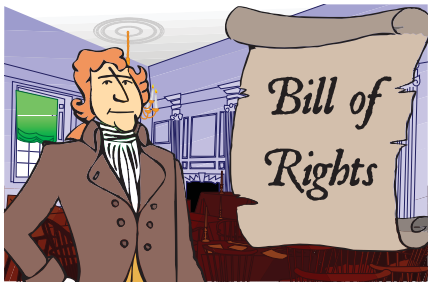
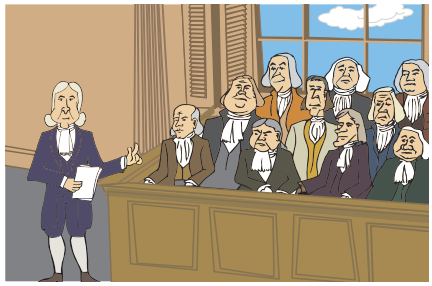
Georgia Bar Journal
December 2008 ▪ Volume 14 ▪ Number 4

Special Issue: Intellectual Property Law

Trial By Jury: What's the Big Deal?



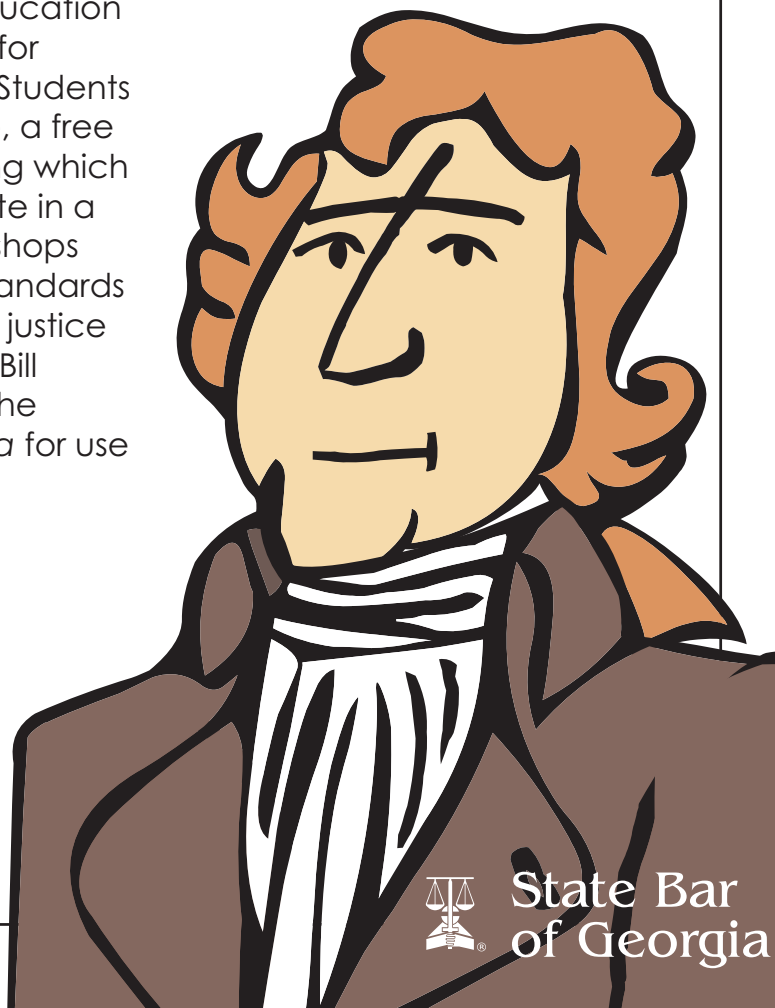



"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics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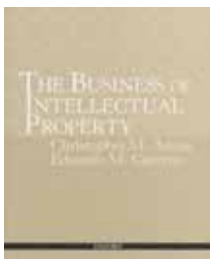

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Manuscript Submissions

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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Introduction to Special Intellectual Property Issue

It has been estimated that over 70 percent of the value of the Fortune 100 global companies is in intellectual assets. For some companies, such as Microsoft, this percentage is substantially higher. The prominence of these assets, as compared to just 10 years ago, requires companies to pay close attention to and develop strategies for capturing and managing these intellectual assets. For lawyers, the intangible nature of these assets may make issue-spotting much more difficult.

In this special issue of the *Georgia Bar Journal*, the focus is intellectual property (IP) law. You will find five IP-related articles and features.

Bradley K. Groff's and Lauren Fernandez Staley's article, "Avoiding the Potholes: A Roadmap for Intellectual Property Due Diligence in Business Transactions," describes how to conduct due diligence on IP issues in various business contexts. The article explains the importance of understanding the structure of the deal and how that can affect the IP due diligence efforts. The article goes on to describe what types of information to seek and techniques for verifying the critical information prior to closing the deal.

In "From Blueprints to Megabytes: Copyright Issues for Architects, Contractors and Developers in the Digital Age," Andrew Crain and Melissa Rhoden explain the importance of IP rights in the construction industry. The article describes how copyright laws apply to architecture and details issues relating to proving copyright infringement and recovering damages.

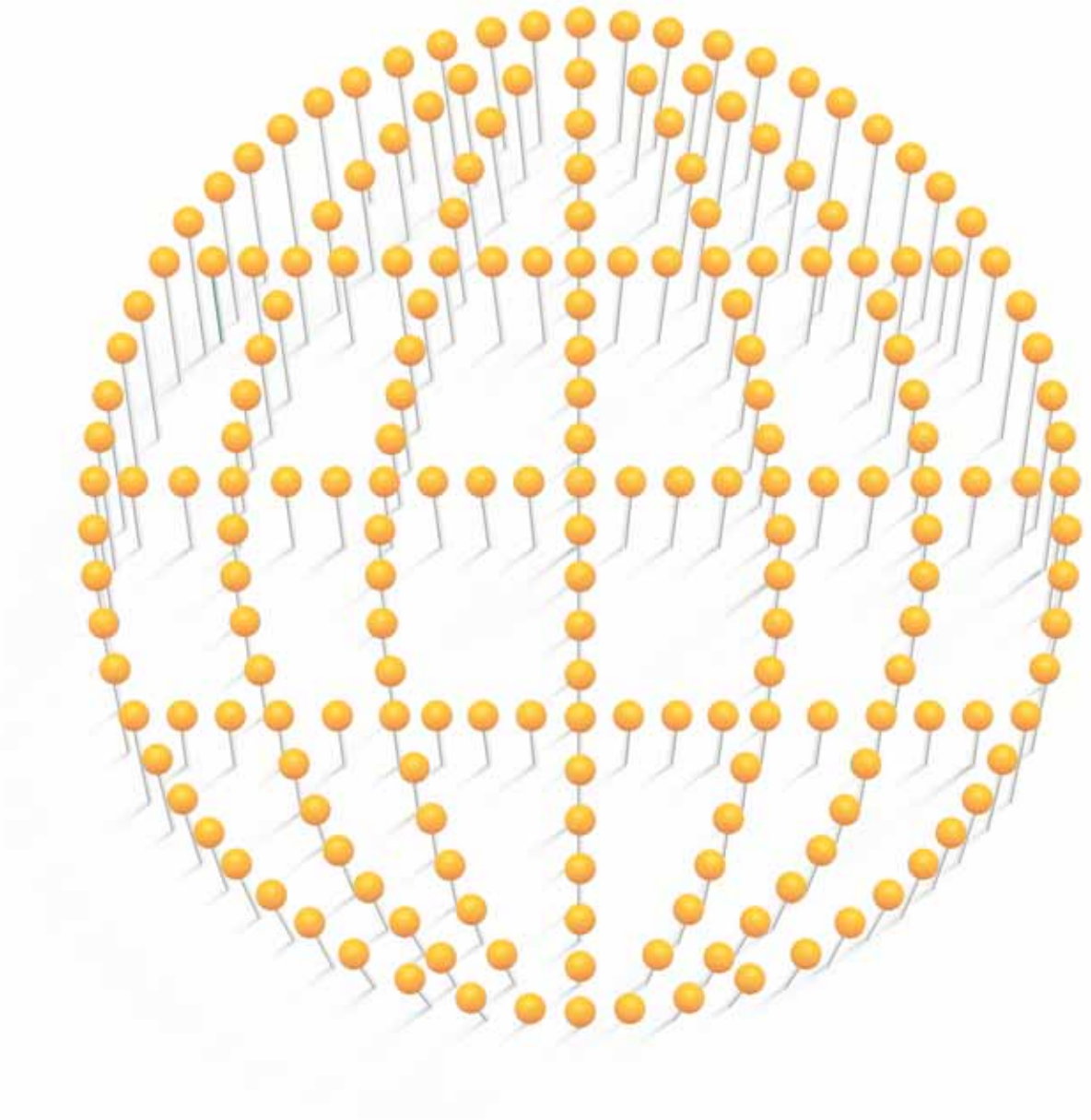
In "Stopping Infringing Goods at the Docks—An Overview of the International Trade Commission," Larry Roberts and Wilson White describe the use of a specialized court, the International Trade Commission (ITC), to prevent the importation of patented goods into the United States. The article describes several distinct advantages of the ITC over litigation in district courts.

