Georgia Appellate Practice Handbook* (ICLE, 6th ed. 2007). He may be reached at 404-881-7569 or jeff.swart@alston.com.

Appendix 1

Survey of Record Transmittal Methodologies

Note: This table was prepared solely for the limited purpose of identifying which states appear to rely on systems that base appeals on the original record or designated subsets thereof (as opposed to photocopies of all or some of the record). Due to its limited purpose, the table does not capture the nuances that govern the record transmission procedures for each of the jurisdictions that it includes. Additionally, although considerable effort has been made to ensure the accuracy of the table, it is possible that the table may be inaccurate in certain respects. Accordingly, this table should not be relied upon by a practitioner seeking to pursue or defend an appeal, particularly an appeal outside the State of Georgia.

State	Court	Appeal on Original Record	Appeal on Copy of Record of "Settled" Record	Authority	Notes
Alabama	Ct. of Civil Appeals		X	Rules of Appellate Procedure, Rules 10 & 11	Parties designate relevant portions; trial clerk assembles and copies record.
Alaska	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 210	Electronic record.
Arizona	Ct. of Appeals		X	Rules of Civil Appellate Procedure, Rule 11	Copies of portions of record submitted on request of appellate court or parties; certified copy of transcript.
Arkansas	Ct. of Appeals		X	Rules of Appellate Procedure - Civil, Rule 7	Parties designate portions of record; copies of portions of record are certified by clerk and transmitted by appellant.
California	Ct. of Appeal	X		Appellate Rules, Rule 8.150	Original record to reviewing court and copy to appellant.
Colorado	Ct. of Appeals	X		Appellate Rules, Rule 10	Electronic or original record submitted after being certified by clerk.
Connecticut	Appellate Ct.		X	Rules of Appellate Procedure, Sec. 68-1	Appellate clerk prepares excerpted record and makes copies.
D.C.	Ct. of Appeals	X		Rules of the Court of Appeals, Rule 10	Record = original trial court papers; parties designate portions of record for use on appeal.
Deleware	Supreme Ct.	X		Rules of the Supreme Court, Rule 9	Original record sent to appellate court.
Florida	Dist. Ct. of Appeal	X		Rules of Appellate Procedure, Rule 9.200	Most of original record transmitted to court; parties can designate additional portions.
Georgia	Ct. of Appeals		X	Rules of the Court of Appeals, Rule 17	Copies prepared by trial clerk.

State	Court	Appeal on Original Record	Appeal on Copy of Record of "Settled" Record	Authority	Notes
Hawaii	Intermediate Ct. of Appeals	X		Rules of Appellate Procedure, Rule 11	Original or electronic record submitted within 60 days.
Idaho	Ct. of Appeals		X	Appellate Rules, Rule 27	5 copies must be prepared within 42 days or 21 days if no transcript is requested.
Illinois	Appellate Ct.	X		Civil Appeals Rules, Rule 321	Original record on appeal.
Indiana	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 12	Trial court clerk retains the record throughout the appeal; parties may request copies.
Iowa	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 6.10	Original record on appeal.
Kansas	Ct. of Appeals	X		Supreme Court Rules, Rules 3.02, 3.07, 3.08	Parties may request copies.
Kentucky	Ct. of Appeals	X		Rules of Civil Procedure, Rule 75.07	Original record on appeal.
Louisiana	Ct. of Appeal		X	Uniform Rules, Cts. of Appeal, Rule 2-1	2 copies.
Maine	Supreme Judicial Ct.	X		Rules of Appellate Procedure, Rule 6	Most of original record sent to court of appeals within 21 days; additional portions may be designated by parties within 7 days of notice of appeal.
Maryland	Ct. of Appeals; Ct. of Special Appeals	X		Maryland Rules, Rule 8-413	Original record on appeal unless trial court orders record to be retained pending appeal.
Massachusetts	Appeals Ct.	X		Rules of Appellate Procedure, Rule 8	Original record on appeal.
Michigan	Ct. of Appeals	X		Appellate Rules, Rule 7.210	Original record on appeal.
Minnesota	Ct. of Appeals	X		Rules of Civil Appellate Procedure, Rule 110.01	Original record on appeal.
Mississippi	Ct. of Appeals		X	Rules of Appellate Procedure, Rules 10, 11 & 12	Parties designate relevant portions of record, which are copied by clerk and transmitted to court.
Missouri	Ct. of Appeals		X	Supreme Court Rules, Rule 81.12	Parties order certified copies of relevant portions of record as needed for appeal.

State	Court	Appeal on Original Record	Appeal on Copy of Record of "Settled" Record	Authority	Notes
Montana	Supreme Ct.	X		Rules of Appellate Procedure, Rule 8	Original record on appeal; parties request relevant portions to be transmitted to court of appeals.
Nebraska	Ct. of Appeals		X	Rules of the Supreme Court/Court of Appeals, Rule 4	Parties designate relevant portions of record to be copied by clerk.
Nevada	Supreme Ct.		X	Rules of Appellate Procedure, Rule 10	Parties prepare appendix of relevant portions of record to submit with briefs; court requests original papers from trial court as it deems necessary.
New Hampshire	Supreme Ct.	X		Rules of the Supreme Court, Rule 13	Original record retained in trial court; parties prepare appendix of relevant portions with briefs; parties can file motion with court to request original papers from the trial court.
New Jersey	Appellate Div. of Superior Ct.	X		Court Rules, Rule 2:5-4	Trial court clerk retains the record throughout appeal unless requested by the parties or the appellate judge.
New Mexico	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 12-209	Original record sent by trial court clerk; any missing portions can be requested by parties if relevant.
New York	Appellate Div. of Supreme Court		X	Civil Practice Law & Rules, Rule 5526	Four Appellate Divisions and the Court of Appeals also have local rules; parties generally copy relevant portions of record for appendix to brief.
North Carolina	Ct. of Appeals		X	Rules of Appellate Procedure, Rule 9	Certain portions of record are copied for appeals as specified in the appellate rules.
North Dakota	Supreme Ct.	X		Rules of Appellate Procedure, Rule 10	Original record on appeal.
Ohio	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 9	Original record on appeal.

State	Court	Appeal on Original Record	Appeal on Copy of Record of "Settled" Record	Authority	Notes
Oklahoma	Ct. of Civ. Appeals	X		Supreme Court Rule 1.33	Record on appeal consists only of the portions designated by the parties; appeal is taken on original documents as designated.
Oregon	Ct. of Appeals	X		Rules of Appellate Procedure, Rule 3.05	Record on appeal consists of original trial court file, exhibits and the portions of oral proceedings designated by the parties.
Pennsylvania	Superior Ct. & Commonwealth Ct.	X		Rules of Appellate Procedure, Rule 1921	Original record on appeal.
Rhode Island	Supreme Ct.	X		Supreme Ct. Rules, Art. 1, Rule 10	Original record on appeal.
South Carolina	Ct. of Appeals		X	Rules of Appellate Practice, Rules 209 & 210	Appellant prepares record on appeal, which consists of all documents, exhibits, etc. designated by any party, and submits same within 30 days of filing last brief. 15 copies required.
South Dakota	Supreme Ct.	X		Rules of Civil Appellate Procedure, § 15-26A-47	Original record on appeal.
Tennessee	Ct. of Appeals		X	Rules of Appellate Procedure, Rules 24 & 25	Record on appeal consists of: copies of all papers filed in trial court; the originals of any exhibits filed in trial court; transcripts; any other matter designated by parties. Certain other papers excluded.
Texas	Ct. of Appeals		X	Rules of Appellate Procedure, Rule 34.5	Record on appeal consists of copies of certain portions identified by Rule as prepared by trial clerk; additional portions may be designated by parties.
Utah	Ct. of Appeals	X	X	Rules of Appellate Procedure, Rule 11	Original or a copy of the record may be submitted by the trial clerk.
Vermont	Supreme Ct.	X		Rules of Appellate Procedure, Rule 10	Original record on appeal.

State	Court	Appeal on Original Record	Appeal on Copy of Record of "Settled" Record	Authority	Notes
Virginia	Supreme Ct.	X		Rules of the Supreme Ct., Rule 5:10	Court Rule identifies certain portions of original record for use on appeal; parties can request additional portions to be included by motion in trial court.
Washington	Ct. of Appeals		X	Rules of Appellate Procedure, Rules 9.1 & 9.6	Parties designate relevant portions, which are copied for record on appeal. For appeals from courts of limited jurisdiction, however, the record may be the original or copy (see Rule 6.1 or Rules for Courts of Limited Jurisdiction).
West Virginia	Supreme Ct. of Appeals		X	Rules of Appellate Procedure, Rule 9	Trial clerk prepares record based on designations of parties; appellant can copy certified record or send it to appellate court to be copied by appellate clerk.
Wisconsin	Ct. of Appeals	X		Rules of Appellate Procedure, § 809.15	Original record consists of portions identified by rule; parties can seek supplementation; trial court clerk can request permission to submit copies.
Wyoming	Supreme Ct.	X		Rules of Appellate Procedure, Rule 3.01	Record on appeal is original record; relevant portions designated by parties are transmitted to court.

Endnotes

1. See, e.g., GA. CONST. art. VI, § IX, ¶ II (requiring the appellate court to "dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term"); GA. CT. APP. R. 23(a) ("Appellant's brief . . . shall be filed within 20 days after the appeal is docketed.").
2. GA. CT. APP. R. 11(a) ("No appeal shall be docketed until the notice of appeal and a record, and transcript, if requested, are filed in the Clerk's office.").
3. O.C.G.A. § 5-6-43(a) (1982 & Supp. 2007).
4. See, e.g., *Hensley v. Young*, 273 Ga. App. 687, 688, 615 S.E.2d 771, 772 (2005) ("It is the primary responsibility of the appropriate parties and not this court to ensure that *all documents relevant to the disposition of an appeal* be duly filed with the clerk of this court prior to the issuance of our appellate decision.") (emphasis added) (quoting *Williams v. Food Lion, Inc.*, 213 Ga. App. 865, 867, 446 S.E.2d 221, 224 (1994)). Given the presumption of regularity of all proceedings in Georgia courts of competent jurisdiction, the failure to include all the materials necessary for the court to evaluate the issues on appeal can result in an automatic affirmance, particularly with respect to issues that require evaluation of sufficiency of the evidence. See, e.g., *Price v. Price*, 281 Ga. 126, 127, 636 S.E.2d 546, 547 (2006) ("[W]ithout a transcript, this Court must assume that the evidence adduced below was sufficient to support the probate court's findings. . . . On appeal, [the appellant] bears the burden of showing error by the record."); *Sterling, Winchester & Long, LLC v. Loyd*, 280 Ga. App. 416, 419, 634 S.E.2d 188, 190 (2006) ("An appellant

- who alleges error in the trial proceedings has the burden of producing a transcript of the allegedly erroneous matter.”) (citation and internal quotation marks omitted); *But see* *Boats for Sail, Inc. v. Sears*, 158 Ga. App. 74, 74, 279 S.E.2d 314, 315 (1981) (reversing the trial court’s grant of summary judgment despite the appellee’s contention that materials omitted by the appellant from the record on appeal supported the decision of the trial court). On the tensions inherent in determining whether all or only part of the record should be designated on appeal, compare *Drummond v. Gladson*, 219 Ga. App. 521, 523, 465 S.E.2d 687, 688-89 (1995) (majority opinion) (characterizing as a “disturbing position” the notion that “the judges of this court are too busy to read the whole transcript of the trial; [and] that there is therefore no need to file the whole transcript” and opining that “a determination of whether an error was harmful simply cannot be made without a review of all the evidence presented at trial”) with *id.* at 524, 465 S.E.2d at 689-90 (Beasley, C.J., specially concurring) (“I do not agree . . . that plaintiffs as appellants were required to submit the entire transcript of the four-day trial. It was not necessary for our review of their sole enumeration of error. Plaintiffs should not be faulted for exercising efficiency and care in reducing the costs of appeal.”).
5. For a more complete discussion of the rules and procedures associated with completion of the transcript and the record, see *GEORGIA APPELLATE PRACTICE HANDBOOK*, ch. 4: *Commencing the Appeal: Notice of Appeal, Transcript, and Record* (Paul J. Kaplan & Jeffrey J. Swart eds., 6th ed. 2007).
 6. O.C.G.A. § 5-6-43(a) (1982 & Supp. 2007) (emphasis added).
 7. See GA. CONST. art. VI, § IX, ¶ II (requiring the appellate courts to “dispose of every case at the term for which it is entered on the court’s docket for hearing or at the next term”).
 8. The author has been advised of at least one instance in which such an offer was made to a trial court clerk’s office and refused on the

- grounds that such assistance might be viewed as improper. By analogy, the rules of the Georgia Supreme Court concerning transmittal of the record arguably provide additional support for this viewpoint. See GA. SUP. CT. R. 67 (“Transmittal [of the record] by a party or attorney is prohibited.”).
9. GA. CT. APP. R. 25(a)(1) (emphasis added).
 10. GA. SUP. CT. R. 19 n.1.
 11. See *Law v. Smith*, 226 Ga. 298, 300, 174 S.E.2d 893, 895 (1970) (observing that the requirement that transcripts be filed with the trial court exists, in part, “to afford local counsel in the county where the case was tried convenient access to the exact duplicate copy of the record so as to enable him to easily ascertain the proper references to be included in his brief”).
 12. See *GEORGIA APPELLATE PRACTICE HANDBOOK*, ch. 15: *Professionalism and Appellate Practice* 213 (Paul J. Kaplan & Jeffrey J. Swart eds., 6th ed. 2007) (observing that appellate practitioners may “have to travel to the appellate court to ensure that the record arrived intact”).
 13. See *supra* note 4.
 14. Ironically, the practice of designating the entire record is not entirely without risk, as the appellate courts have occasionally complained when appellants designate more than the pertinent portions of the record. See, e.g., *Edwards v. United Stone & Allied Prods. Workers of Am.*, 220 Ga. 183, 189, 132 S.E.2d 632, 636 (1964) (reversing the judgment below, but awarding costs against the appellant for designating too much record). There appear to be no recent cases making this point, however, and because underdesignation can be fatal to an entire appeal, a theoretical risk of paying costs due to overdesignation seems unlikely to dissuade many attorneys from continuing to designate the entirety of the record.
 15. 11th Cir. R. 11-2.
 16. See Appendix 1 — Survey of Record Transmittal Methodologies. Perhaps not coincidentally, it appears that the states that contain most of the major metropolitan hubs of the nation’s economic activity rely on a system that makes use of the original trial

- court record. Although there are exceptions to this pattern (perhaps most notably, Georgia and Texas), it bears observation that this group of states includes California, Florida, Illinois and New Jersey, among others. Additionally, as discussed below, New York has established a system that avoids the routine photocopying of all of the original record, instead relying on counsel (not the trial court clerks’ offices) to assemble the portions of the record relevant to the issues on appeal.
17. GA. SUP. CT. R. 67 (“In habeas corpus appeals after criminal convictions, the original record in its entirety shall be certified and transmitted.”).
 18. Of course, a system relying on the original record would carry its own risks, such as the risk that portions of the original record could become misplaced while in the possession of the appellate court. The number of states relying on such a system suggests, however, that such risks are manageable.
 19. See, e.g., *Gaffney v. Gaffney*, 815 N.Y.S.2d 259, 259-60 (App. Div. 2006) (“It is the obligation of the appellant to assemble a proper record on appeal. An appellant’s record on appeal must contain all of the relevant papers before the [trial court] . . .”).
 20. N.J. R. APP. PRAC. 2:5-4(a).
 21. *Id.* 2:6-1.
 22. See *id.* 2:6-9.
 23. *Id.* 2:5-4(d).

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Ten Insights Into Georgia's Doctrine of Forum Non Conveniens

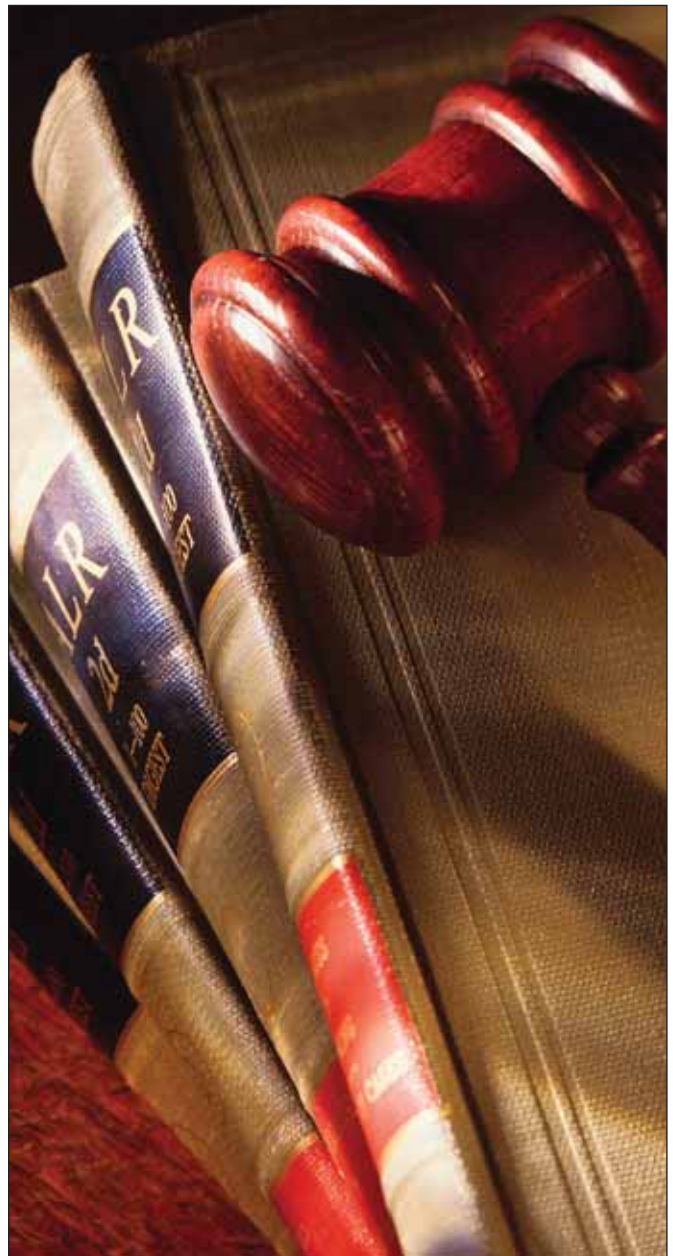
by Joseph G. Mitchell

Forum non conveniens refers to the power of a court to decline jurisdiction because the convenience of the parties and ultimate justice are better served in an alternative forum.¹ Georgia's forum non conveniens statute, O.C.G.A. § 9-10-31.1, became effective on Feb. 16, 2005. Since that time, there have been decisions in several cases that shed light on the statute's construction and application. This article provides 10 insights into the interpretation of the forum non conveniens doctrine by courts in Georgia.