Warren Hall and Brett Coburn write about "Keeping Your Genies in the Bottle: 10 Steps to Protect Your Most Sensitive Secrets." This article provides 10 practical and insightful tips for protecting trade secrets from misappropriation and to help ensure that appropriate legal remedies are available in the event that misappropriation occurs and litigation becomes necessary.

The last IP-related item in this issue is a review by Shane Nichols of *The Business of Intellectual Property* by Christopher M. Arena and Eduardo M. Carreras. Nichols observes that the authors "successfully weave together business and legal concepts in a way that provides an accessible resource for business managers seeking to understand the nuances of intellectual property law."

Even if you do not specialize in IP, we hope that you will find this IP Special Issue of the *Georgia Bar Journal* interesting as well as useful in your practice. GBJ

Wab Kadaba is a partner in the intellectual property department of Kilpatrick Stockton and is active in all areas of the firm's intellectual property practice. His practice encompasses litigation related to intellectual property as well as strategy and management of intellectual property and technology issues. Kadaba is serving as the chair of the Intellectual Property section of the State Bar of Georgia for 2008-09.



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by Jeffrey O. Bramlett

A Time for Leadership from Lawyer-Legislators

Next month, the 2009 session of Georgia's General Assembly convenes. On Jan. 12, six new lawyer-legislators will take office and confront some of the most difficult governing decisions of the past generation. Due to retirements and the defeat of one lawyer-incumbent, the net gain in lawyer-legislators in the Nov. 4 general election is one.

A gain of one may seem modest, but it marks an important turnaround in the steady, decades-long decline in the number of Georgia lawyer-legislators. The 2009 Legislature will feature 12 lawyers in the Senate (21 percent) and 27 lawyers in the House of Representatives (15 percent). For historical perspective, there were more than 70 lawyers in the General Assembly in 1970. By 1978, that number had fallen to less than 50, and the decline has continued until leveling off the past three years.

My colleagues in the Southern Conference of Bar Presidents tell me that Georgia is not alone in experiencing a decline in the role of lawyers in the state legislature. They report similar patterns of historic decline in their states, with many telling me that the percentage of lawyer-legislators in their jurisdictions has dwindled into the single digits.

To be sure, lawyers hold no monopoly on integrity or good ideas about public policy and legislatures benefit from inclusiveness and a diversity of perspective and life experience. However, the work product of legislatures with a shortage of lawyers is too often fraught with the axis of evil in the world of legislation: imprecision, lack of foresight and inattention to detail. These defects inevitably undermine the public interest in clear and predictable law that avoids disputes and unnecessary litigation.

> "On Jan. 12, six new lawyer-legislators will take office and confront some of the most difficult governing decisions of the past generation."

Lawyers are generally equipped by training and experience with a facility for language, habitual diligence and an attention to detail. Experience in the legal profession usually produces in lawyers civility, a skill for negotiation, a talent for finding common ground and an appreciation for enduring outcomes that meet the needs (if not the wants) of all affected parties. In the legislative setting, this combination of skills and qualities is essential.

I am grateful to our Bar colleagues who serve the people of Georgia in the General Assembly. They endure the rigors and expense of campaigning for public office. They sacrifice family time, leisure and income to per-

form this important public service. Their service improves state government and ennobles our profession, but in the upcoming session of the General Assembly, they will confront a daunting array of challenges.

Governing in Hard Times

The economic meltdown afflicting people across our country and around the world is also taking a severe toll on state government here in Georgia. Through the end of October, revenue collections were down 2 percent in the current fiscal year and are projected to get worse before they get better. Budget analysts are forecasting a total shortfall of between $1.5 billion and $2 billion.

Operating under a constitutional obligation to balance the state budget, Gov. Sonny Perdue has reacted to these grim economic realities by imposing budget cuts of 6 percent across the board for the remainder of FY 2009. Further spending cuts are possible. For the next fiscal year, all state departments, agencies and the judicial branch have been required to submit budgets with options for additional funding reductions of 6 percent, 8 percent and 10 percent.

The state's budget for the fiscal year ending June 30, 2009, is $21.2 billion. The entire judicial branch of government operates on $169.5 million, or 0.8 percent of state expenditures. Despite the fact that our judges have received no significant salary increase since 1999, our courts arguably deliver more "bang for the buck" than any other segment of state government. In this epoch of across-the-board cutbacks, no branch of state government is immune from the budget knife, but the Bar will continue to press for fair judicial compensation when economic conditions improve.

Because the vast majority of the judicial branch's budget consists of the costs of employing highly trained and talented people, cuts in human






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.

resources of this magnitude can only be accomplished by layoffs and furloughs. These personnel reductions will inevitably diminish our courts' ability to deliver timely and effective service to the public. For trial courts facing speedy trial demands, for appellate courts operating under constitutional deadlines to decide cases, and for prosecutors and public defenders who confront spiraling caseloads with fewer resources, the consequences of further personnel cuts threaten the quality of our criminal justice system and extremely delays the adjudication of civil cases.

In tough economic times like these, crime and violence tend to increase. Timely access to justice for those who have been harmed by the misconduct of others is essential to maintaining law and order.

In this economically desperate environment, several Bar-sponsored programs are in the crosshairs of debilitating budget cuts, including the Business Court, the Georgia Resource Center for death penalty appeals, grants for victims of domestic violence and the Georgia Public Defenders Standards Council indigent defense program.

In the weeks remaining before the General Assembly convenes, the hard work of getting to a balanced budget is already under way. Your State Bar will be at the table throughout the process, reminding the executive and legislative branches of state government that the rule of law is not a dispensable commodity. Maintaining an adequately resourced judicial branch of government, where the citizens of Georgia can peacefully and timely resolve their disputes in accordance with the rule of law, is a requirement mandated by the constitutions of our state and the United States.

The Bar's Proactive Agenda

In addition to doing what we can to ensure that the judicial branch of state government obtains the resources it needs to operate effectively in the public interest, the State Bar will continue to press a proactive legislative agenda of initiatives germane to the practice of law and the administration of justice. These initiatives are vetted through a process that starts with the Bar's Advisory Committee on Legislation, chaired this year by Patti Gorham of Sutherland in Atlanta, and approved on a supermajority basis by the Board of Governors. Agenda items you can expect to be hearing about include:

- Legislation bringing Georgia's evidence law (much of which cannot be found in our vintage 1853 "Evidence Code") into the modern era in a user-friendly codification based on the Federal Rules of Evidence;
- Legislation spearheaded by the Young Lawyers Division to reform Georgia's Juvenile Code; and
- An initiative to design and implement an integrated electronic court filing system evolving under the leadership of Bar Secretary Ken Shigley, who chairs a special committee appointed for this purpose.

The Bar's legislative advocacy team will be working with the staffs of the Governor and Lieutenant Governor, various Bar sections and committees, the Georgia Public Defender Standards Council, the House and Senate Appropriations and Judiciary committees and members of the legislative leadership to pursue these objectives. There are three concrete steps every interested Bar member can take to support these efforts.

First, please consider becoming involved as an active participant in the Bar's Legislative Action Network (LAN). The Bar formed LAN several years ago to keep Bar members informed on a current basis about emerging legislative issues and to facilitate timely and effective contact with legislators. Between now and Jan. 12, meet with your local Senator and House member. Thank them for their public service. Offer to serve as a resource to them on legislation that involves the justice system and the legal profession. As the session progresses, stay in communication with the Bar leadership and our advocacy team, reporting any feedback or concerns you receive from your legislators. Finally, when prompted by LAN to contact your legislators about an issue of importance to the Bar, please timely communicate your views to your legislators.

Second, please give generously to the Bar's Legislative & Public Education Fund. No dues money is spent on legislative advocacy; our legislative efforts are entirely dependent on your voluntary contributions. Without your financial support for this fund, the Bar's collective voice in opposing sales tax on legal services, defending the prerequisite of graduation from an accredited law school for Bar admission, and advancing our justice system and the rule of law will fall silent.

Finally, pay close attention to the quality of representation your community is receiving in the General Assembly and, if you find grounds for dissatisfaction, seriously consider offering yourself as a candidate for the Legislature in the next election cycle. If some soul-searching leads you to conclude that you are not prepared to make that personal sacrifice, extend your support and encouragement to a lawyer in your community who is ready, willing and able to make a run. Let's turn around the trend toward the depletion of lawyer-legislators and the decline of well-crafted legislation. As the last Georgian to serve as president of the United States put it 32 years ago: "Why not the best?" GBJ

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

For more information on the Bar's legislative program, please visit www.gabar.org/programs/legislative_program/.

by Cliff Brashier

Bar Programs Serve Diverse Georgia Audiences

Thanks to the ongoing support of you, our members, the State Bar is able to offer a wide variety of programs geared to serve very diverse groups of people. They all have at least one thing in common, however: a contribution toward fulfilling the constitutional promise of "justice for all."

This month, I would like to recognize two Bar programs aimed at meeting the needs of two entirely different audiences of Georgians. Both are highly successful in helping the Bar accomplish our mission of serving the public—and they are both funded by lawyers' contributions, foundation grants and other voluntary sources, rather than by bar dues.

"Thanks to the ongoing support of you, our members, the State Bar is able to offer a wide variety of programs geared to serve very diverse groups of people."

BASICS: Closing the Revolving Door

The first of these is the Bar Association Support to Improve Correctional Services (BASICS). Established 30 years ago in response to a challenge from then U.S. Chief Justice Warren Burger for lawyers to become more involved in improving the criminal justice system, this offender rehabilitation program is intended to help released inmates stay out of jail, by legitimate means.

BASICS steers its participants in the direction of self-rehabilitation. During 10 weeks of classes, which take place during the inmates' final year of incarceration, the program assists with developing career, educational and/or work plans, preparing resumes, setting goals and teaching interviewing techniques to prospective job applicants.

Upon their release, the program assists with job research, applying for colleges or vocational schools, completing or changing personal action plans, as well as developing financial plans. The goal is to produce a motivated, prepared, confident individual who is ready to live as a productive citizen. This decreases the likelihood that these individuals will return to jail. Closing the so-called revolving door of the criminal justice system benefits all of society, not the least segment of which is the taxpaying public, due to the high cost of housing repeat offenders.

During the past three decades, more than 10,000 inmates in Georgia Department of Corrections facilities have participated in BASICS, with the vast majority becoming able to maintain steady employment and avoid a return to criminal behavior. According to state records, BASICS graduates have a recidivism rate of only 16 percent. Approximately 30 other bars started BASICS programs when we did, and all have ended due to a lack of funding, except Georgia's.

"BASICS is a wonderful program that is a cross between education and inspiration. It not only saves the state of Georgia millions of dollars in prison costs because of the lower recidivism rate of its graduates, it also saves lives and makes our communities safer in the process," said Seth Kirschenbaum, chair of the State Bar's BASICS committee.

You can help the BASICS program continue this outstanding success through a contribution to the recently established BASICS Tribute Fund at the Lawyers Foundation of Georgia. This fund was created to honor Ed Menifee, executive director of BASICS since its inception. The Lawyers Foundation of Georgia is a 501(c)(3) charitable organization, and contributions to the foundation are tax deductible. Please consider a contribution to help this Bar program continue changing lives for the better.

For more information on BASICS, including an informational video presentation, visit www.gabar.org/programs/basics/.

National Spotlight on Mock Trial Program

The Georgia High School Mock Trial program, sponsored by the State Bar's Young Lawyers Division, the Georgia Bar Foundation, the Council of State Court Judges and the Georgia Civil Justice Foundation, has received national attention in recent months, thanks to the mock trial team from Jonesboro High School winning their second national title. The students from Clayton County were crowned May 10 during the National High School Mock Trial Championship in Wilmington, Del.

Georgia students will have the "home court" advantage (geographically, that is) to retain the trophy when Atlanta hosts the next national competition May 6-10, 2009, at the Fulton County Courthouse. High school students from more than 44 states, U.S. territories and South Korea will participate. This is the second time Georgia has been selected to host the nationals and the first time since 1993.

This is an excellent opportunity to showcase the success of this program, which has enabled more than 1,400 teams from Georgia's public and private schools to participate since 1988.

In addition to faculty advisers, the high school mock trial program depends on volunteer lawyers to help coach the teams as they prepare their presentations from case materials provided by the State Bar committee. In the competition, students play the roles of attorneys and witnesses, while professional lawyers and judges serve as presiding judges and juror/evaluators. Teams are scored on their ability to make a logical, cohesive and persuasive presentation, rather than on the legal merits of the case.

Competitions are held in actual courtrooms across the state to add authenticity to the proceedings, with regional winners then gathering in Lawrenceville to compete for the state title and a trip to the national championship. In addition to the statewide competition, the Mock Trial Program oversees several other activities, all designed to increase students' understanding of and appreciation for the law, court procedures and the legal system.