O.C.G.A. § 9-10-31.1(a) Has Been Held Constitutional

O.C.G.A. § 9-10-31.1(a), states, in part, as follows:

If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state, the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. As to a claim or action that would be more properly heard in a forum outside this state, the court shall dismiss the claim or action. As to a claim or action that would be more properly heard in a different county of proper venue within this state, the venue shall be transferred to the appropriate county.²



O.C.G.A. § 9-10-31.1(a) was one of a number of tort reform statutes passed by Georgia's General Assembly in 2005,³ and as was the case with many of these statutes, its constitutionality was challenged. Specifically, in *EHCA Cartersville, LLC v. Turner*,⁴ the Supreme Court of Georgia examined the constitutionality of O.C.G.A. § 9-10-31.1(a) and a separate venue transfer statute, O.C.G.A. § 9-10-31(c). O.C.G.A. § 9-10-31(c) provided that in medical malpractice actions "a nonresident defendant may require that the case be transferred to a county of that defendant's residence if the tortious act upon which the medical malpractice claim is based occurred in the county of that defendant's residence."⁵ The Supreme Court of Georgia held that O.C.G.A. § 9-10-31.1(a) was constitutional because it "vests the power to change venue in the court," but that O.C.G.A. § 9-10-31(c) was unconstitutional because it vests this same power in a defendant, and thus violated the joint tortfeasor venue provision of the Georgia Constitution.⁶

O.C.G.A. § 9-10-31.1(a) Applies Retroactively

O.C.G.A. § 9-10-31.1(a) became effective on Feb. 16, 2005.⁷ In *Kennestone Hospital, Inc. v. Lamb*,⁸ the Court of Appeals of Georgia held that the forum non conveniens statute should be applied retroactively to a civil case that was pending prior to the statute's effective date. In making this ruling, the Court of Appeals cited *EHCA Cartersville, LLC v. Turner*, in which the Supreme Court of Georgia held that the forum non conveniens statute is procedural and not substantive law because it is a statute that affects where an action may be tried.⁹

Seven Factors to Consider in the Application of the Statute

O.C.G.A. § 9-10-31.1(a) provides, in pertinent part, as follows:

In determining whether to grant a motion to dismiss an action or to transfer venue under the doctrine of forum non conveniens, the court shall give consideration to the following factors:

- (1) Relative ease of access to sources of proof;
- (2) Availability and cost of compulsory process for attendance of unwilling witnesses;
- (3) Possibility of viewing of the premises, if viewing would be appropriate to the action;
- (4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own right to pursue his or her remedy;
- (5) Administrative difficulties for the forum courts;
- (6) Existence of local interests in deciding the case locally; and
- (7) The traditional deference given to a plaintiff's choice of forum.¹⁰

The seven factors outlined by Georgia's forum non conveniens statute serve as a guide to the trial court in making a decision as to whether the case is one that "would be more properly heard in a forum outside this state or in a different county of proper venue within this state."¹¹ The trial court is to consider these seven factors when deciding whether to grant or deny a motion to dismiss, if the alternative forum is outside the state of Georgia, or a motion to transfer, if the alternative forum is within Georgia.¹²

The Trial Court Must Consider Each of the Seven Factors Set Forth in O.C.G.A. § 9-10-31.1(a)

Since the statute's adoption, there have been decisions in several Georgia cases holding that a trial court must make either oral or writ-

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ten findings that weigh and consider each of the seven factors, and failure to do so may result in the trial court's order being overturned.¹³ Therefore, in presenting a proposed order to the trial court, counsel should ensure that the order addresses all of the factors that are outlined in the statute.

A Decision in a Close Case Should Weigh in Favor of Plaintiff's Choice of Forum

The seventh factor set forth in Georgia's forum non conveniens statute states that "traditional deference [is] given to a plaintiff's choice of forum."¹⁴ Accordingly, if all other factors are relatively equal, then the trial court should not transfer or dismiss the civil suit based on this last factor. For example, in *R.J. Taylor Memorial Hospital, Inc. v. Beck*,¹⁵ after finding that all of the factors were closely weighted for each party, the court denied the defendant's motion to transfer based on the doctrine of forum non conveniens and gave deference to the plaintiff's forum choice.

The Trial Court Has Discretion as to Whether to Dismiss or Transfer

The trial court may exercise its sound discretion in determining whether to dismiss a civil case or transfer it to another forum.¹⁶ This is a broad power provided to the trial court, but as noted above, the trial court's decision will be reversed or remanded in the event the court fails to consider all of the seven factors outlined in the statute.¹⁷

An Alternative Forum Must Exist

O.C.G.A. § 9-10-31.1(a) states that in the event that "a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state, the court

shall decline to adjudicate the matter under the doctrine of forum non conveniens."¹⁸ In reviewing a motion to dismiss or a motion to transfer, the trial court must identify an existing alternative forum in which the civil action would more properly be heard.¹⁹ Accordingly, it is not enough for counsel to persuade the court that consideration of the seven factors supports the transfer or dismissal; counsel also must identify another more convenient forum, so that the trial court can make a comparison. The doctrine of forum non conveniens

presupposes at least two forums in which the defendant is amenable to process and furnishes criteria for choice between such forums. The application of the doctrine rests in the sound discretion of the court and the factors to be considered in the doctrine are the private interests of the litigant and the interest of the public.²⁰

The Burden is on the Moving Party

In general, the moving party bears the burden of persuasion with regard to civil motions filed in Georgia. A motion to dismiss or transfer under Georgia's forum non conveniens statute is no different, and thus the moving party has the burden to show that the seven factors support a dismissal or transfer.²¹

Defendant Must File a Written Stipulation Waiving the Statute of Limitations Defense

O.C.G.A. § 9-10-31(b) provides as follows:

A court may not dismiss a claim under this Code section until the defendant files with the court or with the clerk of the court a written stipulation that, with respect to a new action on the claim commenced by the

plaintiff, all the defendants waive the right to assert a statute of limitations defense in all other states of the United States in which the claim was not barred by limitations at the time the claim was filed in this state as necessary to effect a tolling of the limitations periods in those states beginning on the date the claim was filed in this state and ending on the date the claim is dismissed.²²

As a condition precedent to a trial court's dismissal of a case based on the doctrine of forum non conveniens, the defendant(s) must file a written stipulation with the clerk of the court stating that the defendant(s) will waive the statute of limitations defense in all other states. This mandatory requirement is outlined in the statute, and must be followed in order for the civil case to be dismissed based on this doctrine.²³

Pointing the Factors in Favor of a Dismissal or Transfer

When arguing that the seven factors support a dismissal or transfer, counsel should take care to address the following points for each factor identified below.

Factor 1: Relative Ease of Access of Sources of Proof.

Counsel should be prepared to show that the events at issue in the case occurred in the proposed alternative venue.²⁴ This factor will weigh even more heavily in the defendant's favor if the alternative venue is not near the forum in which plaintiff filed the lawsuit.²⁵

Factor 2: Availability and Cost of Compulsory Process.

In analyzing the availability and cost of compulsory process for attendance of unwilling witnesses, the moving party should demonstrate that all, or at least a majority, of the witnesses are located in or near the alternative forum and could be more easily compelled to testify in that forum.²⁶

Factor 3: Viewing the Premises.

The premises should be located in the alternative forum, and counsel should convince the trial court that viewing the premises is not an unnecessary exercise, but rather is important to the trial of the case.²⁷

Factor 4: Unnecessary Expense or Trouble for the Defendant.

This factor requires counsel to establish that litigating in the plaintiff's forum will result in an unnecessary expense or trouble to the defendant that is not necessary to the plaintiff's own right to pursue his or her remedy. In this regard, counsel should be prepared to demonstrate that it is expensive and time consuming for the defendant to litigate in the forum in which the plaintiff filed, but that litigating in the alternative forum would not be expensive or cause trouble for the plaintiff.²⁸

Factor 5: Administrative Difficulties for Forum Court.

To demonstrate the application of this factor, the moving party should show that the evidence and witnesses are located in the alternative forum and that the forum court would experience numerous difficulties in administering the case, especially with respect to compelling testimony.²⁹ Another persuasive argument is to show that the forum court would need to apply foreign law.³⁰

Factor 6: Local Interest in Deciding Case.


With respect to proving the existence of the local interests in deciding the case locally, counsel must persuade the court that the alternative venue has a strong interest in adjudicating the claim, while the forum court's interest is weak.³¹

Factor 7: Deference to Plaintiff's Forum Choice.

Finally, with regard to the traditional deference given to a plaintiff's choice of forum, the moving party

should show the plaintiff's forum choice does not outweigh the other factors outlined in the statute.³²

Conclusion

Under Georgia doctrine of forum non conveniens, the defending litigant now has an opportunity to file a motion requesting that the trial court move his or her civil case to a more convenient forum than where the plaintiff initially filed. To be successful, the motion must address each of the seven factors stated in the statute and propose a better, alternative forum. As the court decisions regarding the statute demonstrate, there are many issues for the moving party to consider. After a review of the insights outlined in this article, and the cases cited, counsel should be armed with the necessary information to file a persuasive motion. 



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Endnotes

1. BLACK'S LAW DICTIONARY 334 (5th ed. 1983).
2. O.C.G.A. § 9-10-31.1(a) (2007).
3. See *Hewett v. Raytheon Aircraft Co.*, 273 Ga. App. 242, 244, 614 S.E.2d 875, 877 (2005).
4. 280 Ga. 333, 626 S.E.2d 482 (2006).
5. O.C.G.A. § 9-10-31(c) (2007).
6. *EHCA Cartersville*, 280 Ga. at 337, 626 S.E.2d at 486.
7. *Hewett*, 273 Ga. App. at 244, 614 S.E.2d at 877.
8. 288 Ga. App. 289, 653 S.E.2d 858 (2007).
9. *Id.*, 653 S.E.2d at 859 (citing *EHCA Cartersville*, 280 Ga. at 338, 626 S.E.2d at 487-88).

10. O.C.G.A. § 9-10-31.1(a) (2007).
11. *Id.*; see *Fed. Ins. Co. v. Chicago Ins. Co.*, 281 Ga. App. 152, 154, 635 S.E.2d 411, 414 (2006).
12. O.C.G.A. § 9-10-31.1(a) (2007).
13. See *Ga. Cas. & Sur. Co. v. Valley Wood, Inc.*, 290 Ga. App. 177, 178, 659 S.E.2d 410, 412 (2008); *Kennestone Hosp.*, 288 Ga. App. at 290, 653 S.E.2d at 860; *Hewett v. Raytheon Aircraft Co.*, 273 Ga. App. 242, 248-49, 614 S.E.2d 875, 880 (2005).
14. O.C.G.A. § 9-10-31.1(a) (2007).
15. 280 Ga. 660, 662-63, 631 S.E.2d 684, 686 (2006).
16. See *Hawthorn Suites Golf Resorts, LLC v. Feneck*, 282 Ga. 554, 556, 651 S.E.2d 664, 666 (2007).
17. See *Kennestone Hosp.*, 288 Ga. App. at 290, 653 S.E.2d at 860.
18. O.C.G.A. § 9-10-31.1(a) (2007).
19. See *Fed. Ins. Co. v. Chicago Ins. Co.*, 281 Ga. App. 152, 155, 635 S.E.2d 411, 414-15 (2006).
20. BLACK'S LAW DICTIONARY 334 (5th ed. 1983).
21. *R.J. Taylor Mem'l Hosp., Inc. v. Beck*, 280 Ga. 660, 662, 631 S.E.2d 684, 686 (2006).
22. O.C.G.A. § 9-10-31.1(b) (2007).
23. See *Hewett v. Raytheon Aircraft Co.*, 273 Ga. App. 242, 250, 614 S.E.2d 875, 881 (2005).
24. See *Hawthorn Suites Golf Resorts, LLC v. Feneck*, 282 Ga. 554, 556-57, 651 S.E.2d 664, 666-67 (2007); *Fed. Ins. Co.*, 281 Ga. App. at 153, 635 S.E.2d at 413-14.
25. See *R.J. Taylor Mem'l Hosp.*, 280 Ga. at 663, 631 S.E.2d at 686.
26. See *Hawthorn Suites Golf Resorts*, 282 Ga. at 556, 651 S.E.2d at 666.
27. *Id.* at 556, 651 S.E.2d at 666; *R.J. Taylor Mem'l Hosp.*, 280 Ga. at 663, 631 S.E.2d at 686.
28. See *Hawthorn Suites Golf Resorts*, 282 Ga. at 556, 651 S.E.2d at 666.
29. *Id.* at 556, 651 S.E.2d at 666.
30. See *Fed. Ins. Co. v. Chicago Ins. Co.*, 281 Ga. App. 152, 153, 635 S.E.2d 411, 414 (2006).
31. See *Hawthorn Suites Golf Resorts*, 282 Ga. at 556-67, 651 S.E.2d at 666-67.
32. *Id.* at 556-57, 651 S.E.2d at 666-67.

New Committee Addressing Unmet Legal Needs of Military Servicemembers, Reservists and Veterans

by Linton Johnson

Recently, the *Atlanta Journal-Constitution* published the story of a young Marine corporal who suffered a traumatic brain injury in an October 2006 roadside bomb explosion in Iraq.

Two years down the road to recovery, his external scars are minimal, but the internal trauma remains: significant memory loss, breathing problems, bronchitis, and discomfort from glass and shrapnel still in his arms. According to the article, the corporal takes medication for seizures, insomnia and depression.

Now 23 years old, he has retired from the Marines at 40 percent disability. He is one of thousands of injured U.S. veterans of Iraq and Afghanistan who returned home as heroes but are a far cry from being made whole again. Sometimes they don't know where to turn for help; sometimes help is not available.

It has come to the attention of the State Bar of Georgia that a growing problem throughout the U.S. military involves active servicemembers, reservists and veterans who need legal services outside what is available to

them from the government. At the Annual Meeting in June, the Board of Governors voted to establish a special committee, charged with the task of identifying and addressing unmet legal needs of the state's military servicemembers, reservists, veterans and their families.

The panel—chaired by Charles L. Ruffin and comprised largely of lawyers with military experience and/or an abiding interest in military and veterans' law—went to work immediately, assigning tasks to various members and meeting on a biweekly basis.

"The Pro Bono for Military Veterans & Servicemembers Committee is working hard on the design of a comprehensive program that encourages Georgia lawyers to stand in the gap between legal services available to on-duty military personnel and unmet needs," State Bar President Jeffrey O. Bramlett said. "Georgia lawyers are grateful for the military service of our troops and returning veterans. This committee is looking for ways lawyers can personally and voluntarily give of themselves where servicemembers and veterans are not getting the legal help they need."

Military lawyers at a number of Georgia installations strongly agree the need for such a program exists.



Photo by Jennifer R. Mason

(Left to right) Committee members Bryan Cavan, president-elect; Linton Johnson, State Bar communications consultant; Antony B. Kolenc, Major, USAF; and Charles L. "Buck" Ruffin, chair, review the State Bar of Georgia Veterans and Servicemembers Law Survey.

Maj. Antony B. Kolenc, staff judge advocate at Dobbins Air Reserve Base in Marietta, related the following scenario: an active duty service member comes in with divorce paperwork recently served on him by his estranged wife. He has three children and the wife wants custody of them. His wife's attorney has drawn up a settlement, with a detailed breakdown of how child support will be paid, for him to sign.

The service member wants to know how he can fight for custody and whether the child support plan is a "good deal" for him. He also wants to know what he will need to file with the court so that he does not lose any of his rights.

"That would be beyond the scope of what can be competently handled in military legal assistance," Kolenc said. "After giving him general advice on the divorce process in Georgia and identifying potential issues in the proposed settlement agreement, I would have to refer him to the local bar association so he can find a good family law attorney, if he can afford it."

This is but one example of soldiers' and veterans' needs for legal

assistance exceeding what is available to them at their installations. In addition to family law issues, servicemembers are increasingly finding themselves in legal limbo on matters ranging from disability claims to employment problems to landlord/tenant disputes.

"These are the types of cases where an individual might not hire an outside lawyer but will simply surrender the issue or go it alone," Kolenc said. "But our attorneys will do everything within our power to ensure the member receives the help they need."

"We frequently see soldiers who have a good consumer law case, involving predatory automobile sales or unauthorized/overpriced repairs, for example, but we cannot represent them in court due to our resource constraints," said Col. Tracy A. Barnes, staff judge advocate at Fort Benning in Columbus. "The State Bar could assist by providing pro bono representation in court in appropriate cases. Another possible way to help us advise clients would be a list of Georgia attorneys willing to lend their subject matter expertise and

guidance to our legal assistance attorneys on a particular case."

Anthony Tempesta, chief of the legal assistance staff at Fort Benning, said there is also a "significant" volume of active duty personnel who could benefit from a pro bono program. "We have four Bar members on staff, and our office is overwhelmed, mostly with family law cases," Tempesta said. "We are presently not accepting any new in-court representation cases, and when we do so again it will be limited to adoption and legitimation cases. Any assistance from the Bar on divorce, child custody and child support matters would be a tremendous help."

The Legal Assistance Division at Fort McPherson served 7,015 members of the military community in 2007, according to staff attorney Marcia Parker, who attended the Bar committee's July 22 meeting. Parker and her colleagues consulted with 4,640 clients and prepared 1,094 wills. The front office staff prepared 1,839 powers of attorney and notarized approximately 5,344 documents. In addition, the division prepared 2,044 federal tax returns and 1,773 state tax returns.

“Georgia lawyers are grateful for the military service of our troops and returning veterans. This committee is looking for ways lawyers can personally and voluntarily give of themselves where servicemembers and veterans are not getting the legal help they need.”

— President Jeffrey O. Bramlett

Parker said her office is mandated to write wills and powers of attorney and handle Servicemember's Group Life Insurance claims on behalf of soldiers stationed at Fort McPherson. In addition, the division handles a significant number of family law issues and provides limited assistance on real property and landlord/tenant issues, consumer protection, civilian and military administrative matters. The office is restricted from handling criminal matters, employment issues (including but not limited to those under the jurisdiction of Department of Justice) or income-generating cases. Servicemembers' eligibility for assistance is dictated under Army Regulation 27-3.

For matters beyond the scope of the division, Parker said, “Our office maintains an attorney referral list. If we are unable to provide a service, we can make initial contacts to local attorneys who specialize in that subject area for a free consultation.”

Soldiers who return from war often have special needs resulting from physical injuries as well as the effects of Post Traumatic Stress Disorder (PTSD).

“When they come home, they are often not the same person,” Parker said, “which can lead to deterioration of the family and other problems.”

Committee members have been in contact with other state bars where similar programs have been launched. Donna G. Barwick spoke with the coordinator of the Operation Legal Eagle project of the North Carolina Bar Association, which has produced mixed results and is undergoing a revamping.

“The program hasn't been used very much,” Barwick reported. “Many of the servicemembers with unmet needs reside in rural areas, while many of the volunteers reside and work in urban centers. Therefore, it was sometimes difficult to match volunteers with potential clients.”

Also, the Department of Defense was already taking care of wills, powers of attorney and similar needs for which volunteers were easier to find, she said. For family law, consumer law and criminal matters, the rural/urban disconnect made things more difficult.

“Their key words of advice include making sure we have an open line of communications with the Judge Advocate General (JAG) officers at the military installations in order to keep up with frequent personnel changes in that position,” Barwick said, “and to make sure volunteers are familiar with the unique nature of military benefits claims.”