The 2009 national competition in Atlanta will be a major undertaking that will require the services of more than 300 attorney volunteers for the judging panels, as well as more than 150 non-attorney volunteers for administrative support. The program is closing in on raising its $400,000 budget for hosting the competition, and donations are still being accepted.

For more information or to sign up as a volunteer, visit www.georgiamocktrial.org or contact Stacy Rieke at 404-527-8779 or stacyr@gabar.org.

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). GBJ

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

by Joshua C. Bell

Let's Get the Respect Back

On a recent Sunday morning I was having breakfast with my wife, our children and my wife's parents when an employee of the restaurant came up and said, "I am proud of you." Of course I was surprised because I had never seen this person before in my life. I didn't even have to ask; the gentleman could tell I was wondering why he would say this to me. He said he was proud of me for wearing the shirt I had on. It was Nov. 2, 2008, and I was wearing a Georgia shirt. The day before, the University of Georgia lost their football game to the University of Florida, 49-10.

"Maybe if we all showed how proud we are to be lawyers we would once again enjoy the respect of the public."

Ever since I can remember traveling for football games, I have always had the same ritual. I wear a Georgia shirt on Sunday… win or lose. I'm proud to be a graduate of the University of Georgia. I am proud whether we win or lose. I also believe that it's even more important to show support after a defeat than a win. When I put on my shirt that morning it wasn't even a decision to show support for my university. It was a given, win or lose.

This series of events made me think of the law and the fact that I'm equally proud to be a lawyer. On a recent trip to Atlanta, I saw an image that I had never seen before. As many times as I have been to the Bar Center I had never approached the building from Cone St. in the evening. The image of the words "State Bar of Georgia" lit up in the night is one that will stay with me forever. At that moment, I could hardly contain my pride to be a Georgia lawyer. In fact, I told the cab driver that I was a member of the State Bar of Georgia, and that was our building. This was a change from my usual routine.

For many years I have almost been embarrassed to tell people who weren't lawyers that I was a lawyer. Why would I do this? Why would I turn my back on my profession that I love so dearly?

I really don't have an answer. Maybe I just didn't want to deal with the grunts and moans that usually follow when I tell someone I am a lawyer. Maybe I was

simply afraid of the perception of my profession. It used to be that people didn't like lawyers, but the profession was respected. No more. All the current research shows that the public doesn't like or respect lawyers. My children may grow up in a world that will not respect what their father does for a living. They may hear jokes about their father, even though it's not about me personally. I will do everything in my power to keep this from happening. I hope that all of you who have taken the path of least resistance, as I have, will change.

I make this pledge to you: I will not shy away from my profession ever again. Whenever I am asked what I do, the answer will be simple.

I wish it were as easy as wearing a shirt on Sunday morning. It won't be. You will have to stand up to a joke. You will have to correct a misconception when you are one against many. You must tell someone you are a lawyer after that person has just told you how he hates lawyers. Maybe if we all showed how proud we are to be lawyers we would once again enjoy the respect of the public. We may even find a few people that like us.

My name is Josh Bell, and I'm a lawyer and a proud member of the State Bar of Georgia.

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Avoiding the Potholes:

A Roadmap for Intellectual Property Due Diligence in Business Transactions

by Bradley K. Groff and Lauren Fernandez Staley

ROLLS-ROYCE.[1] For many, the name alone conjures up images of chauffeur-driven motor coaches with burled walnut and fine leather interiors cruising down the tree-lined lanes of their owners' country estates. Therein lies much of the value of the trademark rights behind the luxury automobile brand that Volkswagen AG sought to acquire in the late 1990s, paying over $700 million to outbid rival suitor BMW.[2]

In the excitement surrounding the acquisition, however, VW's lawyers apparently failed to notice that ownership of the "Rolls-Royce" name, the "Spirit of Ecstasy" flying lady hood ornament and the distinctive Rolls grille configuration were owned by the Rolls-Royce aircraft company, not the automotive company that VW was purchasing. BMW's lawyers, having checked under the hood of the deal, engineered a purchase of those trademarks from the aircraft company for a fraction of what VW had paid.[3] In

the end, VW got the factory and equipment, but could not sell the cars made at that factory as Rolls-Royce motorcars (instead they are sold as Bentleys).

More recently, and closer to home for Georgia attorneys, a dispute over ownership of trademark rights resulting from the sale of a propane gas business led to protracted litigation in *FerrellGas Partners, Inc. v. Barrow*.[4] The Barrow family had grown a local propane service in Butler, Ga., from two delivery trucks into a substantial business. The founder of Barrow Propane Gas, Inc., eventually sold the business to a regional distributor in a stock sale. The sales agreement, however, failed to address ownership of the trademarks and trade names of the company, which included the Barrow family name. A dispute later arose when a family member sought to reenter the propane business as Barrow Energies, Inc. Unable to resolve the dispute over the right to use the Barrow name, trademark infringement litigation ensued.

At first glance, the purchase of a propane company might seem to primarily involve tangible "hard property" assets such as delivery trucks, storage tanks, real estate and hardware. But as with the Rolls-Royce trademarks, the name recognition and customer goodwill associated with the Barrow name were extremely valuable assets of the Georgia company. The ensuing dispute over those intangible assets or intellectual property (IP) led to the expense and distraction of litigation. Indeed, one of the plaintiff's primary contentions was that the family's renewed use of the Barrow name in the propane field had caused widespread consumer confusion, billing and payment errors and misdirected deliveries. These problems could have been avoided had the parties recognized the importance of the IP to the business and specifically addressed the transfer of those IP assets in the sale agreement.

These real-world examples underscore the need for business attorneys to identify and address the IP assets involved in the deals that they structure. As we move toward a technology- and information-driven economy, IP rights such as patents, trademarks, copyright, trade secrets and know-how are often the most visible and valuable assets involved in business deals for high-tech clients. Even brick-and-mortar transactions undertaken by relatively low-tech businesses very often involve less visible IP issues that can have a very significant impact on the outcome of a deal. While the extent of IP due diligence that is warranted will certainly vary depending on the transaction, it is unwise to ignore the potential IP issues involved even in a seemingly low-tech or no-tech business deal. This article provides a roadmap of what to look for, where to look and how to evaluate IP issues that are frequently encountered in business transactions.

Understanding the Deal

The first step in assessing what level of IP due diligence is warranted is to understand both the scope of the transaction and the client's objectives and expectations. The attorney's challenge is to ensure that clients get the value that they expect out of a transaction and avoid unpleasant surprises after a deal is closed, but to do so cost-effectively and with a focus on those IP issues most likely to impact the client's business. Trademarks, patents and other IP rights can come into play in virtually any business transaction, for example:

- Mergers and Acquisitions
- Asset or Stock Purchases
- Spin-Offs
- Bankruptcy Reorganizations and Asset Dispositions
- Joint Ventures
- Distributorship Agreements
- Equipment Purchases or Leases
- Employment Agreements
- Sale of Goods or Services
- Technology Licenses
- Financing and Security Interests

An attorney's understanding of the transaction and the client's goals will help determine how much IP due diligence is reasonable, set timing and cost limitations and direct the focus of the investigation. For example, if the value of the IP assets being transferred is low relative to the non-IP assets, a lesser extent of IP due diligence will generally be warranted. Even if the IP assets being transferred are negligible in value, the level of impact on the client's business can be significant if the investigation is incomplete or the analysis is incorrect. For example, the business of an acquired company having no patents of its own may be severely impacted if its product line is later found to infringe another company's patents.

The time constraints involved will also factor into the determination of how much and what type of IP due diligence is to be conducted. Typically, several weeks at a minimum should be allotted—to allow for collection of data and a thorough analysis of the relevant issues. If a deal must close in a matter of days to meet the parties' objectives, at least a limited amount of concentrated IP due diligence can still be conducted into the most critical IP issues based on publicly available information.

The relationship between the parties to the transaction, both

before and after the deal, should also be considered. For example, the continued participation of key employees and management of an acquired entity will often be necessary to the ongoing success of a business after ownership is transferred. Alienating these future allies by making a due diligence investigation seem too adversarial can be counterproductive. The likelihood of ongoing or future business dealings between the parties to a transaction should also be kept in mind. In some transactions, a high level of trust between the parties already exists, in which case the information needed for an IP investigation can often be obtained more cost-effectively on an informal basis. Confidentiality and privilege concerns arising out of the transfer of information during due diligence must be addressed, especially in the event that a deal does not go through as intended.

Of course, the overall dollar value of the deal will factor largely into what degree of IP due diligence is warranted. For example, a small transaction may justify only a few hundred dollars' worth of investigation into the record ownership of IP or known claims of infringement against key business activities. On the other hand, larger transactions may justify IP due diligence costing tens of thousands of dollars or more. In sum, understanding the deal and knowing the client's endgame enable an attorney to more efficiently structure the IP due diligence.

Collecting the Information

The next step in the due diligence process is to collect information about the IP assets and issues that are relevant to the transaction. Relevant IP issues include both assets (IP rights being transferred) and liabilities (infringement of third-party IP rights). Depending on the particulars of the transaction and the parties involved, one or more types of IP assets can come into play, including:

Patents

Patentable inventions encompass any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof.[5] A patent owner has the right to exclude others from making, using, offering for sale, selling or importing the patented invention.[6] Patents are enforceable for a term of 20 years from the date of application, but require payment of periodic maintenance fees to prevent loss of rights.[7]

Trademarks, Service Marks, Trade Dress

These include words, names, symbols, devices or other things that identify and distinguish the source of the goods or services of one party from those of others.[8] The trademark owner has the right to prevent others from using a "confusingly similar" mark.[9] Information should be gathered about unregistered marks as well as registrations, because common-law rights are created based on priority of use in commerce with or without registration. Because registration provides significant advantages, the lack of registrations for important marks may raise a red flag in the due diligence process.[10]

Copyright

Copyright protects "original works of authorship," including literary works, musical works, dramatic works, pantomimes and choreography, pictorial, graphic and sculptural works, motion pictures, sound recordings and architectural works.[11] The copyright owner has the exclusive right to reproduce the work, to prepare derivative works based upon the work, to distribute copies of the work, to perform the work and to display the work publicly.[12] The term of a copyright is for the author's life plus 70 years, or 95 years from publication or 120 years from creation, whichever is shorter, for works made for hire.[13] Registration is not a requirement for protection, but does provide several advantages, including the availability of statutory damages and attorney's fees for infringement, prima facie evidence of validity and U.S. Customs Service enforcement to impound infringing imports.[14]

Trade Secrets and Confidential Information

Protected under state law, trade secrets include any

> information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information:
>
> (A) Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[15]

Trade secrets and confidential information relevant to a business transaction may include know-how and unrecorded knowledge of key employees, such as customer preferences and vendor contacts. The owner of a trade secret has a cause of action against misappropriation, but no right to prevent

reverse engineering or independent creation.[16]

IP rights that impact business deals include those rights owned by the parties to the transaction, as well as IP rights owned by third parties not involved in the transaction. For example, an acquiring company will want to investigate IP assets owned by the target company and any affiliates, as well as potential infringement of third-party IP rights by the target company's products and services. Although the strength and scope of the target company's IP portfolio are often primary factors in the valuation of the transaction, the freedom to operate without infringing third-party IP rights can be even more critical to continuing operations after a deal has been completed. Issues of potential concern are often identified by reviewing cease-and-desist letters received by the client, investigating threats of litigation, studying competitors' products and marketing literature and through patent and trademark research. Once identified, the ownership, validity and potential infringement of these third-party IP assets should be investigated if deemed relevant to the ongoing business of your client.

Typically, an acquiring company will request documents and information from the target company. The investigation may be conducted in a formal process similar to discovery in litigation, or may be a much more informal process. Representations and warranties of completeness and accuracy are generally included in the underlying purchase and sale agreement. Commonly requested information includes:

- A list of all pending or issued patents, trademarks (registered and unregistered), copyright protected materials and trade secrets, including U.S. and foreign;
- A description of all products or services sold, now or in the past, and those currently in development;
- Copies of any product literature, catalogs, websites, etc.;
- Marketing and advertising materials, brand names, logos, etc.;
- Invention disclosures;
- Employee and contractor agreements, non-disclosure agreements, etc.;
- Corporate IP and trade secret policies and compliance records;
- Financial and accounting documents referring to or valuing IP;
- Cease-and-desist letters received or sent, threats of litigation or even rumors in the marketplace of impending legal action;
- Past, pending and threatened infringement litigation or Patent and Trademark Office proceedings, including copies of any settlement agreements;
- Licenses, assignments, security agreements, liens, releases, etc. dealing with IP;
- Software development records, source code availability and licenses;
- Records of patent maintenance fee payments and trademark registration renewals;
- Warranties and indemnities made to others against claims for IP infringement;
- List of competitors and their known IP rights; and
- Personal or phone interviews with key employees in R&D, marketing, IT, legal and finance departments.

It may be useful for the parties to enter into a common-interest agreement or joint development agreement to better preserve any attorney-client privilege or confidentiality in the information being shared. If a considerable volume of information is anticipated or if several persons will need to access the information from different locations, it may be efficient to set up a secure online data-room to organize the due diligence materials.

Verification and Analysis

After collecting information from the parties to the transaction, some measure of independent searching, verification and supplementation

of that information should be conducted. Various public and commercial sources may provide relevant information, including:

- Searches for any issued patents or published patent applications relevant to the transaction may be commissioned from a professional patent search company or online at http://www.uspto.gov/patft/index.html.
- The content of issued patents and published patent applications, including prosecution histories, can be obtained at http://portal.uspto.gov/external/portal/pair.
- Patent and trademark assignment and ownership data are available at http://assignments.uspto.gov/assignments/. Relevant ownership information may also be found in local UCC filings.
- Patent maintenance fee payment records can be obtained at https://ramps.uspto.gov/eram/patentMaintFees.do.
- A number of international patent documents are available at http://ep.espacenet.com/?locale=EN_ep and http://www.wipo.int/pctdb/en/.
- Copyright Office records are accessible at http://www.copyright.gov/records/.
- Federal trademark registration and application information is accessible at http://www.uspto.gov/main/trademarks.htm.
- Commercial trademark search companies can identify potentially conflicting marks used by third parties.
- Georgia state trademark registration information is available online at http://www.sos.state.ga.us/corporations/marksearch.htm.
- General search engines such as http://www.google.com/ or http://www.yahoo.com/ can turn up useful information about a business, product or person involved in the transaction, and identify common law rights in unregistered trademarks.
- Federal court records can be searched at http://www.pacer.psc.uscourts.gov/.