Eric A. Ballinger, reporting on his research on behalf of the committee, said the Oregon project is operating with 120 lawyer volunteers on its Military Assistance Panel (MAP).

In Oregon, the JAG officers pre-qualify soldiers in need of assistance based on program criteria and guidelines. Once qualified, the soldier makes contact with the Oregon State Bar's Lawyer Referral Service. The bar's call center then refers the case to a MAP lawyer, who provides the first hour with the client on a pro bono basis. Any following services are provided under a fee arrangement, but most of the cases are handled pro bono to the conclusion of the matter.

There are no major military installations in Oregon, but the program serves National Guard members mobilized and deployed overseas. In 2009, the number of Oregon Guard members deployed to the Middle East is expected to increase to 3,500. By comparison, Ballinger pointed out, Fort Benning has more than 10,000 active duty soldiers at that post alone.

The committee is continuing to proactively solicit input from key personnel at Georgia military installations on the legal services that are and are not already available to servicemembers.

Committee member E. Marcus Davis is also board chair of the Brain Injury Association of Georgia. He said approximately 300,000 veterans of the Iraq and Afghanistan wars suffer from either Traumatic Brain Injury (TBI) from exposure primarily to improvised explosive devices or PTSD from exposure to the constant life-threatening stresses of combat. The effects of TBI and PTSD include cognitive disabilities, attention and concentration difficulties, emotional disability, memory and word search problems, the effects of which may include chronic anxiety, panic attacks, relationship problems, problems holding a job, substance abuse and, sadly, even domestic violence.

“I hope through our military assistance project, lawyers will help steer veterans toward existing programs that can help,” Davis said. “For example, the Brain and Spinal Cord Injury Trust Fund established by the state of Georgia exists to provide


financial assistance to those who are injured. The Brain Injury Association of Georgia and the Brain Injury Resource Foundation provide information, resource listings, support groups and peer visitor programs for traumatic brain injury survivors. The Shepherd Center, through a grant by the Bernard Marcus Foundation, administers a brain injury rehabilitation program for returning veterans. Raising awareness of resources like this could be an important function of our program."

The committee is addressing a host of issues during the program's developmental stages, including how cases will be prioritized and assigned. Under discussion is a plan to develop two lists of attorneys, those who would provide fee-based services and those who would offer pro bono representation. Cases would first be directed to the fee list, based on the lawyer's geographic location and area of expertise. Servicemembers who are unable to pay any legal fees would be referred to the pro bono list.

Regarding case priority, committee members are considering a system of handling deployed servicemembers' needs first, followed in order by pre- and post-deployment issues, general active duty, veterans with pending disability benefit claims, reservists and retirees.

The committee is also investigating ways to support referral and volunteer attorneys with training and resources, to help make any pro bono or referral relationship cost effective and attractive for Bar members, especially so for rural and small-firm lawyers.

"We are informing ourselves about the complexities of working across the lines of the various branches of the military service and the differing needs of National Guard, reservists, and active duty personnel," says Bramlett. "We are focused on making the Georgia lawyers who decide to participate in this effort the best-trained and best-prepared attorneys in the United States to meet these needs. The committee is mindful that we have before us an opportunity for Georgia lawyers to say thanks to our servicemembers and veterans for all they do, often at significant personal sacrifice, to protect our country."

Accompanying this article is a survey form for all Bar members to complete in an effort for the committee to determine interest and willingness among Georgia lawyers to participate in helping meet the legal needs of our servicemembers, reservists and veterans, either on a pro bono or fee basis. Please complete the survey found on page 34 and return it no later than Oct. 31. You may also complete the survey online at www.gabar.org. 



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

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New Hampshire Bar Association
State Bar of New Mexico
New York State Bar Association
North Carolina Bar Association
State Bar Association of North Dakota
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State Bar of Georgia Veterans and Servicemembers Law Survey

The State Bar of Georgia has created a Military Veterans and Servicemembers Committee to assess the unmet legal needs of veterans, active duty servicemembers (including reservists and the National Guard), and their families in Georgia. The Committee will make recommendations to the Bar regarding various options to address these unmet legal needs, possibly including the creation of an attorney referral service.

To determine the level of interest in serving veterans, servicemembers, and their families, we ask for your participation in this brief survey.

1. Please tell us your Georgia Bar number. You may be contacted if the Bar approves of the creation of a referral panel. (Proof of errors and omissions insurance coverage will be required to participate.) _____
2. Are you willing to provide paid and/or pro bono legal services regarding disability benefits* for veterans? (CLE Training Provided) Yes ____ No ____
3. If you answered "YES" to Question #2, please check the kind of services you are willing to provide. (Check all that apply) PAID ____ PRO BONO ____
4. Are you willing to provide paid and/or pro bono legal services regarding civilian employment rights (under USERRA**) and other civil legal rights unique to military members under the SCRA*** and similar laws? (CLE Training Provided) Yes ____ No ____
5. If you answered "YES" to Question #4, please check the kind of services you are willing to provide. PAID ____ PRO BONO ____
6. Are you willing to provide paid and/or pro bono legal services for deployed or current or former servicemembers or their families regarding general civil legal concerns (e.g. divorce, child custody disputes, landlord disputes, taxes, immigration, bankruptcy, insurance and juvenile proceedings)? Yes ____ No ____
7. If you answered "YES" to Question #6, please check what kind of services you are willing to provide. (CHECK ALL THAT APPLY) PAID ____ PRO BONO ____
8. If you answered "YES" to Question #6, check the areas of law in which you are willing to provide PAID or PRO BONO services:

Administrative Law	_____	Juvenile Proceedings	_____	Wills and Estates	_____
Bankruptcy	_____	Landlord/Tenant Law	_____	Other (please specify):	_____
Civil Litigation	_____	Medicare/Medicaid	_____		_____
Consumer Law	_____	Military Law	_____		_____
Disability Benefits	_____	Personal Injury	_____		_____
Employment Law	_____	Residential Real Estate	_____		_____
Family Law	_____	Social Security Benefits	_____		_____
Insurance Law	_____	Tax Law	_____		_____
Immigration Law	_____	Voting Rights	_____		_____

9. Are you interested in attending CLE training concerning veterans disability benefits appeals? Yes ____ No ____
Note: A Veterans Benefits Manual and other resources are available for purchase from the National Veterans Legal Services Program. Visit www.nvlsp.org.
10. Are you interested in attending CLE training concerning USERRA**, the SCRA***, and similar legal protections unique to veterans and servicemembers? Yes ____ No ____
11. Please identify the county in which you generally practice law. _____. How many miles are you generally willing to travel from your office in connection with your law practice? Check one.

Up to 5 miles	_____	Up to 50 miles	_____	Anywhere in the	_____
Up to 10 miles	_____	Anywhere in Georgia	_____	United States	

12. Please identify any other State Bar section, Bar committee or local bar group that provides pro bono legal services in your area for veterans, servicemembers and their families:

Please identify any foundation or other possible sources of funding for pro bono legal services targeting the unmet legal needs of veterans, servicemembers and their families.

Thank you for your participation in this survey. Please feel free to make comments or suggestions for the Committee's consideration.

***Disability Benefits:** Veterans often need legal counsel in appeals of decisions by the Department of Veterans Affairs regarding disability levels and compensation. These cases may require out-of-state travel, possibly including an appearance before the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims. See 38 U.S.C. § 5904 et seq.

****Servicemembers' Civil Relief Act (SCRA)** (formerly known as the Soldiers' and Sailors' Civil Relief Act): Servicemembers and their families often need legal representation to secure the wide variety of protections available under the SCRA relating to debt relief, eviction, and other matters requiring "the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." See 50 U.S.C. Appx. § 501 et seq.

*****Uniformed Services Employment and Reemployment Rights Act (USERRA):** This Act provides civilian job protection for servicemembers for the purpose of "eliminating or minimizing the disadvantages to civilian careers and employment" resulting from military service. See 38 USCS § 4301 et seq.

Complete survey online at www.gabar.org, or mail to: **State Bar of Georgia, Attn: Pro Bono for Military Veterans & Servicemembers Committee, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303.**

Questions about the State Bar of Georgia Pro Bono for Military Veterans & Servicemembers Committee? Please contact Charles L. Ruffin, chair, at probono@gabar.org.

Visit these related links for more information:

- National Veterans Legal Services Program — www.nvlsp.org
- The Georgia Online Justice Community — www.GeorgiaAdvocates.org/GOJC
- American Bar Association, Operation Enduring Lamp — <http://www.abanet.org/legalservices/helpreservists/>
- Veterans Consortium Pro Bono Program — <http://www.vetsprobono.org/>
- Military.com — www.military.com/benefits

An Update on Georgia Legal Legacies

In the April 2008 issue of the *Georgia Bar Journal*, a listing appeared on pages 44-49 highlighting families who have multiple generations of Georgia lawyers. Since then, many have contacted us to have their families listed as well. Below you will find a continuation of Georgia Legal Legacies.

Hon. Samuel B. Adams (1873)
Alexander A. Lawrence (1880)
Hon. Alexander A. Lawrence (1930)
Sam Adams Dorsey (1934)
Alexander Pratt Adams (1940)
Thomas H. Adams (1940)
Cam D. Dorsey Jr. (1940)
David Wynn Adams (1989)
Jane Lawrence Peeples (1991)
m. John Colquitt Peeples (1990)
Brooks Wallace Binder III (1993)
Duncan Hamilton Adams (1999)

Joseph B. Bergen (1951)
Frederick S. Bergen (1986)

Jack K. Berry (1958)
Jack Keith Berry Jr. (1982)

James B. Blackburn (1949)
James B. Blackburn Jr. (1984)

John Wightman Bowden (1900)
Henry Lumpkin Bowden (1933)
Henry L. Bowden Jr. (1974)
m. Jeanne J. Bowden (1977)

John M. Brennan (1935)
Joseph Patrick Brennan (1977)

Richard J. Buttimer (1966)
Edward M. Buttimer (1968)
Edward Milton Buttimer Jr. (1996)
Joseph Edwin Buttimer (1997)

Kenneth H. Cail (1949)
Kenneth H. Cail Jr. (1986)

Adam P. Cerbone (1976)
Thomas M. Cerbone (1981)
Jason Philip Cerbone (2008)

Hon. H. Sol. Clark (1929)
Fred S. Clark (1960)

W. Spencer Connerat (1912)
Spencer Connerat Jr. (1958)

Hon. Herman W. Coolidge (1939)
Hon. Hermann W. Coolidge Jr. (1973)

Grady Lee Dickey (1950)
David Herschel Dickey (1977)

Alphene William Dowell (1925)
William A. Dowell (1974)

Henry M. Dunn (1917)
H. Mitchell Dunn Jr. (1958)

Robert E. Falligant (1929)
Robert E. Falligant Jr. (1966)
John Daniel Falligant (1968)

W. Leon Friedman (1924)
Julian R. Friedman (1958)

Robert W. Galloway (1978)
Robert Brandon Galloway (1999)

Jay D. Gardner (1955)
James Robert Gardner (1978)

Julian Hartridge Sr. (1922)
Julian Hartridge Jr. (1950)
Walter C. Hartridge (1961)

Thomas J. McNamara (1975)
Mary McNamara Adams (2003)

Hon. Wilbur D. Owens Jr. (1952)
Wilbur D. Owens III (1986)

Hon. Philip S. Ringel (1927)
Herbert A. Ringel (1930)
Fred M. Ringel (1951)
Malcolm H. Ringel (1966)

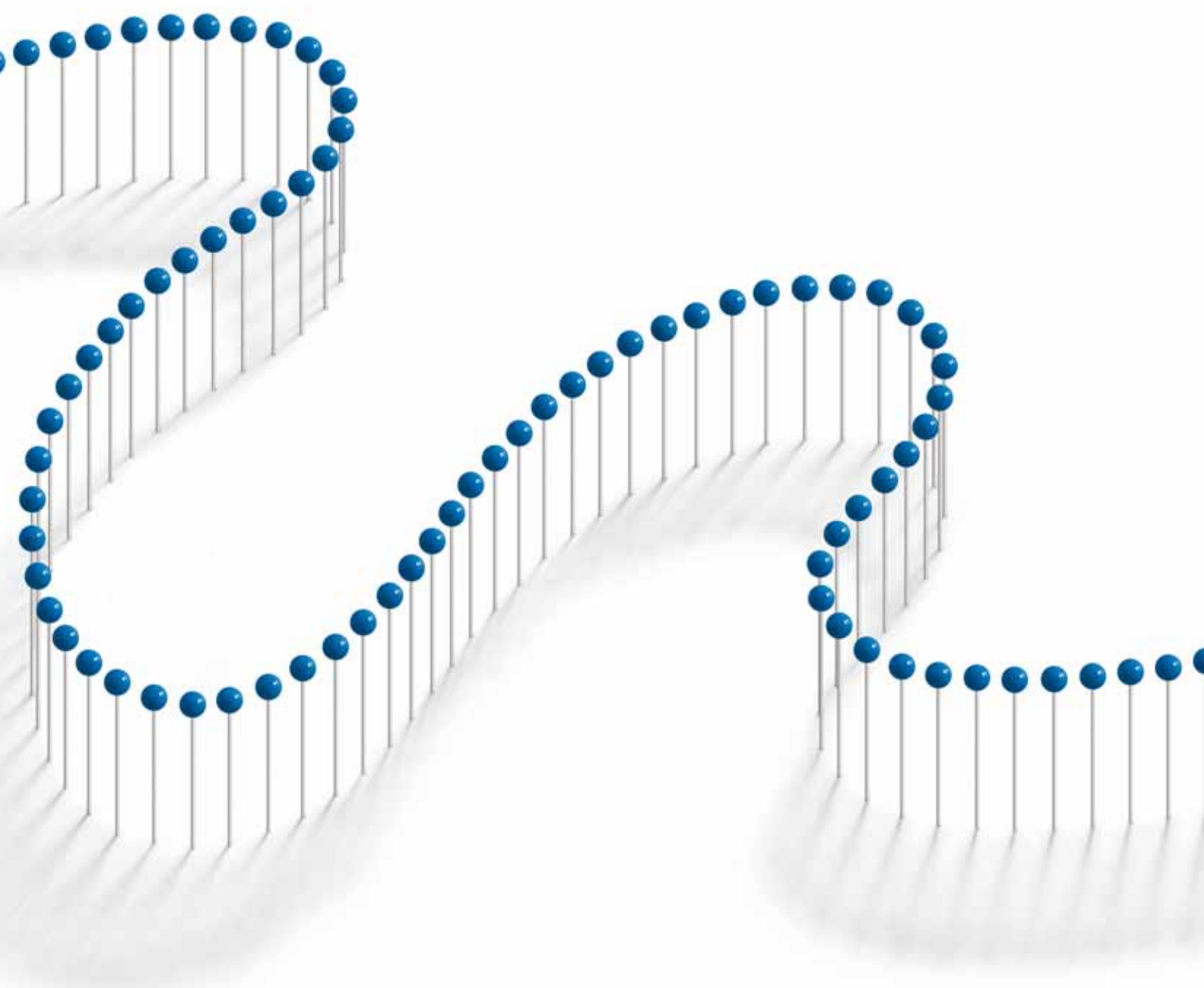
Robert T. Thompson (1951)
Robert T. Thompson (1975)

Weir Dee Walker (1950)
Daryl J. Walker (1975)

Frank B. Zeigler (1951)
David E. Zeigler (1979)

*(*This is not a complete list of all State Bar of Georgia members who met the criteria set forth. The information was compiled from e-mails received from Georgia lawyers who volunteered their family's information after the Georgia Legal Legacies article was published in the April 2008 issue of the Georgia Bar Journal.)*

(Italics denotes deceased)



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The Chatham County Courthouses at Savannah

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Mills Lane, who has written and edited a number of volumes on the architecture of the Old South, closes his 1969 edition of *Savannah Revisited, A Pictorial History* with a brief essay entitled, "Last Prosperity, 1865-1895." Here Lane assesses the economic problems of Savannah on the eve of the 20th century in order to make the point that the city's flavor and charm were "preserved by the port's decline." Such was the irony explicit in much of the city's architecture erected in the closing decades of the 19th century, just before cotton's kingdom began to unravel.

The history of Savannah before 1910 is in many ways a paradigm for the history of Georgia and the cotton

growing South, for Savannah like most of Georgia developed little or no industry and no significant middle class. Cotton was the central economic fact of the city, and in the closing decades of the 19th century, no one foresaw the spiral of ruin to be wrought by the falling prices and glutted markets just before the turn of the century; nor did anyone dare to dream the wildest nightmare of all, the boll weevil.

Indeed, Savannah had always prospered on the cotton trade, and after the war, when cotton again began to flow down the river from Augusta and the railroads were rebuilt, it seemed logical to assume that the city would again rise to prominence. By the mid-1890s, five railroads converged on Savannah importing not only cotton from the interior but also vibrant hope for the future. Here again were the railroads and the myth of the New South, this time tempting old and stately Savannah to employ the Victorian fantasies of Boston architect, William Gibbons Preston.

Loosely the reign of Victoria saw revivalism flourish in England, and although the roots of American architecture of the period are similarly revivalist and decidedly English, a unique American character became increasingly distinct. The fact is, for the New World, the dates of Victoria's reign are of little historical significance, architecturally or otherwise.



Photos by Wilber W. Caldwell

Built in 1889, William Gibbons Preston, architect.

Although generally I refrain from calling American architecture "Victorian," in the case of Savannah I make an exception. Owing to her close mercantile ties with England in the cotton trade, Savannah developed architecturally as a remarkably English city. From the earliest Regency architecture of William Jay, the squares of the city have been uniformly lined with Georgian, brick buildings of a powerfully homogeneous nature. With this decidedly English base, Savannah became the natural host to a surprising amount of architecture of both the early and the late Victorian periods. In fact, Savannah's celebration of the myth of the New South made her home to the most diverse, and perhaps some of the best, Victorian buildings in Georgia. Of particular interest here are buildings of the

early period especially in the Italianate and Early Gothic Revival styles. Equally at home in Savannah are buildings of the late Victorian period in representative array: Second Empire, Richardsonian Romanesque, Queen Anne and the elaborate tracery of the various High Victorian domestic styles. It is this English uniformity and compactness of plan that gives Savannah her charm today, and in this context the work of William Gibbons Preston can be termed "Victorian," in spite of its debt to the American master, H. H. Richardson.

William G. Preston, a Bostonian and a graduate of the *Ecole des Beaux Arts* in Paris, designed 23 Victorian buildings in Savannah. Among them were four significant public structures: The Cotton Exchange (1886), the DeSoto Hotel (1888), the Chatham County Courthouse (1889) and the Volunteer Armory (1892). Of the four, only the DeSoto Hotel, demolished in 1968, no longer stands. In contrast to his joyous Cotton Exchange and equally distinctive Armory, Preston seems to have missed the mark with his 1889 Chatham County Courthouse. The structure's dingy yellow brick set against the warmth and comfort of surrounding red brick buildings and the occasional gleaming white of nearby Classical forms, seems shabby indeed. The east facade facing Wright Square seeks Richardsonian monumentality only to achieve a sort of institutional heaviness. Although the great arch below groupings of five arched windows above five lented windows is true to Richardson's ideas, the composition lacks the master's flare. This is not one building but several, and it illustrates once again the inherent danger in the freedom of eclecti-

cism—just because the style gives license to draw from many wells is no guarantee that the resulting water will be sweet.