Once the IP data has been collected and confirmed, the task then switches to analyzing the importance of your findings with respect to your client's business objectives. Confirming the true ownership of IP assets is often a threshold consideration. If there is a cloud on the title or an incomplete chain of title for key IP assets underlying the transaction, the value of the deal or even its continued viability should be reassessed. Ownership of IP assets is confirmed by tracing the chain of title, similar to a real estate title search. The assignment records of the U.S. Patent and Trademark Office are the most commonly used source of information in this area, but it may also be advisable to check U.C.C. security interests recorded at various county courts.[17] If an ownership problem is found, it is usually easier to correct while the parties are working together to close a deal, rather than after the ink is dry.

A frequently encountered IP ownership problem is a patent lacking a recorded assignment from one of its joint inventors. Because each joint inventor can independently license an invention without consent and without accounting to other inventors, market exclusivity can be lost if clear title cannot be traced back to each and every inventor.[18] It may be desirable to interview the inventors named on a patent to confirm that all persons who contributed to the invention were named on the patent. Another IP ownership problem involves brand names used in connection with imported products. These brands may be trademarks of the importing company or of the foreign source of the products, so conflicts can arise when a distributorship agreement is terminated or if products are sourced from a new supplier. Copyright in graphic designs, marketing copy and software may be owned by the external contractor who prepared the material, absent a written agreement otherwise, so questions also arise regarding ownership of website data, logos and proprietary software.

The investigation should also confirm that the IP rights at issue have been properly maintained and are currently in force. For patents, this includes confirming that maintenance fee payments have been made, checking products for proper patent marking, and investigating any terminal disclaimers, reexaminations or judicial findings of invalidity. For trademarks, this includes confirming that registrations have been properly secured and renewed, that the goods and services are accurately identified in the registrations and that the marks have been correctly and continuously used in the marketplace. Investigating prior licensing and enforcement efforts, including lawsuits that have been dismissed or settled, may uncover potential problems.

After confirming ownership and maintenance, the next important inquiry is into how strong the IP assets are and to what extent they will affect your client's business. This is typically the most difficult and time-consuming part of the investigation, but also the most critical. For example, with regard to a patent, the scope of the patent's coverage must be deciphered and compared to the relevant products or services. This is one area where it is dangerous to judge a book by its cover. A patent's drawings and written description may appear very broad, but only the patent claims legally define the scope of its protection.[19]

Many times, it is discovered that a company's patents do not even cover their own commercial products, let alone those of their competitors. It is also possible that a seemingly broad patent might be invalid in view of prior art known to the acquiring company, but unknown to the target company (or vice versa). As a result, a patent that initially seems to be of great

significance may turn out to be only a paper tiger. This can significantly devalue the deal if the patent is one of the primary assets being acquired in a transaction. It may save the deal, however, if the "scarecrow" patent is owned by a competitor and would otherwise stand in the way of a valuable product line being acquired.

The strength of a trademark can also affect the value of a transaction. A mark's strength depends on the distinctiveness of the mark, how the mark is used, how early in time it was used and a number of other factors. Actual use of the mark should be confirmed with an investigation into sales records, catalogs and product packaging. Likewise, although copyright may inhere in a commercial item, such as a graphic design used as a carpet pattern, the scope of the copyright may be very weak or "thin" depending on the degree of originality in the work. So while the ownership of an IP asset may be easy to determine, its significance and value to the transaction are usually far more difficult to ascertain.

Conclusion

IP questions are often neglected when structuring transactions in business areas that are not considered particularly "high-tech," but IP issues can have substantial impact, even for traditional brick-and-mortar businesses. By recognizing and understanding how IP impacts a business deal, attorneys can help clients better assess the risks and benefits associated with the deal and thereby make better-informed decisions as to the deal's value. GBJ

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Endnotes

1. *See, e.g.*, U.S. Trademark Reg. No. 197089 (registered May 21, 1924); U.S. Trademark Reg. No. 325195 (registered June 11, 1935).
2. Tom Buerkle, *BMW Wrests Rolls-Royce Name Away From VW*, INT'L HERALD TRIB., July 29, 1998, *available at* http://www.iht.com/articles/1998/07/29/rolls.t.php.
3. *Id.*
4. Ferrellgas Partners, Inc. v. Barrow, 80 U.S.P.Q. 2d 1097 (BNA) (M.D. Ga. 2006).
5. 35 U.S.C. § 101 (2007).
6. *Id.* § 271.
7. *Id.* § 154.
8. 15 U.S.C. § 1127 (2007).
9. Planetary Motion, Inc. v. Techsplosion, Inc., 261 F.3d 1188, 1193 (11th Cir. 2001).
10. *See, e.g.*, 15 U.S.C. § 1111 (2007).
11. 17 U.S.C. § 102 (2007).
12. *Id.* § 106.
13. *Id.* § 302.
14. *Id.* §§ 408-412.
15. O.C.G.A. § 10-1-761(4) (2000).
16. Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 490 (1974).
17. *See In re* Roman Cleanser, 225 U.S.P.Q. (BNA) 140, 142 (Bankr. E.D. Mich. 1984) (perfecting security interest in trademark is governed by U.C.C. rather than federal trademark statute), *aff'd*, 802 F.2d 207 (6th Cir. 1986) *In re* TR-3 Indus., 41 B.R. 128 (Bankr. C.D. Cal. 1984) (valid security interest does not require filing with U.S. Patent and Trademark Office).
18. 35 U.S.C. § 262 (2007).
19. SRI Int'l v. Matsushita Elec. Corp. of Am., 775 F.2d 1107, 1122 (Fed. Cir. 1985).

From Blueprints to Megabytes:

Copyright Issues for Architects, Contractors and Developers in the Digital Age

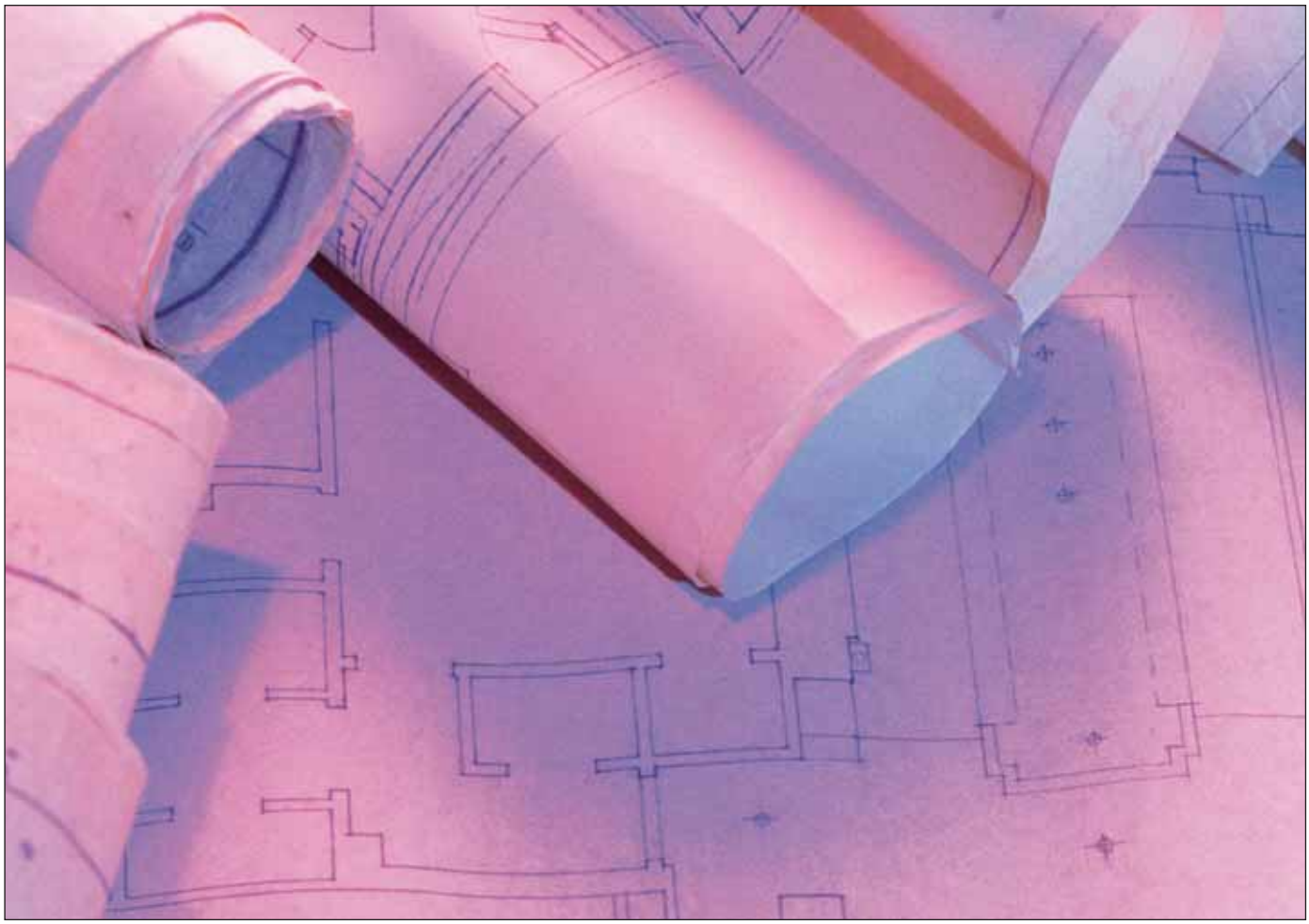
by Andrew Crain and Melissa Rhoden

Like many professions today, the architectural design process, including that for high-rise residential condominiums, has changed considerably in recent years. Today's architects have, in large part, exchanged their pencils, rulers and drawing tables for computers and computer-aided drafting (CAD) software programs and computer desks. The benefits of these changes are substantial (although likely debatable by some old-school architects), as architectural designs created by CAD programs can be easily changed, viewed, printed and saved for future use.

Electronic architectural design is not without its own risks and challenges. Electronic architectural drawing files, like any digital document, can be transferred virtually anywhere almost immediately. Thus, for any number of reasons, the architectural drawing files of one architect or firm may end up on the desk, or worse, the computer screen, of another architect or firm. Although there certainly may be legitimate and appropriate reasons for this to occur, problems can arise when the content from architectural drawing files finds its way into architectural drawing files of another architect on a different project. When this happens, significant copyright infringement liability can result, not only for the individual architect who made the unauthorized copy, but also for the architectural firm whose drawings contain the copied material. Potentially, the developer of the project, contractors and the end users (i.e., tenants) of the completed building can be involved.

When a subsequent project is designed by an architect who did not create the initial design, these issues can be particularly troublesome for developers attempting to create a series of building projects with common designs and features. If the developer fails to obtain approval from the initial architect, any unauthorized re-use of that architect's drawings, provided that they have been copyrighted, can present substantial problems for all involved in subsequent projects.

If the entertainment industry has taught us any copyright lessons, it is that digital computer files are not immune to copyright laws. Thus, architects, developers and contractors, all of whom increasingly rely on architectural drawing files that are digitally created and maintained, should be aware of potential



copyright issues associated with these media.

How Does Copyright Law Apply to Architecture?

For all copyrightable works, including works related to architecture, copyright protection exists in an original work of authorship as soon as the work is created, i.e., fixed in a tangible medium of expression.[1] Although there is no requirement that one must register an original work to obtain a protectable interest, in order to initiate an action for infringement, an application for copyright registration must first be filed with the U.S. Copyright Office.[2] The U.S. Court of Appeals for the 11th Circuit has held that the issuance of the certificate of registration is required prior to filing a lawsuit for infringement.[3] Notwithstanding this registration requirement, perhaps the threshold question is what is copyrightable when it comes to architecture.

Before the enactment of the Architectural Works Copyright Protection Act (AWCPA) in 1990,[4] works of architecture were afforded only limited copyright protection. Architectural plans could be registered for copyright as a "pictorial, graphic, and sculptural work" under 17 U.S.C. § 102(a)(5), but the actual architectural structures were allowed almost no protection.[5] As its legislative history indicates, prior to the enactment of AWCPA, it was possible to construct an identical building from architectural plans or drawings, and escape copyright liability, provided that the plans or drawings themselves were not actually copied.[6] Congress enacted the AWCPA specifically to extend protection to "architectural works" as a new category of authorship.

Thus, an architectural work is the "design of a building as embodied in any tangible medium of expression," which may include "a building, architectural plans, or drawings."[7] Moreover, an architectural work includes the overall form of a building as well as the "arrangement and composition of spaces and elements in the design."[8] A copyright for architectural works explicitly excludes, however, individual standard features, such as doors and windows.[9] This exclusion makes sense because of the functionality exclusion of copyright, i.e., copyright protects expression and not function or utility.

That does not mean that the composition or arrangement of those features is not copyrightable, as the 11th Circuit recently found in *Oravec v. Sunny Isles Luxury Ventures, L.C.*[10] This point is also reflected in the legislative history of the AWCPA, which recognizes that creativity in architecture frequently takes the form of a selection, coor-

dination or arrangement of unprotectable elements into an original, protectable whole.[11]

The primary effect of the AWCPA is to provide copyright protection to physical architectural works. The AWCPA does not apply to copyrights in technical drawings. Before 1990, only architectural plans were protected by copyright, and only against copying as technical drawings, not as embodied in a structure based on the drawings. The 1990 Act did not change this law. Rather, the 1990 Act *added* protection in § 102(a)(8) of the copyright statute for the built structure, which was a new form of protection with its own registration requirements and infringement analysis.[12]

Now, a work can obtain protection as both an architectural work (under § 102(a)(8)) and a technical drawing (under § 102(a)(5)), but only if the work is registered under both categories. This requires two separate copyright registration certificates. These steps, in conjunction with the placement of the proper notice of copyright, should afford the strongest level of protection, and therefore provide the most options with regard to remedies, should infringement occur.

Proving Copyright Infringement

In order to establish a prima facie case of copyright infringement for any copyrighted work, including architectural technical drawings and works, a copyright owner must prove that: (1) he or she owns a valid copyright; and (2) the defendant copied constituent elements of the work that are original.[13] In regard to the first element, a certificate of copyright registration made before or within five years of first publication of the work constitutes prima facie proof of ownership of a valid copyright, including the element of originality, which is yet another reason to register a work sooner rather than later.[14]

In addition to ownership of a valid copyright, a plaintiff must also prove that the defendant copied protectable elements of the work and may do so by presenting direct or indirect evidence of copying. One rarely sees direct evidence of copying; indirect evidence is more common. Indirect, or circumstantial, evidence of copying involves proof that the infringer had access to the copyrighted work during or prior to creation of the infringing work and that the infringing work is substantially similar to the copyrighted work.[15]

In the case of architecturally-related copyrights, access may arise in several different ways. For instance, an architect may depart one firm for another and take physical or electronic architectural drawing files to the new firm. Alternatively, multiple architectural firms may be involved on different aspects of the same project, especially larger projects, thereby necessitating the exchange of architectural CAD files among firms. Developers or contractors may also (with or without authorization) share architectural drawings among architectural firms that they commonly use, for example, to ensure that desired features are implemented on subsequent projects or that previously priced building components are again used.