The recent history of this building parallels Savannah's fortunes. In the 1950s, the old courthouse was remodeled in order to save the expense of a new one. In the early 1970s, Savannah finally built a new court building, and this building was abandoned. It stood empty and neglected for almost 20 years until it was finally restored in 1990.

In Savannah, the waters of architecture had been sweet indeed, and among the sweetest flowed from the building which Preston's 1889 courthouse replaced. It was among the finest examples of the Greek Revival in Georgia, standing equal to Charles Cluskey's notable achievements in the state and even rivaling Robert Mills' early work in South Carolina. Some sources attribute this building to Mills. In fact there is a volume of opinion and speculation in this area. Talbot Hamlin, in his exhaustive study of the Greek Revival in America, mentions the possibilities of either Mills or William Jay in connection with this courthouse. Chan Sieg attributes the building to Henry McAlpin, although it seems the ubiquitous McAlpin was more likely the builder. Mills Lane is firm in his proclamation of Russell Warren who he describes as "a professional ... from Rhode Island." According to Hamlin, Warren designed "extraordinarily

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vivid and original houses and was one of the architects responsible for the splendor of the Greek Revival in Rhode Island." Whoever the architect, this building graced Wright Square for almost 60 years, and its columns stood for a very different myth than the myth represented by the towers of William Gibbons Preston which replaced it.

In 1833, in the American South, the columns of the Greek Revival were about to be twisted into a grotesque vision of the Greek democracy, in effect, idealizing that darker side of a classical society in which slavery had flourished. Elsewhere in adolescent America the Greek Revival mirrored more noble elements of classical culture as well as the new nation's strong anti-English sentiment. Jefferson himself had chosen classical architecture as the new national style, not only for its historical symbolism, but also because pure Classicism could look directly to original archeological sources for inspiration, thus bypassing English models. To be sure, the style flourished for a period in England; still it was ideal for this American architectural end-run. Although Savannah was not as drawn to the

Greek Revival as many other important Southern cities, the style was perfect for the city's 1833 courthouse. With a Greek Temple of Justice the city could celebrate her American democratic spirit, her English mercantile ties and her Southern attachments to cotton and to slavery.

The original Chatham County Courthouse, which this building replaced, was built before the Revolution. In fact an early guidebook to Savannah relates that the brick building was damaged during the Revolutionary War both by bombardment and later by British troops quartered in the building. We know that it was quite small, having "no halls and no corridors," but we can only guess as to its appearance. The building was repaired after that war and served the county for another 50 years.

That such a simple courthouse served Savannah until 1833 speaks to the humble roots of Savannah herself. She began as "only the rude and crude military outpost of England's last and poorest colony in America." By 1760, the town had about 400 buildings, but only three were of brick. In 1794, Savannah had a population of

about 2,500. By 1830, her population was over 7,000, but 11 years later the only "paved" street would be a plank road from the warehouses of The Central of Georgia Railroad on West Broad Street to the wharves. Growth slowly brought refinement to Savannah. Still, just beyond her charming squares, lay a vast wilderness. In 1833, when her grand Greek courthouse was built The Central Railroad and Canal Company of Georgia was chartered to lay rails from Savannah to Macon and at that time, the country it sought to traverse was very wild indeed.

But growth came to Savannah with the prosperity of cotton and with more railroad lines from the interior to the coast. But despite her hopeful post Civil War boom, the trend after 1870 was toward inland rails, parallel to the coast, a transportation trend that eventually forsook rail-sea routes to the Northeast in favor of all-rail alternatives. This, along with government regulation of railroads and the maturing of large railroad syndicates, marked the beginning of the end for the golden age of The Central of Georgia Railroad. Along with the sinking fortunes of cotton, The Central of Georgia Railroad's decline foreshadowed the ebb of Savannah's prominence as a seaport. GHI



Built in 1833, Russell Warren, architect (attributed).

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

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Notice of Expiring BOG Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2009. These incumbents and those interested in running for a specific post should refer to the election schedule (posted below) for important dates.

Alapaha Circuit, Post 1Carson Dane Perkins, Nashville
 Alcovy Circuit, Post 1Steven A. Hathorn, Covington
 Appalachian Circuit.....Diane Marger Moore, Jasper
 Atlanta Circuit, Post 1Elizabeth A. Price, Atlanta
 Atlanta Circuit, Post 3H. Fielder Martin, Atlanta
 Atlanta Circuit, Post 5Thomas G. Sampson, Atlanta
 Atlanta Circuit, Post 7William M. Ragland Jr., Atlanta
 Atlanta Circuit, Post 9C. Scott Greene, Atlanta
 Atlanta Circuit, Post 11.....Roger Eugene Murray, Atlanta
 Atlanta Circuit, Post 13Patrick F. McMahon, Atlanta
 Atlanta Circuit, Post 15.....Letitia A. McDonald, Atlanta
 Atlanta Circuit, Post 17Rita Arlene Sheffey, Atlanta
 Atlanta Circuit, Post 19.....Robert L. Shannon Jr., Atlanta
 Atlanta Circuit, Post 21Patricia Anne Gorham, Atlanta
 Atlanta Circuit, Post 23.....Donna G. Barwick, Atlanta
 Atlanta Circuit, Post 25Phyllis J. Holmen, Atlanta
 Atlanta Circuit, Post 27Nancy Jean Whaley, Sandy Springs
 Atlanta Circuit, Post 29Tina Shadix Roddenbery, Atlanta
 Atlanta Circuit, Post 30.....Karlise Yvette Grier, Atlanta
 Atlanta Circuit, Post 32Seth David Kirschenbaum, Atlanta
 Atlanta Circuit, Post 34Allegra J. Lawrence, Atlanta
 Atlanta Circuit, Post 36Robin Frazer Clark, Atlanta
 Atlantic Circuit, Post 2Joseph D. McGovern, Glennville
 Augusta Circuit, Post 1J. Benjamin Kay III, Augusta
 Augusta Circuit, Post 3Thomas Reuben Burnside III, Augusta
 Blue Ridge Circuit, Post 2.....Eric Alvin Ballinger, Canton
 Brunswick Circuit, Post 1J. Alvin Leaphart, Jesup
 Chattahoochee Circuit, Post 2William C. Rumer, Columbus
 Chattahoochee Circuit, Post 4Earle F. Lasseter, Columbus
 Cherokee Circuit, Post 2J. Lane Bearden, Calhoun
 Clayton Circuit, Post 1.....H. Emily George, Forest Park
 Clayton Circuit, Post 3.....Charles J. Driebe, Jonesboro
 Cobb Circuit, Post 2Ronald Arthur Lowry, Marietta
 Cobb Circuit, Post 4Patrick H. Head, Marietta
 Cobb Circuit, Post 6J. Kevin Moore, Marietta
 Conasauga Circuit, Post 2Henry C. Tharpe Jr., Dalton
 Cordele CircuitJohn Carswell Pridgen, Cordele
 Coweta Circuit, Post 2James Charles Thornton, LaGrange

Dougherty Circuit, Post 2Gordon Robert Zeese, Albany
 Dublin CircuitCharles Mitchell Warnock Jr., Dublin
 Eastern Circuit, Post 2Lester B. Johnson III, Savannah
 Eastern Circuit, Post 4N. Harvey Weitz, Savannah
 Flint Circuit, Post 1Gregory A. Futch, McDonough
 Griffin Circuit, Post 2Roy B. Huff Jr., Peachtree City
 Gwinnett Circuit, Post 1.....David S. Lipscomb, Lawrenceville
 Gwinnett Circuit, Post 3.....Robert V. Rodatus, Lawrenceville
 Lookout Mountain Circuit, Post 2Christopher A. Townley, Rossville
 Macon Circuit, Post 1David S. Hollingsworth, Macon
 Macon Circuit, Post 3Charles Lucius Ruffin, Macon
 Member-at-Large, Post 1*Sonjui Lal Kumar, Atlanta
 Member-at-Large, Post 2*Han Chun Choi, Atlanta
 Middle Circuit, Post 2William Steven Askew, Swainsboro
 Mountain CircuitJames T. Irvin, Toccoa
 Northeastern Circuit, Post 2Nicki Noel Vaughan, Gainesville
 Northern Circuit, Post 1.....C. Patrick Milford, Carnesville
 Ocmulgee Circuit, Post 2Wilson B. Mitcham Jr., Gray
 Oconee Circuit, Post 2John P. Harrington, Eastman
 Ogeechee Circuit, Post 2Susan Warren Cox, Statesboro
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 Piedmont Circuit.....Scott Reed Tolbert, Jefferson
 Rome Circuit, Post 1Paul T. Carroll III, Rome
 South Georgia Circuit, Post 2.....Gary Olen Allen, Pelham
 Southern Circuit, Post 2Brian Allen McDaniel, Moultrie
 Southwestern CircuitR. Rucker Smith, Americus
 Stone Mountain Circuit, Post 2Johnny W. Mason Jr., Atlanta
 Stone Mountain Circuit, Post 4John M. Hyatt, Decatur
 Stone Mountain Circuit, Post 6A. Thomas Stubbs, Decatur
 Stone Mountain Circuit, Post 8Robert P. Mallis, Decatur
 Tallapoosa Circuit, Post 1Michael Douglas McRae, Cedartown
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 Towaliga Circuit.....John Byrd Garland, Jackson
 Waycross Circuit, Post 2.....C. Deen Strickland, Waycross
 Western Circuit, Post 1Lawton E. Stephens, Athens

**Post to be appointed by President-Elect*

State Bar of Georgia 2009 Proposed Election Schedule

OCT	Official Election Notice, October Issue <i>Georgia Bar Journal</i>
DEC 5	Mail Nominating Petition Package to incumbent Board of Governors Members and other members who request a package
JAN 5-10	Nomination of Officers at Midyear Board Meeting, State Bar Building, Atlanta
JAN 30	Deadline for receipt of nominating petitions for incumbent Board Members (Article VII, Section 2)
MAR 3	Deadline for receipt of nominating petitions by new candidates

MAR 17	Deadline for write-in candidates for Officer to file a written statement (not less than 10 days prior to mailing of ballots (Article VII, Section 1 (c))
APR 1	Ballots mailed
MAY 1	11:59 p.m. deadline for ballots to be cast in order to be valid
MAY	Election results available



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>  **Davis, Matthews & Quigley, P.C.**, associate **Rebecca Crumrine** was appointed to the **executive committee** of the **State Bar of Georgia Family Law Section**. She is a member of the Family Law Section of the Atlanta Bar Association, the Georgia Association for Women Lawyers and sits on the State of Georgia Child Support Electronic Task Force.

>   **Kilpatrick Stockton LLP** announced that the 2008 edition of *Chambers USA: America's Leading Lawyers for Business* has once again named it the **"Leading Georgia Firm for Intellectual Property."** Kilpatrick Stockton led all Georgia firms with the "Most Ranked Individual Attorneys in Intellectual Property." Ranked attorneys include **Miles Alexander, Joseph Beck, Bill Boice, Bill Brewster, Jim Ewing, Wab Kadaba, John Pratt and Jerre Swann.**

Intellectual property partners **Miles Alexander, Bill Brewster, Ted Davis, Jerre Swann** and **Virginia Taylor** each were recognized by Legal Media Group in its 2008 *Guide to the World's Leading Trade Mark Law Practitioners*.

Intellectual property associate **Lauren Estrin** was recognized by the Anti-Defamation League (ADL) as this year's *ADL Southeast Region Jay S. Kaiman Leadership Award* recipient.


Partner **James F. (Jay) Bogan III** was elected **chair** of the **Appellate Practice Section** of the State Bar of Georgia. Bogan will also serve as chair of the Second Eleventh Circuit Appellate Practice Institute, to be held on Oct. 23-24 at the State Bar.

Kilpatrick Stockton was named a **top firm for diversity** by *MultiCultural Law Magazine*. The magazine ranked the firm as a "Top 100 Law Firm for Diversity," one of the "Top 25 Law Firms for African-Americans" and one of the "Top 100 Law Firms for Women."

Partner **Craig Bertschi** was selected to serve on the **Board of the Georgia Innocence Project (GIP)**. GIP is a nonprofit organization dedicated to helping individuals who have been convicted of crimes they did not commit.


> **Charles Kuck**, managing partner of immigration firm **Kuck Casablanca & Odom, LLC**, was inducted as **president** of the **American Immigration Lawyers Association** at its 2008 Annual Conference in Vancouver, Canada, in

June. Kuck concentrates his practice on U.S. immigration and nationality law, and international migration matters.

>  **Patti M. Richards**, a tax lawyer and CPA with the Richards Law Firm, LLC, was **installed** as the **chair** of the **Atlanta Bar Association Tax Section** in May and as the **president-elect** of the **American Association of Attorney-CPAs** at their annual meeting in Amelia Island, Fla. in June. Richards recently completed a three-year term on the IRS Advisory Counsel where she served as one of 20 tax professionals from around the country as advisor to the IRS Commissioner on tax policy and procedure.

> **Fisher & Phillips LLP** announced that senior partner **Tex McIver** was listed in *Who's Who Legal 2008*, which recognizes him internationally for his practice in labor and employment law. Who's Who Legal assesses the foremost legal practitioners in 29 distinct areas of business law.

> **Krevolin & Horst, LLC**, founding partner **Jeffrey D. Horst** was nominated by his peers and selected by *Chambers USA: America's Leading Lawyers for Business* as one of the top business litigators in Atlanta. Horst is one of only a handful of lawyers from a small firm to receive such recognition.

>  **Philip W. Engle**, vice president and general counsel of Atlanta-based Prenova, Inc., attained the grade of **fellow** of the **Chartered Institute of Arbitrators**, a UK-based organization with members worldwide which is active in the field of international dispute resolution.



> **McKenna Long & Aldridge LLP** announced that *Legal 500* recommends them as a **"tier one"** firm in the South Atlantic region for **mergers and acquisitions** work. Individually, **Jeffrey Haidet**, chairman of the firm, was praised for his accessibility to clients, and Atlanta-based partners **Thomas Wardell** and **Stacy Sins Ingram** were named as major contributors to the firm's success.

> **Greenberg Traurig, LLP**, announced that **Rodney G. Moore**, of counsel in its Atlanta office, was sworn in as **president** of the **National Bar Association (NBA)** in August at the NBA's 83rd annual convention in Houston, Texas. Moore is the first Georgia lawyer elected to serve as president of the NBA in its 82-year history.

- > **Hall, Booth, Smith & Slover, P.C.**, was honored as one of Atlanta's "**Best Places to Work**" by *Atlanta Magazine*. The survey recognized Atlanta's top 40 companies based on employee job satisfaction.

- >  **Carlton Fields** announced that Atlanta attorney **Nestor J. Rivera** was recently appointed **vice chair** of the **American Bar Association Health Law Section's Coordinating Committee on Diversity**. This committee is responsible for developing and implementing all diversity initiatives for the Health Law Section.

- > **Smith Moore Leatherwood LLP** attorney **Barry Herrin** was chosen to serve as **membership vice chair** of the **American Bar Association Health Law Section** in 2008-09. Herrin began his appointment in September.

- >   **The American Bar Association** awarded the **Savannah Bar Association's Young Lawyers Division** a prestigious **first place prize** for a mock trial commemorating the anniversary of the landmark trial of the slave ship, *The Wanderer*. The mock trial was written and directed by HunterMaclean attorneys **Christopher Smith** and **Colin McRae**, who also played the roles of prosecutor Henry Ganahl and defense attorney John Owens.

In August, the YLD of the Savannah Bar Association presented a **\$3,000 donation** to the **Chatham County Guardian Ad Litem Association**. The donation was the product of the 2008 Annual Charity Golf Tournament, which was held in May at the Westin Savannah Harbor golf course.

- > *Corporate Counsel* magazine chose **HunterMaclean** as a **Go-To Law Firm® for litigation**. 2008 marks the second consecutive year that HunterMaclean has been selected as a Go-To Law Firm®. Nominated by CNA Surety Corporation, this honor recognizes HunterMaclean's excellent track record and extensive legal expertise in litigation.

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced that it will lead the launch of the **Homeless Experience Legal Protection program** in Atlanta. The project, which began in New Orleans and is expanding to a number of other cities, provides a weekly legal clinic for homeless individuals, and initially will be staffed

by Baker Donelson attorneys offering pro bono legal services. The first clinic was held in August.

- > **Hunton & Williams LLP** announced that the firm was selected as **one of the top 50 Best Law Firms for Women** by *Working Mother* magazine and **Flex-Time Lawyers**. *Working Mother* magazine is an authoritative source for career mothers, and Flex-Time Lawyers LLC is a national consulting firm advising attorneys and legal employers on work/life issues. This is the second year in a row the two organizations have recognized Hunton & Williams for the steps the firm is taking to encourage the retention and advancement of women.

The firm honored 13 Atlanta attorneys in August with the **2008 E. Randolph Williams Award for outstanding pro bono service**. Recipients of the award, named after one of the firm's founders, each contributed more than 100 hours of pro bono legal services to indigent persons and non-profit organizations during the firm's most recent fiscal year. Those honored were: **Jason M. Beach**, **Lawrence J. Bracken II**, **Karyl A. Davis**, **Lynn Gavin**, **Roger G. Gustafson**, **Marisa Huttenbach**, **Sylvia King Kochler**, **Erin C. Lockett**, **Cam L. Moultrie**, **Amanda Patterson**, **Bryan Powell**, **Lara Taylor Sevensen** and **Rita A. Sheffey**.

Hunton & Williams LLP also announced that Atlanta attorneys, **James Meadows**, partner, and **James Harvey**, partner and co-chair, both in the firm's global technology and outsourcing practice, earned individual national rankings from **Chambers and Partners**, a highly regarded legal research organization. Listed as "**Up and Comers**" were **Greta Griffith**, lending services group partner, and **Karen Sanzaro**, global technology and outsourcing partner.

- > **The District Attorneys' Association of Georgia** announced new leadership for 2008-09. **Richard Currie**, district attorney of the Waycross Judicial Circuit, will lead the association as **president**. **Howard Simms**, district attorney for the Macon Judicial Circuit, will serve as **vice president**; and **Ken Mauldin**, district attorney for the Western Judicial Circuit, will serve as **secretary-treasurer**. Appointments were also made for two key committees. **Ken Wynne**, district attorney of the Alcovy Judicial Circuit, will **chair** the **2008 Legislative Committee**. **Spencer Lawton**, district attorney for the Eastern Judicial Circuit, will **chair** the **2008 Victim Assistance Committee**. Lawton was also selected as the 2008 District Attorney of the Year.

Allison Mauldin, assistant district attorney for the Ocmulgee Judicial Circuit, was selected as the **2008 Assistant District Attorney of the Year**.

- > **The Prosecuting Attorneys' Council of Georgia** has voted to retain its current leadership for 2008-09. **Tommy Floyd**, district attorney of the Flint Judicial Circuit, will continue to lead the Council as **chairman**. **Benjamin S. Richardson**, solicitor-general for Muscogee County, will continue to serve as **vice-chair**; and **Kelly Burke**, district attorney for the Houston Judicial Circuit, will remain **secretary**.
- > **The Georgia Association of Solicitors-General** has announced new leadership for 2008-09. **Benjamin S. Richardson**, solicitor-general of Muscogee County, will lead the association as **president**. Richardson was also selected as 2008 Solicitor-General of the Year. **Brian Fortner**, solicitor-general of Douglas County, is **president-elect**. **Leslie Abernathy**, solicitor-general of Forsyth County, will serve as **secretary** and **Rosanna Szabo**, solicitor-general of Gwinnett County, is **treasurer**.
- > **Richard A. Malone**, executive director of the Prosecuting Attorneys' Council of Georgia, was elected **president** of the **National Association of Prosecutor Coordinators (NAPC)** for 2008-09. The purpose of the NAPC is to provide a forum for the exchange of ideas and information and the development of programs and services for the mutual benefit of prosecutor coordinators and prosecutors.
- > **Arnall Golden Gregory LLP** partner **Robert L. Rothman** was elected **chair** of the **American Bar Association Section of Litigation**. Rothman will focus on access to legal services and is organizing a national symposium to be held in December.
- > Incisive Media named **Stites & Harbison** as a **2008 Go-To Law Firm® for Leading Financial Services Companies**. The firm was named a Go-To Law Firm® for legal work done in the areas of litigation and labor & employment. Less than one-half of 1 percent of all law firms in the U.S. and abroad receive the Go-To Law Firm® honor. In addition, 45 Stites & Harbison attorneys firm wide were recognized in *Super Lawyers* magazine.

On the Move

In Atlanta

- > **Macey, Wilensky, Kessler & Hennings, LLC**, announced that **Peter G. Stathopoulos** joined the firm as **of counsel**. Stathopoulos has been practicing

in the areas of state and local taxation and economic development incentives since 1993. The firm is located at 230 Peachtree St. NW, Suite 2700, Atlanta, GA 30303; 404-584-1200; Fax 404-681-4355; www.maceywilensky.com.

- > **Lalaine Briones** was promoted from staff attorney to **deputy director of legal services** for the **Prosecuting Attorneys' Council of Georgia**. Her new duties consist of the acceptance, assignment, supervision and review of conflict and disqualification cases as well as other special prosecutions that come to the agency and its regional offices. The Prosecuting Attorneys' Council is located at 104 Marietta St. NW, Suite 400, Atlanta, GA 30303; 404-969-4001; Fax 404-969-0020; www.pacga.com.

- >  **Kilpatrick Stockton** announced the addition of prominent attorney **Jim Paine** to the firm's leading **commercial transactions team** in the **corporate department**. Paine joins the firm as counsel in the Atlanta office. Prior to joining Kilpatrick Stockton, he was the primary counsel for information technology and data security matters at The Home Depot. The firm is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.

- >  **Womble Carlyle Sandridge & Rice, PLLC**, announced that leading intellectual property and business litigator **William M. Ragland Jr.** joined the firm as a **member**. Ragland will continue his national practice in intellectual property and business litigation from the firm's Atlanta office. Ragland joins Womble Carlyle from the law firm of Hunton & Williams LLP in Atlanta, where he was a partner. The office is located at One Atlantic Center, Suite 3500, 1201 W. Peachtree St., Atlanta, GA 30309; 404-872-7000; Fax 404-888-7490; www.wcsr.com.

- > **Christopher R. Reeves** joined **The Finley Firm, P.C.**, as an **associate**. His practice areas will focus on environmental, medical malpractice, premises liability and toxic/mass tort litigation. 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.

- > In August, **Smith Moore LLP**, with offices in Charlotte, Raleigh, Greensboro, Wilmington, N.C., and Atlanta, **joined** with the attorneys of

Leatherwood Walker Todd & Mann PC, based in Greenville, S.C., to form **Smith Moore Leatherwood LLP**. 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.



Legare



Wolfe

Buckley & Klein, LLP, announced that **Cheryl B. Legare** and **Steven E. Wolfe** joined the firm as **associates**. Both Legare's and Wolfe's practices focus on assisting employees in resolving concerns with their future, current and former employers. The firm is located at 1180 W. Peachtree St., Suite 1100, Atlanta, GA 30309; 404-781-1100; Fax 404-781-1101; www.buckleyklein.com.

> **Coughlin Stoia Geller Rudman & Robbins, LLP**, announced that **Jason S. Jackson** joined the firm as a **patent associate** in its intellectual property practice group. Jackson specializes in computer science and electrical engineering patents. Prior to joining Coughlin Stoia, Jackson was a litigation attorney at Needle & Rosenberg, P.C., in Atlanta where he handled software, electronics and business method patents. The office is located at 3424 Peachtree Road NE, Suite 1650, Atlanta, GA 30326; 404-504-6500; www.csgr.com.

> **Jones Day** announced that **Cindy A. Brazell** and **Douglas S. Gosden** joined the firm as **partners** representing banks and other financial institutions and borrowers in leveraged finance transactions. They were formerly partners in the Atlanta office of Kilpatrick Stockton LLP. The firm is located at 1420 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-521-3939; Fax 404-581-8330; www.jonesday.com.

> **Nancy K. Gardner** joined the Atlanta office of **Chamberlain Hrdlicka** as a **shareholder**. She practices in the areas of trademark, copyright and licensing law. Gardner came to Chamberlain Hrdlicka from Needle and Rosenberg. The office is located at 191 Peachtree St. NE, 34th Floor, Atlanta, GA 30303; 404-659-1410; Fax 404-659-1852; www.chamberlainlaw.com.

> **Cantor Colburn LLP** announced that leading intellectual property litigator **Elizabeth Ann "Betty" Morgan** has joined the firm as a **partner**. Morgan will continue her national practice in intellectual property litigation from the firm's Atlanta office.

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She joins the firm from Epstein Becker & Green, P.C., where she was a member. The office is located at 1180 Peachtree St. NE, Suite 2050, Atlanta, GA 30309; 404-607-9991; Fax 404-607-9981; www.cantorcolburn.com.

>  **Jason N. Sheffield** joined the Atlanta office of **McGuireWoods LLP** as an **associate** in the firm's tax and employee benefits department. Sheffield was previously an associate with Taylor, Busch, Slipakoff & Duma, LLP, in Atlanta. The firm is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.


> **Morris, Schneider, Prior, Johnson & Freedman, LLC**, welcomed **Lawrence W. Kelly** into the partnership in July. Kelly is a member of the firm's litigation department. The firm's Atlanta office is located at 1587 Northeast Expressway, Atlanta, GA 30329; 770-234-9181; Fax 770-234-9192; www.mspjf.com.

>   **The Ramos Law Firm** announced the addition of **Adriana Sola Capifali** and **James D. Timmons Jr.** as **associates**. Both attorneys will be focusing their practice areas in workers' compensation. The firm is located at 1800 Peachtree St., Suite 620, Atlanta, GA 30309; 404-355-3431; Fax 678-904-5645; www.amoslawfirm.com.

> **William H. Mathieu** joined **Stites & Harbison** as a **member** of the Atlanta office. He will serve clients in the real estate & banking service group. Prior to joining Stites & Harbison, Mathieu was a partner at Powell Goldstein. The firm is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

> **Robert Petmecky** announced the opening of **Petmecky Law Group, LLC**. The firm will serve clients and their advisors in the areas of estate planning and administration, asset protection, succession planning and charitable planning. The firm is located at 2302 Parklake Drive, Suite 100, Atlanta, GA 30345; 770-724-0307; Fax 770-908-0920; www.plgplanning.com.

In Savannah

>  **HunterMaclean** announced that attorney **Nicholas Laybourn** joined the firm as a **litigator** in the Savannah office. Laybourn's practice areas include products liability, commercial disputes, contract matters and medical malpractice. The office is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; huntermaclean.com.

> **Margaret K. Clark**, formerly with the firm of McCorkle & Johnson, LLP, announced the formation of her own firm. Clark focuses on construction law, contract review and drafting, lien law, open account collection, homeowners' association law, and civil litigation and arbitration. The firm's office is located at 11511 Abercorn St., Suite 220, Savannah, GA 31419; 912-201-1458; Fax 866-756-6221; www.mkclawfirm.com.

In West Des Moines, Iowa

> **Marilyn (Walker) Hamilton** accepted a position as an **administrative law judge** in the **Office of Disability Adjudication and Review (ODAR)** of the Social Security Administration. The ODAR is responsible for holding hearings and issuing decisions as part of the Social Security Administration's process for determining whether or not a person may receive benefits. The ODAR is located at Regency West Building 7, Suite 300, 4400 Westown Parkway, West Des Moines, IA 50266; 515-223-5038; Fax 515-223-0371.

Correction

In the August 2008 issue of the *Georgia Bar Journal*, attorney Neil C. Gordon of Arnall Golden Gregory LLP was mistakenly reported as having been indicted into the American College of Bankruptcy. Instead, Gordon was inducted into the college. We do apologize for this error.

Do you have news to share with fellow Georgia lawyers?
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All in the Family

by Paula Frederick

“**C**all your mother,” your sister Amy advises as you pick up the telephone. “I’ve been avoiding her all week,” you admit with a heavy sigh. “I can’t believe she wants me to sue Aunt Rosie!”

“Yep, they have really lost their minds this time,” your sister agrees. “For years we’ve been begging them to give in to the developers and sell grandma’s farm. Who would have thought it would turn into this debacle?”

“And I’m the poor fool who’s trying to negotiate the deal!” you moan. “I only agreed to help because they *swore* they agreed on all the details! ‘Sell it fast and we’ll divide the money equally’ – that’s what they promised! Now Mom wants to sell, Rosie wants another \$1 million, and the developer is about to walk away! Why me?”

“Well, that’s what you get when you’re the lawyer in the family,” Amy reminds you. “But it gets worse,” she warns. “Aunt Rosie told Mom she was going to file a grievance against you.”

Dropping your head into your hands, you do a quick recap. “After six weeks of hard negotiating, the developer is about to take his offer off the table. I’m hiding from my own mother. Aunt Rosie’s grieving me. Anything else?”

“Umm...how about the fact that no one is paying you a dime?” your sister adds helpfully.

Many of us don’t have a choice about handling the occasional legal matter for family members—after all, it’s hard to say “no” to the folks who paid your law school tuition. Problems can arise, however, particularly when the lawyer is trying to balance the interests of multiple clients or when the lawyer has a personal stake in the subject matter of the representation.

The Bar regularly receives grievances against lawyers filed by their family members. The complaints usually involve poor communication or conflicts of interest.



Problems with communication arise when a lawyer is too casual about representing a family member. For example, instead of sending letters as she would for any other client, the lawyer believes she can wait until she sees her cousin at a family gathering to pass along information about the case. In group representation, the lawyer may make the mistake of communicating with only one family member, mistakenly assuming that person will accurately convey information to the others.


Conflicts that arise from multiple representation fall under Georgia Rule of Professional Conduct 1.7. The rule prohibits a lawyer from representing a client when there is a significant risk that the lawyer's duties to herself or to another will materially and adversely affect the representation. It allows multiple representation where there is no such risk, or where the clients consent despite the possibility of adverse effect.

Like poor communication, problems with conflicts usually stem from a natural tendency to treat family more casually than a "real" client. For example, even a lawyer who regularly makes written con-

flicts disclosures before undertaking multiple representation may fail to do so when the clients are family members, expecting the family bond to minimize problems. When a conflict arises the lawyer may be tempted to stay in the case long after a compromise solution is possible.

The ugliest conflicts involve claims that the lawyer has engaged in self-dealing, putting his personal interest ahead of the interests of the rest of the family. It may be difficult to avoid this impression when the lawyer has a personal interest in the representation—one more reason to decline representation in the first place.

So be careful when representing family. Evaluate potential conflicts, make the appropriate disclosures and don't take the case if the situation does not pass muster under Rule 1.7. Handle the case as you would any other.

Insisting on the formalities may not make you the most popular guy at the family reunion, but will certainly prevent headaches later. 



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

(June 21, 2008 - Aug. 13, 2008)

by Connie P. Henry

Disbarments

Daniel J. Levy

Atlanta, Ga.

Admitted to Bar in 1998

On July 7, 2008, the Supreme Court of Georgia disbarred Attorney Daniel J. Levy (State Bar No. 449298). The State Bar filed four Notices of Discipline against Levy. Levy was properly served with the Notices of Discipline by publication, but he failed to file Notices of Rejection. The following facts are deemed admitted by his default:

Levy agreed to represent clients in legal matters and abandoned each client after doing some work on their cases. He failed to file appropriate pleadings, motions or responses and, in most cases, his failures led to dismissal of their cases or appeals or interruption of their negotiations. He failed to communicate with those clients and failed to withdraw from representation. Levy essentially abandoned the practice of law without advising any of these clients.

The Court found in aggravation of discipline that Levy had multiple violations in each case and that multiple disciplinary matters were being pursued simultaneously, thereby evidencing a pattern and practice of wrongful conduct.

Charles Houston Richards

Atlanta, Ga.

Admitted to Bar in 1991

On July 7, 2008, the Supreme Court of Georgia disbarred Attorney Charles Houston Richards (State Bar No. 603822). The State Bar filed a Notice of Discipline against Richards. Richards was properly served with the Notice of Discipline by publication, but he failed to file a response. The following facts are deemed admitted by his default:

In one incident a client retained Richards to represent him in collecting a judgment. Richards did some

initial work on the case but failed to adequately communicate with the client after the first month. Although the client believes Richards collected more than \$8,000 from the defendant, Richards did not give the client any of the funds.

In a second incident a client retained Richards to represent him in a workers' compensation case. Although Richards received settlement funds for the client, he did not allow him to see the disbursements to medical providers. Richards deducted more than the agreed-upon fee from the settlement funds and gave the client a check that was written on his trust account, allegedly representing the client's portion of the settlement. The client attempted to cash the check five times before the funds became available.

The Court found in aggravation of discipline that Richards already had received two Investigative Panel Reprimands in 2007.

Suspensions

Michael Anthony Edmunds

Atlanta, Ga.

Admitted to Bar in 1999

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Michael Anthony Edmunds (State Bar No. 239744) on June 30, 2008, and ordered that he be suspended from the practice of law for three years with conditions for reinstatement. Respondent answered a formal complaint and then filed a petition for voluntary discipline.

Edmunds admitted that he failed to communicate effectively with clients in six matters and that he also failed to provide diligent representation in one of those matters. He also admitted that he used his trust account to hold funds for a business that was not related to his law practice, but in which he had an interest. None of the funds in that account belonged to his clients.

In mitigation of discipline the Court found that Respondent tried and failed to simultaneously practice law and cope with his divorce, alcoholism and depression; he referred all clients to other attorneys; he has not practiced law since his license was suspended on Aug. 7, 2007; he completed a 30-day outpatient alcohol treatment program; he attends one to two Alcoholics Anonymous meetings per week; and he receives counseling from a State Bar program. The Court also noted that Respondent's rule violations did not appear to have injured the clients. Prior to reinstatement, Respondent must obtain certification from the Lawyer Assistance Program that he is fit to practice law and that he poses no threat to the public or his clients.

Anthony Brett Williams

Braselton, Ga.

Admitted to Bar in 1996

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Anthony Brett Williams (State Bar No. 760811) on June 30, 2008, and ordered that he be suspended from the practice of law for six months with conditions for reinstatement. Williams pled guilty to a violation of OCGA § 45-11-5 (misdemeanor for a public officer to receive money not due him through the use of his office) and was sentenced under the First Offender Act to one year of probation. While a state paid assistant district attorney, Williams participated in a scheme initiated by the then-district attorney, to obtain from Banks County money to which the district attorney was not entitled. Respondent should have known that the Banks County Board of Commissioners did not know the details underlying the scheme. Once confronted with his participation, Williams, who has no prior discipline and who is remorseful, cooperated fully in the investigations. Prior to reinstatement, Williams must prove that his probation has been terminated.

Russell William Pope

Conyers, Ga.

Admitted to Bar in 1993

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Russell William Pope (State Bar No. 584330) on July 7, 2008, and ordered that he be suspended from the practice of law for a period of six months.

In Docket No. 5410 Pope filed a modification of child custody for a client in July 2005 which resulted in custody of the child being granted to Pope's client, the father. In August 2005 the case was transferred to Cobb County. Pope took no further action to prosecute the modification petition. A hearing was held in October 2006 but Pope failed to appear. The trial court issued an order returning custody of the child to the mother. In May 2006 the mother filed a grievance against Pope. Pope acknowledged service of the Notice of Investigation but did not respond. The Supreme Court suspended Pope from practice and subsequently reinstated him in July 2007 when he submitted a response.


In Docket No. 5431 Pope entered into a written fee agreement in May 2006 to represent a client in a child custody and support matter and the client paid him \$2,605. Pope filed a petition for change of custody and in September 2006 the parties reached an agreement. Although Pope was to prepare a final consent order, he failed to do so and his client was unable to contact him. Pope finally prepared the consent order in October 2007 and submitted it to opposing counsel. In March 2007, the client filed a grievance against Pope. Pope acknowledged service of the Notice of Investigation but did not respond. After the State Bar notified him that a formal complaint would be filed against him, he withdrew from the case.

In File No. 070246, two clients hired Pope regarding an automobile accident. In December 2005 the other driver's insurance company made an offer in response to Pope's

demand letter. Pope did not communicate the offer to his clients, nor did he respond to the insurance company. In November 2006 the statute of limitations expired on the clients' claims. In February 2007 one of the clients filed a grievance against Pope. Pope acknowledged service of the Notice of Investigation but failed to respond. On Jan. 3, 2008, the Court suspended Pope for failing to respond and on Jan. 15 he submitted a response.

In mitigation of discipline the Court found that Pope cooperated with the State Bar; he is remorseful; he has no prior disciplinary record; during the time period of these matters Pope was suffering marital difficulties; and the clients in File No. 070246 are suing him for malpractice. Justice Sears and Justice Hunstein dissented.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since June 20, 2008, three lawyers have been suspended for violating this Rule and one has been reinstated. 



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

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Trust Account Management to Weather the Storm

by Natalie R. Kelly

Storms raging in the U.S. economy have come ashore for many law firms. Faced with concerns about financial markets, and in some cases the financial institutions they work with, many lawyers want to make sure they are doing what they should with their trust accounts, and to ensure the funds for which they are responsible have been properly protected. The Bar provides these pointers to help make sure there are no sleepless nights when it comes to dealing with a client's money.

Know the Bar's Rules About Trust Accounts

Georgia's Professional Rules of Conduct that relate to trust account set up and maintenance are:

- Rule 1.15(I) Safekeeping Property — General
- Rule 1.15(Ii) Safekeeping Property — Trust Account and IOLTA
- Rule 1.15(Iii) Record Keeping; Trust Account Overdraft Notification; Examination of Records



For additional information on trust accounting in specific situations, you can also refer to Formal Advisory Opinions:

- No. 91-2 — Advance Fee Payments
- No. 94-2 — Ethical Considerations Applicable to a Lawyer Paying Funds to Others over a Client's Objections
- No. 98-2 — Unclaimed Trust Funds and the Disposition of Unclaimed Property Act

- No. 04-1 – Placement of Real Estate Closing Proceeds in Trust Accounts

To receive assistance with any of the Rules or Advisory Opinions, call the Ethics Helpline at 800-682-9806 or 404-527-8741.

Check Your Bank's "Approved" Status

Only approved institutions can be used by lawyers to properly set up client trust accounts. However, you should make sure your bank is approved by checking annually at the IOLTA (Interest on Lawyer's Trust Account) approved bank listing online at www.gabar.org/ethics/iolta_approved_banks/.

Properly Setup and Name Your Trust Account

To set up your trust account, take a *Notice to Financial Institution* form to the bank officer responsible for establishing lawyers' trust accounts at your bank. This form can be found online at www.gabar.org/public/pdf/GBF/IOLTA.pdf and directs your financial institution to remit earned interest to the Georgia Bar Foundation. Interest does not come to the State Bar of Georgia.

When naming your trust account, be sure to use the terms "lawyer trust account" or "attorney trust account" to differentiate the account from other valid "escrow" accounts that other professionals may have.

Put Good Checks and Balances in Place for Account Reconciliation and Management

Always have paper bank statements for your trust account delivered to you, unopened by your staff. Do not divulge passwords or account access information to your staff for online account monitoring. Limit access to your trust account

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

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information only to those who absolutely need it. Reconcile your account monthly and make sure you have running ledgers for your overall account and individual client accounts balances. You can get sample reconciliation checklists and ledger forms from the Law Practice Management website forms area at www.gabar.org/programs/law_practice_management/forms/.

Law Practice Management can also assist you in determining which software or computer programs can help you automate and track your trust accounts. Most legal-specific, time billing and general ledger accounting programs have the ability to manage lawyers' trust accounts without much setup or customization. The following programs may be helpful for smaller law firms: Timeslips (www.timeslips.com), Amicus Accounting (www.amicusaccounting.com), PCLaw (www.pclaw.com) and TABS3 (www.tabs3.com). This list is not all-inclusive.

On a practical level, you can keep your operating account information separate from your trust account information by using different colored checks or different banks for the accounts. Keeping the checkbooks in separate secure areas in your office can also help to ensure you don't make the costly mistake of mixing up your accounts by accident.



Know That Your Clients' Funds Can Be Insured for More Than \$100,000

While all approved institutions must be FDIC insured, and funds for each of your individual clients are insured up to \$100,000 under normal FDIC regulations, accounts with balances exceeding \$100,000 can be insured over that amount under certain circumstances. Because the IOLTA is a fiduciary account, it may actually be insured for much more.

FDIC insurance applies to each of the attorney's clients as if the funds were directly deposited by the individual client, provided certain requirements are met (those requirements should be discussed between each bank/attorney, but generally deal with the proper title of the account, if the client has no other funds deposited at the same bank under the same name and the bank's access to the client's information).


If you have already had occasion to look into increasing protection for funds in a bank account, you may have found information about a service called CDARs (Certificate of Deposit Account Registry Service). Under the CDARs program, a participating bank will transfer balances in excess of \$100,000 to a sufficient number of other participating banks so that no single bank holds more than \$100,000. Unfortunately, this is probably not a workable solution for Georgia lawyers. Georgia Rule of Professional Conduct 1.15(III) requires you to maintain your trust account in an approved institution—one that has agreed to report overdrafts to the State Disciplinary Board. In the CDARs program, funds in excess of FDIC limits are placed in other banks, including out-of-state banks, without regard to whether they have been approved by the State Bar. As a result, you could end up with trust funds that have been placed in financial institutions that do not meet the requirements of the ethics rules.

Check Out Additional FDIC and Related Resources

Beyond general information on insurance for your FDIC deposits, the FDIC website provides many tools to help monitor and work with the insurance coverage amounts and the status of financial institutions. You can use a calculator to get an estimate of how much coverage is available for each of your deposit accounts, or even groups of deposit accounts you establish. You can also keep track of the status of financial institutions that are being monitored or set-to-be closed. Visit www.fdic.gov to use these resources.

Another place to check on a financial institution's status is Veribanc. Visit their site at www.veribanc.com to sign up for services.

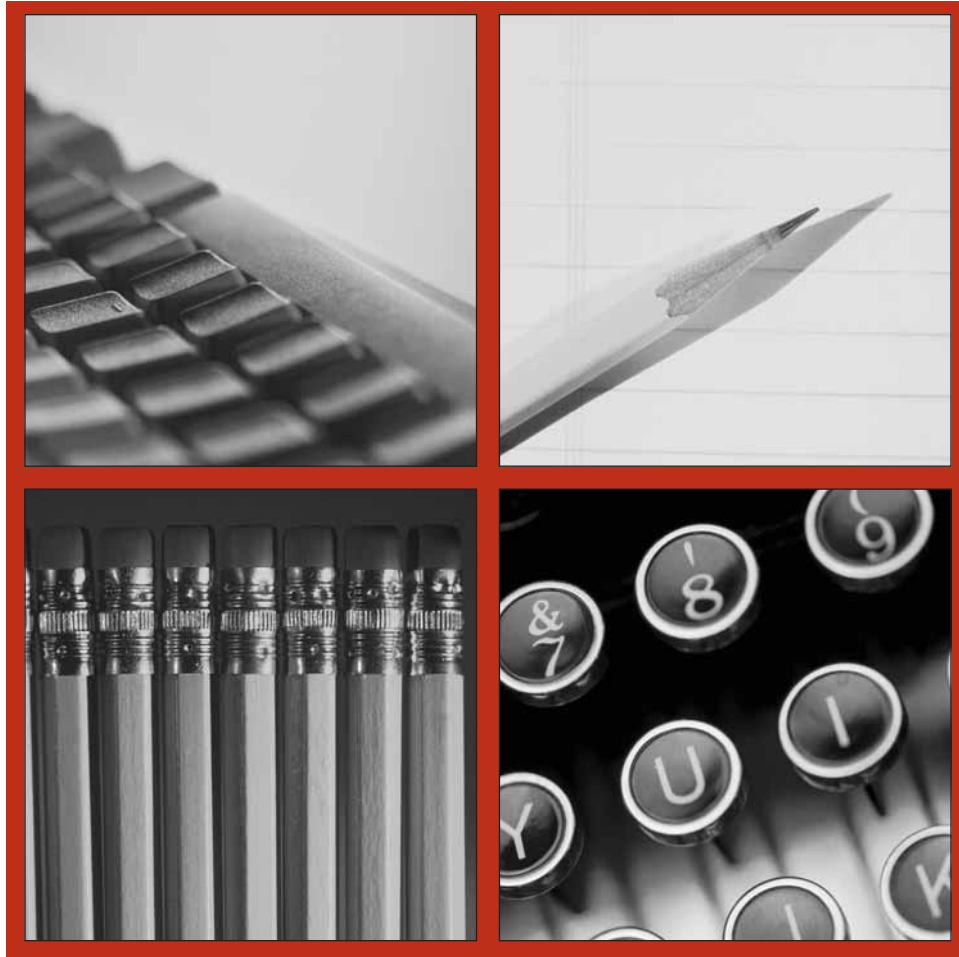
Contact Us for More Help

If you ever have any questions about your trust account or how you have set it up, you can contact various departments at the Bar for assistance. You can contact the State Bar's Trust Account Overdraft Notification Office whenever you have an overdraft situation or question about an approved institution for your trust account. Call the Ethics Helpline for questions about the Bar Rules or Advisory Opinions and what you can and cannot do with your trust account. The Law Practice Management Program can help you review, streamline and automate your trust accounting procedures and provide checklists and forms to help you keep your account maintained properly. 



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

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The Editorial Board will review all submissions and decide on publication.

Satellite Images. . .

by Bonne Cella

The State Bar of Georgia's satellite office in Tifton is approaching its 14th year of operation. Used for a myriad of purposes, attorneys from all over the state meet here for depositions, mediations, training programs, seminars and committee meetings.

The conference room comfortably accommodates 35 people. It is equipped with a large screen TV, LCD projector, a conference telephone line and wireless access points for online communications.

Georgia Legal Services, Workers' Compensation, Child Support Enforcement, The Children's Advocacy Collation and Ruth's Cottage—a women's shelter—are some of the agencies that use the facility for meetings and training purposes.


The staff at the satellite office is available to plan and host law-related events on site or other locations as well as assist local bar associations with programs and communications.

Community outreach and serving the many consumers that contact the office remains a top priority with the goal of preserving and enhancing the image of the State Bar of Georgia.



(Center) 1995-96 President Bobby Chasteen welcomed honored guests, including 1994-95 president Hal Daniel (right), to the grand opening of the Satellite Office on Jan. 20, 1995.

Food service is available, soft drinks and coffee are complimentary and so is the parking!

As we approach our 14th year of operation, we invite State Bar members who have not used the resources here to give us a call. Remember, you have a home away from home in South Georgia. We look forward to serving you! 



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.

Since the Tifton Office opened its doors in January 1995, it has provided space, resources and hospitality to members of the legal community and the public alike. Below is a brief list of events, meetings and organizations that have utilized the facility over the past 13 years.

Organized and Facilitated

- The first naturalization ceremony held in South Georgia
- The first visit of the Supreme Court in Tifton
- The first interactive Supreme Court hearing outside of Atlanta
- The grand opening of the federal courthouse in Albany, Ga.
- A legal clinic for tornado victims
- YLD Great Day of Service for Tift Circuit
- Facilitated Professional Enhancement programs (statewide)

Hosted

- Statewide Attorney Speaker's Bureau
- Public Defender training
- Domestic violence workshops
- Law staff training
- ADR training
- State Bar Executive Committee meetings
- FBI, GBI hearings
- State Bar Investigative Panel and Review Panel Meetings
- CLE for ICLE
- Host Section CLEs and meetings

- Membership Services Committee meetings
- Indigent Defense seminars
- Town Hall meetings
- Superior Court Clerks and IRS seminar
- Local Bar Activity Committee meetings
- Child Support Recovery seminars
- Divorce Mediation training
- Divorcing Parents seminars
- Malpractice Prevention seminars

In the Community

Hosted

- Georgia Advocacy Program for special needs children
- Tifton Heritage Foundation
- Leadership Tifton
- Museum Guild
- Drug prevention seminar for high school students
- National Crime Victims' Rights Week—served as site for filming public service announcement for TV



(Left to right) Sherry Gatewood, administrative assistant and Bonne Cella, administrator, welcome you to the Satellite Office.



(Left to right) Charles Shenton, Valdosta; Raleigh Rollins, Thomasville; Mike Burke, Tifton; and Johnny Spurlin, Tifton, are some of the many regulars who use the office for depositions and mediations.



Liesa Gholson, director of Process Improvement & Oversight of The State Board of Workers' Compensation, Atlanta, presents a workshop at the Tifton office. (Left to right) Susan Thursby, Liesa Gholson, Julia Snow and Debra Lewis.



The Museum Guild of the Tifton Museum of Art and Heritage holds their fundraising meetings at the satellite office. (Left to right) Tammy Griffin, Avan Moore and Nancy Baldwin.

Summertime Section Events

One of Many Benefits Available to Members

by Derrick W. Stanley

Summer is not typically a busy season for sections. There are vacations to take, cook-outs to plan and holidays to celebrate.

Despite all the interruptions that occur this time of year, two sections had very successful events.

On Aug. 6, the Patent Committee of the Intellectual Property Law Section held a lunch seminar at the Bar Conference Center titled "Recent Developments in Trademark and Unfair Competition Law." Ted Davis, partner at Kilpatrick Stockton LLP, presented the information to a near capacity crowd.

Likewise, the Entertainment and Sports Law Section held their annual meeting Aug. 20, at Maggiano's Buckhead. Before the section elected a new slate of officers, "The State of Georgia—The State of the Industry" program was presented. The panel discussion covered recent Georgia trends in music, film, visual and theater arts. Speakers represented SESAC, the National Academy of Recording Arts and Sciences, Georgia Lawyers for the Arts and the Atlanta Coalition of Theaters. SESAC not only participated in the program, but also assisted in sponsoring the event.

There are many events that have already been scheduled throughout the remainder of 2008 and into 2009. In addition to the events that are sponsored specifically by the sections, there are also CLE programs that are delivered by ICLE. Please visit www.iclega.org for a full listing of CLE offerings and events.

This is also a great time of year to consider joining a section of the State Bar of Georgia. There are currently 40 sections ranging from Administrative Law to Individual Rights and Family Law to Workers' Compensation. Being a member of a section allows you the opportunity to network with peers who share the same passions and practice. Many sections produce

Administrative Law ★
Agriculture Law ★ Antitrust
Law ★ Appellate Practice ★
Aviation Law ★ Bankruptcy Law
★ Business Law ★ Consumer
Law ★ Corporate Counsel Law ★
Creditors' Rights ★ Criminal Law ★
Dispute Resolution Law ★ Elder Law ★
Eminent Domain Law ★ Entertainment
and Sports Law ★ Environmental Law ★
Equine Law ★ Family Law ★ Fiduciary Law
★ Franchise and Distribution Law ★ General
Practice and Trial Law ★ Government Attorneys
Section ★ Health Law ★ Immigration Law
Section ★ Individual Rights Law ★ Intellectual
Property Law ★ International Law ★ Judicial
Section ★ Labor and Employment Law ★ Legal
Economics Law ★ Local Government Law ★ Military/
Veterans Law ★ Product Liability Law ★ Real
Property Law ★ School and College Law ★ Senior
Lawyers ★ Taxation Law ★ Technology Law ★
Tort and Insurance Practice ★ Workers'
Compensation Law

newsletters that contain timely information, as well as hold social events, monthly lunch and learns, and networking receptions. The section chairs also have the ability to share important information by e-mail to the members. A few sections maintain websites in addition to those located on the Bar website.

You can join a section at any time of the year by simply completing the application on page 61 and mailing it to the State Bar of Georgia. The application is also available at www.gabar.org. 



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

2008-2009 Section Membership

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<input type="checkbox"/> Appellate Practice	\$15
<input type="checkbox"/> Aviation Law	\$15
<input type="checkbox"/> Bankruptcy Law	\$35
<input type="checkbox"/> Business Law	\$20
<input type="checkbox"/> Consumer Law	\$25
<input type="checkbox"/> Corporate Counsel Law	\$25
<input type="checkbox"/> Creditors' Rights	\$15
<input type="checkbox"/> Criminal Law	\$20
<input type="checkbox"/> Dispute Resolution Law	\$15
<input type="checkbox"/> Elder Law	\$20
<input type="checkbox"/> Eminent Domain Law	\$35
<input type="checkbox"/> Entertainment and Sports Law	\$25
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Getting The Most Out of Casemaker:

An Overview of the Advanced Search Features—Part III

by Kimberly White

In the August 2008 Casemaker article, you learned about performing searches using the word forms feature via the advanced search tab.

We continue our explanation of the advanced search options here by digging deeper and showing you how to use the “Proximity” feature.

The “Proximity” feature allows you to determine how closely you want your keywords to appear together in your document (see fig. 1). You can narrow your results to be in the same sentence or within 500-1,000 characters of your search term.

In the Georgia Library of Casemaker, you are able to use the “Proximity” search field as follows:

Document

When using the default option, the keywords you type into the Full Document Search Query will appear within the document (see fig. 2). In this example, the keywords “property” and “liability” will appear in the same document (see fig. 3).

Within 1000 Characters

When you narrow your search and set the Proximity to “Within 1,000 Characters,” Casemaker will only list documents where the keywords listed are within 1,000 characters of each other (see fig. 4). For example if you type in the words “property” and “liability” and change the “Proximity” to “Within 1,000 Characters,” Casemaker returns 5,801 matches instead of the original 5,829 matches (see fig. 5).

Within 500 Characters

You can further narrow your search by setting the “Proximity” to “Within 500 Characters” (see fig. 6). For example, if you revise your search using the words

“property” and “liability” and change the “Proximity” to “Within 500 Characters,” Casemaker now returns 5,650 matching documents (see fig. 7).


Sentence

Now, you can modify your search by changing the “Proximity” setting to “Sentence,” which means that all of your keywords will appear in the same sentence. Revise your search and keep the words “property” and “liability.” When you change the “Proximity” to “Sentence,” Casemaker only returns documents where your keywords are listed in the same sentence (see fig. 8).

Word

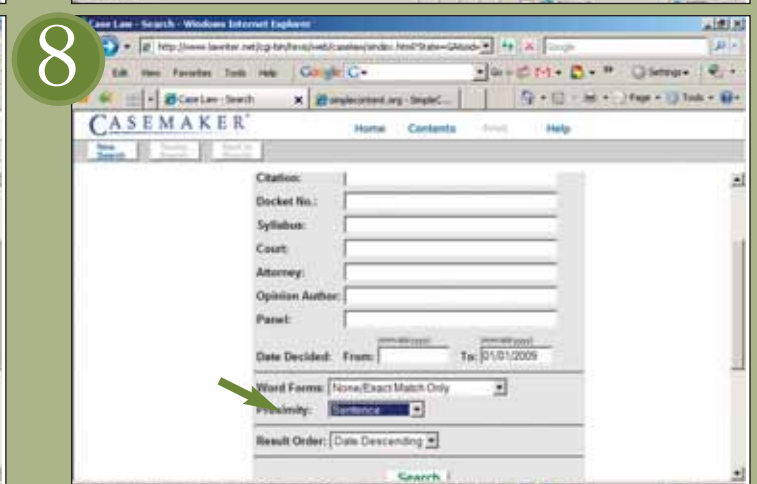
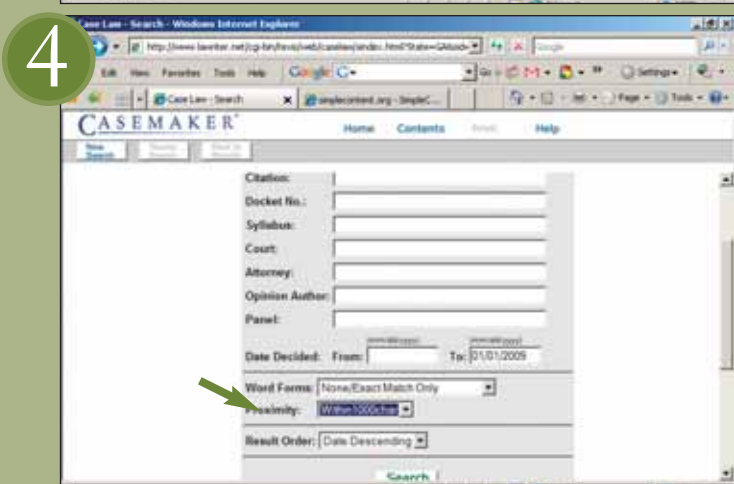
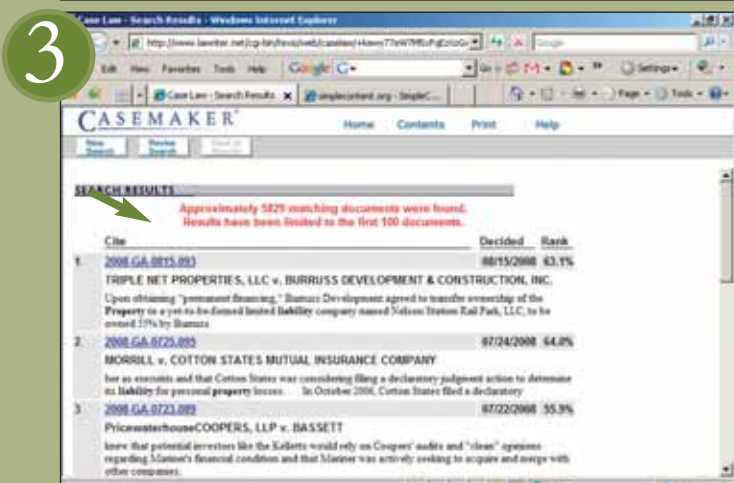
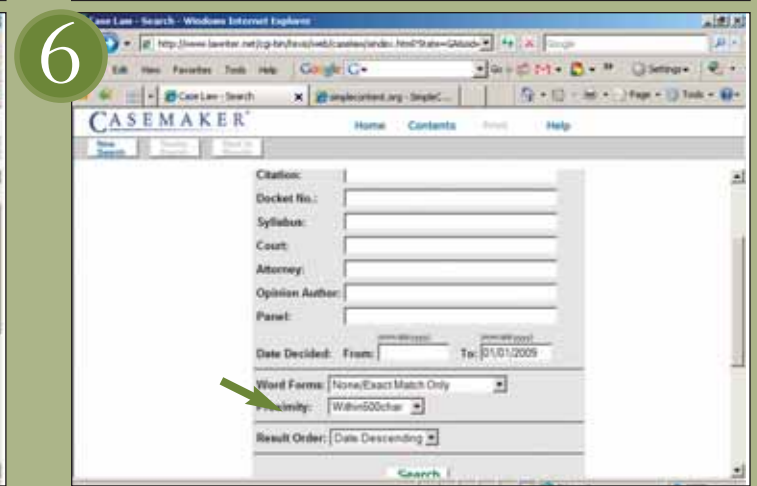
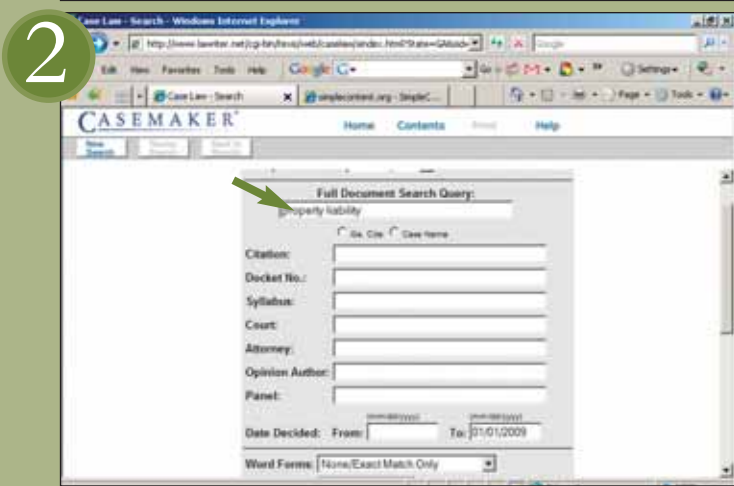
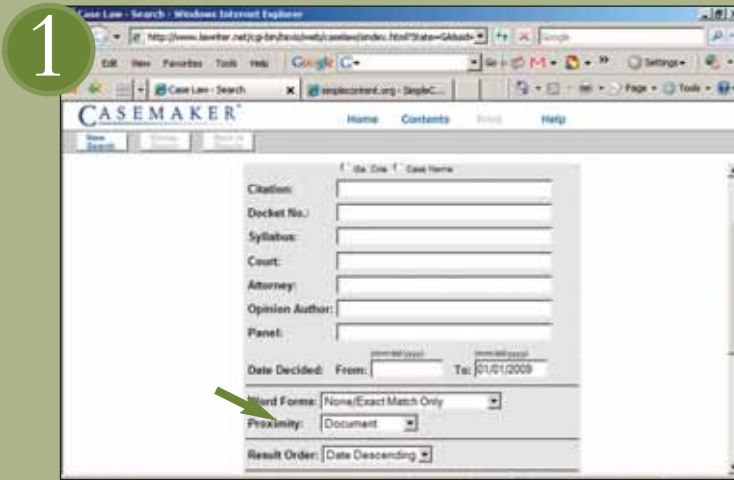
The “Word” option will return the same results as the “Wildcard” option that was mentioned in the August 2008 article. Changing the “Proximity” to “Word” will give you the same results as if you put quotation marks around the keywords or put an asterisk behind the keywords when typing them in the “Full Document Search Query.” Casemaker returns only results that contain the keywords when they appear in the document exactly as you indicated.

Casemaker 2.0 is dedicated to helping you locate documents or opinions in a platform that is accurate and expeditious. The “Proximity” feature allows you to narrow your search significantly. Using this feature gives you a greater chance of locating the information you are looking for.

For more assistance with using Casemaker, please contact Kimberly White, member benefits coordinator, at kimberlyw@gabar.org, 404-526-8618 or 800-334-6865. 



Kimberly White is the member benefits coordinator of the State Bar of Georgia and can be reached at kimberlyw@gabar.org.



The Road To Heaven Is Paved With Good Verbs

by Karen J. Sneddon and David Hricik

According to Stephen King, “The road to hell is paved with adverbs. . . .”¹ While we hope that heaven may still admit writers despite the occasional adverb, this month’s installment of “Writing Matters” suggests that brevity and clarity demand scrutiny of each adverb.

What is an adverb? An adverb is a word that modifies an adjective, verb or other adverb.² The easiest way to spot one is to watch for words ending in “ly,” as in “he quickly drove to the client’s office.” *Quickly* modifies *drove*, a verb, and so *quickly* is an adverb. Not all adverbs end with “ly” but many do.

Lest we be accused of going too far, the well-chosen adverb can have a powerful impact. For example, Justice Stevens’ dissent in *Bush v. Gore* concluded with “I respectfully dissent.”³ The other dissenting opinions did not include the adverb “respectfully.” Justice Stevens’ inclusion of “respectfully” — or the other dissenting justices’ omission of that one word — no doubt came after careful consideration.

Yet, most writers do not give adverbs the attention they deserve. “In weak moments,” Pulitzer Prize-winning author Richard Ford says, “a writer will use an



-ly adverb when the verb isn’t strong enough.”⁴ Consider the following example: *The defendant tightly closed her hand.* We already have *clenched* as quite a nice verb that describes a tightly closed hand: *The defendant*

clenched her hand is shorter; the verb is also more vivid. Using *tightly closed* conveys laziness since the writer used the weaker verb *closed* plus the adverb *tightly* instead of the stand-alone and stronger verb, *clenched*.

Legal writers often use adverbs in the form of “intensifiers.” The most commonly used intensifiers are *really*, *clearly* and *very*. These adverbs annoy judges. Chief Justice Roberts stated:

We get hundreds and hundreds of briefs, and they’re all the same Somebody says, ‘My client *clearly* deserves to win, the cases *clearly* do this, the language *clearly* reads this,’ blah, blah blah. And you pick up the other side and, lo and behold, they think they *clearly* deserve to win. . . . I mean, if it was an easy case, we wouldn’t have it.⁵

Ironically, the use of intensifiers can also hide the real strength of a statement. For example: *The plaintiff’s car clearly stopped at the corner*. What makes it so clear? The use of the word *clearly* can make the writer forget the support: *Three witnesses swore the plaintiff’s car stopped at the corner*.

Adverbs can be good, but they can also mask better writing. As a result, if you include an adverb (including words ending with “ly”) delete it and replace the verb it modifies with a stronger verb unless there is a compelling reason to not do so. Finally, intensifiers create particular issues for legal writers, and so the chart lists many of them, including common ones that the “ly” filter will not catch. Use them sparingly and intentionally.

Adverb Editing Tips

- Either using a highlighter and a hard copy of your work or using the electronic highlighter on your computer, highlight each adverb in your work. Are

Intensifiers to Avoid

absolutely	only
actually	patently
almost	plainly
certainly	really
clearly	quite
completely	simply
definitely	so
extremely	surely
greatly	truly
heartily	unarguably
just	indoubtedly
literally	unequivocally
merely	unquestionably
mildly	very
obviously	

Try It:

Revise the following sentences.

- The police officers ran really fast across the lawn.
- Three armed thieves daringly stole the very rare coins.

Possible Revisions:

- The police officers dashed across the lawn.
- Three armed thieves snatched the rare coins.

Save Valuable Research Time

Casemaker is a Web-based legal research library and search engine that allows you to search and browse a variety of legal information such as codes, rules and case law through the Internet. It is an easily searchable, continually updated database of case law, statutes and regulations.

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you faced with the electric glow of fluorescence? You may need to eliminate some adverbs.

- Use the find function on your computer and type in "ly." Because many adverbs have this ending, you will be able to quickly see the use of every "ly" and determine whether it is an appropriate use of an adverb, or even an overuse of one particular adverb.
- Use the chart to help you avoid the most common intensifiers. 



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. Stephen King, *ON WRITING* 125 (2000). See also Brendan T. Beery, *Some Particularly Useless Words*, 82 Mich. B.J. 56, 57 (2003).
2. An adjective, in contrast, modifies or describes a noun.
3. *Bush v. Gore*, 531 U.S. 98, 129 (2000) (Stevens, J., dissenting).
4. Don Lee, *About Richard Ford: A Profile*, <http://www.pshares.org/issues/article.cfm?prmArticleID=4087>.
5. Robert Barnes, *Chief Justice Counsels Humility; Roberts Says Lawyers Must Put Themselves in Judges' Shoes*, WASH. POST, Feb. 6, 2007, at A15, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/05/AR2007020501297.html>.

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Sixteen Years of Professionalism Orientations in Georgia Law Schools

by Avarita L. Hanson

For the 16th year, the State Bar's Committee on Professionalism partnered with the Chief Justice's Commission on Professionalism and all five ABA-accredited Georgia law schools to present professionalism orientation programs for more than 1,000 incoming students—first-years, transfers and visitors. Since 1993, these orientations have introduced law students to issues of professionalism not only germane to the practice of law but immediately relevant to their lives as law students.

Using faculty, judges and volunteer attorneys as group leaders, students discussed hypothetical situations from law school life that present ethical and professionalism challenges. They used their student codes of conduct, in addition to the Georgia Rules of Professional Conduct, as the basis for their answers. They also used their own moral and ethical compasses with their knowl-



Photos by Avarita L. Hanson and Terie Latala

Hon. Patsy Y. Porter, Fulton County State Court, speaks to incoming first-year students at Georgia State University College of Law during the Law School Orientation on Professionalism on Aug. 12.

Law School	Date Held	Number of Incoming Students	Keynote Speaker
Atlanta's John Marshall	Aug. 16, 2008	169	J. Diane Woods, Esq. Huff, Woods & Hamby, Marietta
Emory	Aug. 22, 2008	228	Hon. Anne Barnes Court of Appeals of Georgia
Georgia State	Aug. 12, 2008	235	Hon. Patsy Y. Porter State Court Fulton County
Mercer	Aug. 15, 2008	160	Hon. Frank J. Jordan Superior Court, Chattahoochee Circuit, Columbus
University of Georgia	Aug. 15, 2008	229	Hon. Richard W. Story U.S. District Court (N.D. Ga.)

edge and experience to address the professionalism issues discussed in the orientation group sessions.

This unique learning experience was developed by the State Bar of Georgia and has been replicated by more than 40 law schools across the country. Each student body heard from a keynote speaker and at some of the schools, students took an honor code oath. Others heard from Sally Evans Lockwood, director of the Office of Bar Admissions, regarding their obligations and expected behavior as law school students who in three or four years will seek admission to the State Bar of Georgia. Many students gave the professionalism orientation breakout discussions the highest marks in their orientation experience.

Each law school orientation audience heard relevant, informative and inspiring messages from distinguished keynote speakers. Fulton State Court Judge Patsy Y. Porter kicked off the orientation season at Georgia State University College of Law's orientation. At the University of Georgia School of Law, the Hon. Richard W. Story, U.S. District Court for the Northern District of Georgia, related thoughts on professionalism from great Georgians including former Chief Justices Harold Clark and Robert Benham, as well as

Alabama federal Judge Frank Johnson, who he described as "one of the stalwarts in ending segregation in the South." Using as a reference point the essay by Robert Fulgrum, *All I Really Need to Know I Learned in Kindergarten*, Story advised incoming UGA law students to "follow simple rules of courtesy learned as children" to resolve many of our professional shortcomings. Marietta attorney J. Diane Woods shared her own simple, yet poignant, illustrations of professionalism to the incoming full and part-time students at Atlanta's John Marshall Law School. Chattahoochee Circuit Superior Court Judge Frank J. Jordan enlightened Mercer stu-

dents with professionalism tips for law students and stressed the importance of good lawyer communication with lessons from Malcolm Gladwell's book, *Blink*. Judge Anne Elizabeth Barnes, Court of Appeals of Georgia, delivered historical, scholarly and eloquent remarks on professionalism to Emory's eager and receptive new students.

Kudos to Committee on Professionalism Chair Dick Donovan and law school liaisons Phillip Jackson, Mary McCall Cash, Mel Mobley, Jonathan Weintraub and T. Shane Mayes, for all their efforts in executing another round of successful programs. Many thanks to law school administra-




Attorney Patrick J. Fetter, Law Offices of Patrick J. Fetter P.C., Brunswick (far left) and Judge Stephen S. Goss, Superior Court, Dougherty Judicial Circuit, Albany (far right) discuss professionalism and ethics hypotheticals with students at the University of Georgia School of Law.



Students at Emory University School of Law take the Professional Conduct Code Pledge during the 2008 Orientation to Professionalism August 22, 2008.

tors and faculty for their leadership and assistance—Mercer’s Dean Daisy Floyd, Assistant Dean Mary Donovan and Prof. Patrick Longan; Emory’s Associate Dean A. James Elliott, Assistant Dean Katherine A. Brokaw and Prof. Janette Pratt; Atlanta’s John Marshall’s Dean Richardson Lynn, Associate Dean Michael Mears and Assistant Dean Sheryl Harrison; Georgia’s Dean Rebecca H. White, Associate Dean Paul M. Kurtz and Jill Birch; and Georgia State’s Associate Dean Roy Sobelson and Dr. Cheryl Jester-George.

Many thanks to the volunteer judges, attorneys and professors whose names appear on our Honor Roll on pg. 73 for serving as group leaders and sharing their experiences with hundreds of aspiring attorneys. Of course, thanks to the staff of the Chief Justice’s Commission on Professionalism, Assistant Director Terie Latala and Administrative Assistant Nneka Harris-Daniel, for their outstanding coordination of this year’s round of orientation programs. 



Avarita L. Hanson is the executive director of the Chief Justice’s Commission on Professionalism. She can be reached at professionalism@cjcpga.org.

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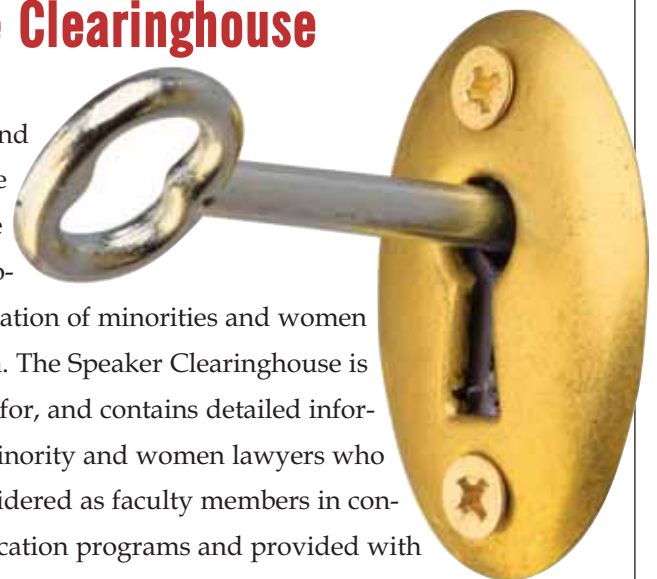
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Below are several excerpts from the keynote address given by the Hon. Patsy Y. Porter at Georgia State University's College of Law Orientation. Porter's remarks informed, entertained and inspired Georgia State's incoming students. These remarks will remind even long-term practitioners that professionalism matters at the beginning and throughout their chosen career.

Lessons from A Keynote Address

Welcome to law school. As you begin your first year, I am sure you know that you are entering an honorable profession. Lawyers and judges are the people who helped make this country what it is today. Without us the world in which we live, America, would not be the land of the free—free to say, do, worship, complain, criticize, go, come, live, work and pretty much do as we please. Yes, even with our lumps, bruises and imperfections, America is a great country because of lawyers. I am proud that as lawyers we have played, do play, and because of each of you sitting here today, will continue to play a major role in the development of our country and continue to make America the nation that it is today—one that has open arms and open opportunities for everyone.



Lawyers and judges are the people who do all that they can within the bounds of the law to create a level playing field for everyone. Whether you are right, whether you are rich or famous, whether you are poor or homeless, popular or unpopular; we're the people who advocate for your rights.

Now, my statement to you is: it's all in how you do it. You can be the best lawyer you can be or you can be the worst lawyer there is. Three things that I live by are: your word is your bond; if you beat them, you've got to beat them fairly; and don't ever let them see you sweat.

When I say, "Your word is your bond," I mean when you say something, it must be the truth. Years ago, lawyers did not have to send letters. Now we get five letters confirming XYZ. The reason we have to do that now is that somewhere along the way, lawyers lost their professionalism. If I told you something, that's what it is. It's my word, and my word is my bond. That's the kind of lawyer you should strive to be.



As lawyers, always think, "If in doubt, don't do it." If you're not sure, don't do it. If it does not feel right, don't do it. Let your conscience be your guide. We all have one. Or use this gauge: if your mom or dad saw your behavior, would they be proud of you? If they would not be proud of what you are doing, don't do it.



I was involved in an incident about a year ago where a lawyer had written a recommendation in the file and told the opposing counsel what he recommended for his client. That solicitor left my courtroom, and another solicitor came and offered something totally different. This lawyer said that he had worked out another recommendation with lawyer X and lawyer Y was not willing to go along with it. I then asked lawyer Y, "What is written in the file and what are you asking for?" He replied, "Twelve months to serve 10 days, the balance on probation and the \$1,000 fine; but I want twelve months to serve 30 days, a \$1,000 fine and the balance on probation." So I asked if lawyer X conveyed to lawyer Y that this was the recommendation? The lawyer indicated that he did. At this point, my decision was that the sentence would be just as he described. You can't say one thing and then do something different. You might not agree with it, but you can't just erase it and act like it didn't happen. There are better ways to handle situations like this. For example, the attorney could have come to me and said that his predecessor made the first recommendation and that he is not in agreement with that. He didn't want to sign his name to it because he knew it was the defendant's third or fourth DUI and thought he needed 30 days. But that was the recommendation that was made in the file. He could have talked to the other lawyer and renegotiated it. What you cannot do is act like it was not written in the file and just start over from scratch. That is not professional. You have to find a way to honor what you believe in. I would never suggest that a person sign their name to something they did not agree with. But I also wouldn't suggest that an attorney pull the rug out from under someone when they represented to their client that they would do 10 days in jail and you say that they are going to do 30 days. That's not what we call being professional.



The one thing I can tell you is this: the only person's name on your bar license is yours. There is no client or amount of money that should ask you to do anything to put your law license at risk. In other words, be professional and courteous to everyone you meet. Treat people in a professional and courteous manner with dignity and respect as the professional that you are. Be professional, be honest, have integrity. "Just do it."



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In Memoriam

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Decatur, Ill.
Emory University School
of Law (1982)
Admitted 1982
Died August 2008

Kathleen Denise Aure
Oakland, Calif.
University of Tulsa College
of Law (1976)
Admitted 1976
Died July 2007

Lisa Lynn Ballentine
Atlanta, Ga.
Emory University School of Law
(1989)
Admitted 1989
Died August 2008

Louis Clarence Brown Jr.
Winston, Ga.
Boston College School of Law
(1982)
Admitted 1985
Died April 2007

George W. Chandler III
Tybee Island, Ga.
John Marshall Law School (1972)
Admitted 1974
Died October 2007

Lisa Joan Farmer
Atlanta, Ga.
Emory University School of Law
(1988)
Admitted 1988
Died September 2008

Lowell Garrett
Atlanta, Ga.
Columbia University School
of Law (1965)
Admitted 2005
Died August 2008

William Bernard Greene
Cartersville, Ga.
University of Georgia School
of Law (1951)
Admitted 1950
Died July 2008

Gary Hamilton
Marietta, Ga.
Woodrow Wilson College of Law
(1947)
Admitted 1947
Died June 2008

John Jarrett
Houston, Texas
University of Illinois College
of Law (1978)
Admitted 1978
Died June 2007

Daniel W. Latimore Jr.
Atlanta, Ga.
Harvard Law School (1968)
Admitted 1968
Died September 2007

Jacqueline Kirkland McLendon
Atlanta, Ga.
Woodrow Wilson College of Law
(1948)
Admitted 1948
Died July 2008

William J. Robinson Jr.
Cartersville, Ga.
Woodrow Wilson College of Law
(1985)
Admitted 1985
Died May 2007

Charles E. Scalera
Washington, D.C.
Massey Law College (1969)
Admitted 1974
Died April 2008

William M. Shingler
Donalsonville, Ga.
Woodrow Wilson College of Law
(1981)
Admitted 1985
Died August 2008

Sylvia Whitlock
Atlanta, Ga.
Georgia State University College
of Law (1995)
Admitted 1995
Died August 2008

Emily Marguerite Willard
Atlanta, Ga.
Atlanta Law School (1973)
Admitted 1974
Died June 2008


Lisa Joan Farmer passed away in September 2008. Born in Gainesville, Fla., in September 1960, Farmer spent her formative and adult years in Atlanta. A 1982 graduate of Vanderbilt University, she graduated from Emory University School of Law in 1988. While in law school, Farmer served as the Notes and Comments Editor of the *Emory Law Journal*. Much of her lengthy and distinguished legal career was spent at Alston & Bird LLP. A renowned lawyer, Farmer specialized in the defense of medical malpractice cases. A frequent lecturer, she was respected widely by both sides of the bar.


She is survived by her mother, Dr. Susan Fellner of Chapel Hill, N.C.; her father, Dr. Donald Fellner of Hilton Head, S.C.; her sister, Katherine Fellner; as well as her loving husband of 16 years, Chris, and their beloved son, Brian.



William R. Shingler, born in October 1946 to the late Morrison P. and Marveen Hall Shingler, died in August 2008. He graduated from Marion Military Institute in 1964 and went on to attend Middle Georgia College. He then attended the University of Georgia, where he received a Masters Degree in Public Administration. In 1983, he graduated from the Woodrow Wilson School of Law in Atlanta, passed his bar exam in 1985, and began his private practice in Donalsonville, Ga. He had worked his way through law school as a charter pilot. Shingler was the first In School Suspension Officer for the Seminole County School System. He was a member of the State Bar of Georgia, the Pataula Bar Association, the Georgia Trial Lawyers Association and the Bar of the U.S. Supreme Court. Shingler served as the municipal court judge for Donalsonville and was the attorney for the Iron City and Jakin City Councils. He was a member of the Airport Authority, the Quiet Birdmen Association and the Aircraft Owners and Pilots Association. Shingler was also a member of Friendship United Methodist Church.

He leaves to cherish his memory his wife, Dell Shingler of Donalsonville; two sons, Billy Shingler and Jim Shingler and his fiancée Shay Stanley of Donalsonville; a daughter, Leah Banford and her husband Jeff of Crested Butte, Colo.; a brother, Morrison P. Shingler and his wife Angie of Perry, Fla.; a sister, Caroline Kicklighter and her husband Charlie of Macon, Ga.; adopted mother Louise Lee of Donalsonville, as well as numerous nieces and nephews.

He was preceded in death by his parents, Morrison P. and Marveen Hall Shingler and one sister, Suzanne Shingler Fowler. 

He was preceded in death by his parents, Morrison P. and Marveen Hall Shingler and one sister, Suzanne Shingler Fowler. 

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Politics in Georgia

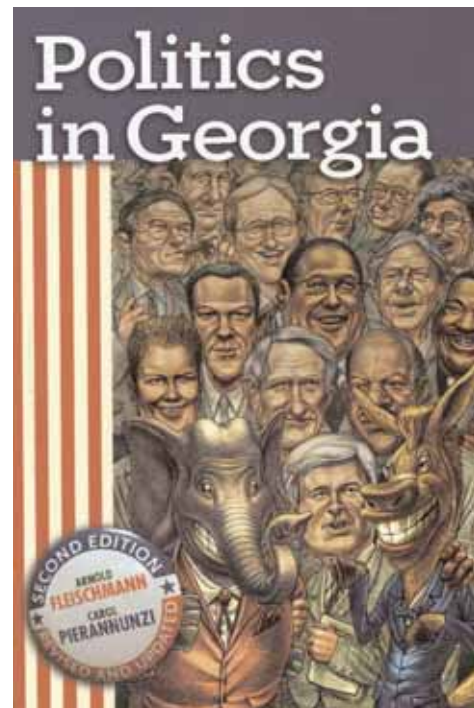
by Arnold Fleischmann and Carol Pierannunzi
University of Georgia Press, 392 pages

reviewed by Bridgette Eckerson

In a time when everyone seems to have a political agenda, *Politics in Georgia* provides a refreshingly nonpartisan, nonjudgmental look at Georgia's government and public policy, as well as the operation of the two-party system in Georgia. The authors teach political science at Georgia universities. Arnold Fleischmann is an associate professor at the University of Georgia, and his research has focused on the politics of urban development and social movements. Carol Pierannunzi is a professor at Kennesaw State University, and she has a particular interest in statistical research methodology.

The updated second edition examines every aspect of politics, from grassroots activism to presidential elections, and adds coverage of the most recent elections and issues. The authors place Georgia politics in context nationally through statistical comparisons with other states and through a study of the impact of federal law on state government. The central focus of the book, however, is an analysis of Georgia politics over time.

Racial politics, demographic change and a shift in power from the Democratic party to the Republican party over the last generation all loom large in Georgia's political history. A recurring theme is



“change,” and it is clear from reading this book that modern Georgia politics would be unrecognizable to an observer from only 50 years ago. The voting rights and power of women and blacks, the influence of interest groups, a shift in the party holding power and an entirely rewritten constitution are just a few of the dramatic changes that Georgia has seen in that short span of time. Because of this flux, the authors consider Georgia to be a “purple” state, with a conservative history but also with competitive political parties.

The authors' interests are illustrated throughout the book. Urbanization and demographic change are dominant factors in Georgia's politics, and the book

is filled with surveys and statistics on every topic. The authors take care to identify the source of any survey and to note deviations in survey methodology, such as the timing or wording of questions. The authors also place the statistics in context, demonstrating patterns over time and demonstrating how Georgia politics changes as a result.

Numbers often tell the story, but *Politics in Georgia* is not all dry numbers. There is also a good mix of well-known facts and little-known details to complete the picture. For example, the authors take a close look at how and why the Republican party has advanced in recent years, studying how changes in income, education level or voters' level of interest in a particular issue might affect voting patterns and party affiliation. The authors also successfully combine instructive statistics with an interesting story, such as the fact that Georgia's first Republican governor in a century, Sonny Perdue, began his career as a Democrat.

Politics in Georgia begins with a basic overview of federal, state and local government and proceeds to an historical examination of Georgia's social, cultural and political changes from the pre-Revolutionary War period to the present. From this background we learn the source of Georgia's most recent challenges. For example, demographic change and urbanization have increased the political importance of cities. When voting for statewide offices, Georgia formerly used the "county-unit system," similar to the federal electoral system. Now, after a switch to a popular vote system, and because of population shifts to city centers, urban voting power has grown.

After this historical background, *Politics in Georgia* goes on to examine Georgia's Constitution: the previous nine constitutions, the current structure, and its role in Georgia poli-


tics. The Georgia Constitution is not just a bare-bones document, granting powers to the government and protecting citizens' rights. In fact, the current constitution barely 25 years old is quite detailed and is often used as a tool for advancing the political interests of one group over another. Article IX is entirely devoted to local governments, and the party in power can easily, and often does, amend the constitution to its political advantage. The authors also compare the more detailed language regarding individual rights in the Georgia Constitution with the treatment of individual rights in the federal Constitution.

The authors next analyze elections, party politics and the voting process. These have undergone significant changes in the last several decades, and to those interested in partisan politics, chapters 4, 5 and 6 are perhaps the most salient. The decades-long dominance of Georgia politics by the Democrats once made the primary elections the center of the political process. Nevertheless, by the late 1980s the Republicans started to make gains, and now Georgia is considered, at least on the national stage, to be a Republican stronghold. Because this development is quite recent, the authors show how, statewide, the two parties still compete with one another. This shift has affected the practice of politics at every level of state government, as well as the most controversial issues in recent Georgia political history, such as the state flag, redistricting and lobbying. *Politics in Georgia* covers these and many other issues in detail.

The structure of Georgia's government and the powers and prerogatives of Georgia's elected officials, including at the local level, form the substance of the next several chapters. Most lawyers will be familiar with the topics covered in the chapter on the legal system: juries, lawyers, legal education and the judicial selection process. The authors give substantial atten-

tion to the inner workings of our citizen legislature and to the interactions among the three branches of Georgia government. Even though many local elections are nonpartisan on the ballot, politics often governs the form and function of local government. Again, the authors make the statistics come to life. After the enactment of the Voting Rights Act, racial politics declined as class politics rose. Gone were the days of literacy tests and the poll tax; local white business leaders and moderate black leaders joined forces and formed majorities, leaving out poor whites who still favored the extremes of racial segregation.

The authors conclude with a chapter on public policy: how priorities have changed over the years and the likely challenges to confront Georgians in the future. Transportation, health care, education and the environment are just a few of the major policy concerns that we face, and the authors draw from previous chapters to determine how the political process will shape these issues.

Politics in Georgia covers a vast amount of information, far too much to explore in one book review. The authors' well-organized approach makes for straightforward reading as well as a handy reference guide to any given topic. Although the authors state that their book is intended for teachers, scholars, students and the general voting public, those with a keen interest in politics will especially want to read this book in this presidential election year. 



Bridgette Eckerson graduated from the University of Virginia in 1997 and from Georgia State University College of

Law in 2002. After law school, Eckerson practiced product liability litigation. She is currently a stay-at-home mom to her two daughters and is an independent contractor for Thomson West.

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First Publication of Proposed Formal Advisory Opinion No. 07-R1

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

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

An original and twenty (20) copies of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board by November 15, 2008, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. Any comment submitted to the Board pursuant to Rule 4-403(c) is for the Board's internal use in assessing proposed opinions and shall not be released unless the comment has been submitted to the Supreme Court of Georgia in compliance with Bar Rule 4-403(d). After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

PROPOSED FORMAL ADVISORY OPINION NO. 07-R1

QUESTION PRESENTED:

May different public defenders employed by the same agency represent co-defendants when a single public defender would have an impermissible conflict of interest in doing so?

SUMMARY ANSWER:

Different public defenders employed by the same agency are not automatically disqualified from repre-

senting co-defendants when a single public defender would have an impermissible conflict of interest merely because of such employment. Public defenders working in different offices and employing effective safeguards to protect each client's confidential information and trial strategy may represent such co-defendants unless other circumstances create a conflict of interest for one or more of the public defenders.

OPINION:

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

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

Neither the text nor the comments of the Georgia Rules of Professional Conduct explicitly answers the question. The terminology section of the Georgia Rules of Professional Conduct defines "firm" as "a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization.

See Comment, Rule 1.10: Imputed Disqualification.” Comment [1] to Rule 1.10 states that the term “firm” includes lawyers “in a legal services organization,” without defining a legal services organization. Comment [3], however, provides that:

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

The role of lawyers representing clients in a public defenders’ agency can be analogized to the role of lawyers within a legal aid organization.

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

The first of these concerns is not relevant to a legal aid organization. There is no unified economic motive in a non-profit entity. The second concern depends upon how the entity is organized and operates. Lawyers in some legal aid organizations share access to

confidential client information. On the other hand, legal aid organizations may be organized in separate, discrete offices, and there would be no reason to presume that confidential client information could or would be shared in such an arrangement.

The analogy for public defender offices is obvious. Such offices are non-profit, government-funded entities. They are organized in Georgia by circuit and county lines, and as a result there is no reason to presume that every assistant public defender, even within the same circuit, has access to the confidential information of the clients of every other assistant public defender in that circuit.

By analogy to the legal aid organizations mentioned in Comment [3] to Georgia Rule of Professional Conduct 1.10, public defender offices do not constitute a “firm” within the meaning of that rule if the offices comply with the following guidelines. To avoid problems with conflicts and confidentiality, the attorneys should maintain separate physical locations and should not share computer servers, investigators, filing cabinets or administrative staff working in direct client representation with regard to cases involving co-defendants. There should be no intermingling or sharing of information between the offices regarding cases involving co-defendants except as would normally take place between attorneys in separate law firms representing co-defendants.

The lawyer in charge of the public defenders’ agency may have administrative supervision over each of the attorneys representing co-defendants. The supervising attorney cannot, however, breach the wall protecting the trial strategy and confidential information of the co-defendants.

Such circumstances would only prevent an automatic, imputed disqualification of a public defender under Rule 1.10(a). It would still be possible for a public defender to have a conflict of interest for other reasons in the particular circumstances of a specific case. Each public defender remains obligated to alert the court and his or her client to conflicts of interest that arise from reasons other than common employment by the same agency.

Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than 30 days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2007-2008 *State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as “*Handbook*”).

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is

reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

This Statement, and the following verbatim text, are intended to comply with the notice requirements of Rule 5-101, *Handbook*, p. H-6.

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE: STATE BAR OF GEORGIA
Rules and Regulations for its
Organization and Government

MOTION TO AMEND 2008-2
MOTION TO AMEND THE RULES AND REGU-
LATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors, and upon the concurrence of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, *2007-2008 State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

**Proposed Amendments to Part VIII, Continuing
Lawyer Competency, of the Rules of the State Bar of
Georgia**

It is proposed that Rule 8-105 of Part VIII of the Rules of the State Bar of Georgia regarding continuing legal education requirements be amended by deleting the rule in its entirety and substituting a new rule as follows:

Rule 8-105. Annual Report

The Commission shall provide at the end of each year to all non-exempt active members an Annual Report of their CLE record in such form as the Commission shall prescribe.

A member whose record contains credit for unearned hours shall report corrections on or before January 31st. A member whose record fails to include credit for earned hours may report corrections on or before January 31st.

II.

**Proposed Amendments to Part I, Creation and
404735702, of the Rules of the State Bar of Georgia**

It is proposed that Rule 1-202 (d) of Part I of the Rules of the State Bar of Georgia regarding Emeritus Members be amended by deleting the struck-through sections and inserting the sections underlined and italicized as follows:

(d) **Emeritus Members.** Any member in good standing of the State Bar of Georgia who shall have attained the age of 70 years and who shall have been admitted to the practice of law in the State of Georgia for 25 years, may retire from the State Bar upon petition to and approval by the Executive Committee. Such a retired member shall hold emeritus status ~~and shall annually confirm in writing this emeritus status.~~ An emeritus member of the State Bar shall not be required to pay dues or annual fees. An emeritus member of the State Bar shall not be privileged to practice law except that an emeritus member may handle pro bono cases referred by either an organized pro bono program recognized by the Pro Bono Project of the State Bar or a non-profit corporation that delivers legal services to the poor. An emeritus member may be reinstated to active or inactive membership upon application to the Executive ~~Committee~~ Director and payment of non-prorated dues for the year in which the emeritus members returns to active or inactive service.

SO MOVED, this ____ day of _____, 2008.

Counsel for the State Bar of Georgia

Robert E. McCormack
Deputy General Counsel
State Bar No. 485375

OFFICE OF THE GENERAL COUNSEL
State Bar of Georgia
104 Marietta Street, NW - Suite 100
Atlanta, Georgia 30303
(404) 527-8720

Proposed Amendments to Uniform Superior Court Rules 4 and 24

At its business meeting on July 30, 2008, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 4 and 24 and proposed new Rule 46. A copy of the proposed amendments may be found at the Council's website at www.cscj.org. Should you have any comments on the proposed

changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, Dec. 15, 2008.

United States Postal Service

Statement of Ownership, Management, and Circulation

1. Publication Title Georgia Bar Journal	2. Publication Number 0217 .. 560	3. Filing Date September 16, 2008
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10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)		
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11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box <input checked="" type="checkbox"/> None		
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13. Publication Title Georgia Bar Journal		14. Issue Date for Circulation Data Below August 2008	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		33,643	34,000
(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541. (Include advertiser's proof and exchange copies)		33,012	33,444
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e. Free Distribution Outside the Mail (Carriers or other means)		80	85
f. Total Free Distribution (Sum of 15d and 15e)		232	243
g. Total Distribution (Sum of 15c and 15f)		33,244	33,687
h. Copies not Distributed		762	710
i. Total (Sum of 15g and h)		34,006	34,397
j. Percent Paid and/or Requested Circulation (15c divided by 15g, times 100)		99.3	99.2
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> Publication required. Will be printed in the October 2008 issue of this publication. <input type="checkbox"/> Publication not required			
17. Signature and Title of Editor, Publisher, Business Manager, or Owner Sarah Coole Director of Communications		Date September 23, 2008	


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

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- Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.
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- Item 15h. Copies not Distributed, must include (1) newsstand copies originally stated on Form 3541, and returned to the publisher, (2) estimated returns from news agents, and (3), copies for office use, leftovers, spoiled, and all other copies not distributed.
- If the publication had Periodicals authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
- In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
- Item 17 must be signed.

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PS Form 3526, October 1999 (Reverse)



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Annual Fiction Writing Competition

Deadline January 20, 2009

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

Rules for Annual Fiction Writing Competition

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

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



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