Although a copyright owner may prove that an infringer had access to and copied the protected work, infringement does not arise unless there is substantial similarity between the original and allegedly infringing works.[16] Substantial similarity exists "where an average lay observer would recognize the alleged copy as having been appropriated."[17] Not surprisingly, where electronic architectural drawings are dragged and dropped from a drawing file of a copyrighted work to a subsequent drawing file by someone lacking authority to do so, the level of similarity is not only substantial, but is often nearly identical.

Recoveries for the Infringement

If a copyright owner establishes infringement liability, then a number of damage and remedy options are available. The first remedy is an injunction to prevent or restrain the infringement.[18] An architect copyright owner could seek to enjoin an infringing architect, developer or contractor from using infringing architectural plans. Such an injunction could prohibit the continued

construction of a building, the continued use of infringing plans in the construction of a building, the actual construction of an infringing building itself or the occupancy or use of an infringing building. Any of these injunctive remedies could be catastrophic to an infringing architect, contractor, developer and/or tenant.

Courts may be reluctant to issue such injunctions, as they could result in substantial negative impact on parties far removed from the actual copyright infringement, such as tenants. This is especially true when the copyright owner may easily be compensated by money damages. Depending on the magnitude of the infringement and the potential scope of irreparable injury to the copyright owner, however, such an injunction might not be completely unrealistic.

Regarding monetary damages, copyright owners may choose to pursue actual damages, as allowed by § 504(a) of the copyright statute.[19] Actual damages may be negligible or even nonexistent in regard to architecturally related copyrights, unless, for example, the copyrighted design is one intended for use more than once, such as a tract house design. Thus, actual damages may not necessarily be an architect copyright owner's best option.

Another remedy allowed by § 504(b) of the copyright statute is lost profits, also described as infringer's profits. This damage recovery seeks to divest a copyright infringer of those profits obtained as a result of infringing the copyright. Interestingly, § 504(b) actually permits the copyright owner to recover both lost profits and actual damages to the extent that the lost profits recovery is not already taken into account in the actual damages award.[20]

The copyright statute contains another interesting aspect concerning infringer's profits in that it specifically provides a burden-shifting provision; i.e., the copyright owner must only prove the infringer's gross revenues.[21] Upon making this showing, the infringer then bears the burden of proving those deductible expenses and profits not attributable to the copyright infringement.[22] Courts have held, however, that "[a]ny doubt as to the computation of costs or profits is to be resolved in favor of the plaintiff."[23] This burden-shifting contemplates that the infringer is always in a better position than a plaintiff copyright owner regarding financial data. As a result, if a copyright infringer commingles profits attributable to the infringement with costs and non-infringement-related profits, then the infringer may pay a hefty price.

Infringer's profits may be a targeted area for an architect copyright plaintiff to recover against an infringing architect (at another firm), developer or contractor. If, for example, an architect's architec-

tural plans are copied by another architect in designing a different building, then, depending on the magnitude of the project, the revenues of the project for the infringing architect could be substantial. Because architects often recycle portions of a prior project's architectural plans when possible, it is conceivable that infringing designs could be replicated in a number of successive projects, thereby magnifying the profits attributable to the infringement. Thus, an architect copyright owner, who may recover little, if any, actual damages, could recover substantially greater amounts in infringer's profits.

Another unique remedy provided by the copyright statute is statutory damages. Section 504(c) provides that a copyright owner may recover a statutory damage remedy in lieu of actual damages and infringer's profits.[24] The statute allows the copyright owner to make this election any time prior to the rendering of final judgment, and, if elected, the remedy ranges from a minimum of $750 up to $30,000, as the court deems just, for all infringements of one work.[25] This statutory damage award is per copyrighted work, not per infringement. If a copyright owner can establish willful infringement of potentially more than one copyright, which is not uncommon, especially in cases involving both architectural technical drawings under § 102(a)(5) and architectural works under § 102(a)(8), the court may increase the statutory damages award up to $150,000.[26]

A copyright owner might prefer a statutory damages award if the copyright owner cannot establish actual damages or lost profits. In a case where copyright infringement is by another architect, contractor or developer regarding one or more specific projects, the copyright owner might opt for lost profits for the reasons discussed above, as the revenues may be more easily associated with the infringing building project or projects. But, if the infringer is, for example, a publisher who copied an architect's architectural plans in a magazine or on an Internet web page, then proving the gross revenues related to the infringement may become much more difficult, thereby making a statutory damages recovery more attractive.

A statutory damages recovery is only available to a copyright owner if the copyright owner registered the copyright of an unpublished work before the infringer commenced the infringement.[27] If the infringed work is a work that has been published, then statutory damages are available to the copyright owner if the work was registered before the infringement commenced or within three months of the first publication of the infringed work.[28] Again, this is yet another reason to register the copyright of the work sooner rather than later.

To register a copyright with the U.S. Copyright Office, submission of a two-page form, a deposit of the work being registered and a $45 filing fee are all that is required. Unlike an application for patent, which comprises a lengthy technical narrative document, applications for copyright are relatively easy to prepare. It is typically not until the author of the work discovers that someone has copied the work, however, that the author then seeks to register the copyright in the work, which also commonly is long after first publication of the work. So, in that case, the author cannot recover statutory damages due to the failure to register the work before the infringement occurred.

As a part of recoverable costs, the copyright statute does allow for the recovery of attorney's fees to a prevailing plaintiff.[29] This recovery can be substantial, as the attorney's fees for a copyright litigation case in Georgia can range from $250,000 to in excess of $1,000,000, depending on the amount of actual damages or lost profits potentially recoverable.[30]

Just as with statutory damages, the copyright plaintiff must have registered the copyrighted work prior to the commencement of the infringement for attorney's fees to be recoverable.[31] So, if the copyright owner fails to obtain registration before commencement of the infringement, this potentially significant damage recovery is eliminated. A copyright owner, such as an architect, should instead invest a little time and money to routinely file a copyright registration application in association with the creation of architectural plans and works to enhance recovery if that work is ever infringed.

Potential Copyright Snares

Despite real and significant potential damage recoveries and remedies available for copyright infringement, common misconceptions persist in architecture, construction and project development that may create substantial copyright infringement exposure. As an example, though architects might generally agree that copying the electronic files of another architect's architectural plans is impermissible (as it certainly is, without authorization), some may find no problem using the architectural plans of another as a reference or inspiration for the creation of another work. Whether such practice is permissible depends on the content taken and whether the resulting work is substantially similar to the copyrighted work used as a reference. Therefore, architects, developers and contractors alike should review their standard practices to ensure that the copyrighted work of another is not being used without authorization.

Authorization to use another's work may oftentimes result from an incorrect understanding as to the ownership of the copyrighted work in the first place. Architects and developers usually will enter into owner/architect agreements addressing these issues. Otherwise, the author architect typically retains the right to all copyrights, which may not be acceptable to a developer. The American Institute

of Architects (AIA) offers standard forms of agreement between owners and architects that address copyright issues. These agreements generally attempt to strike a balance between both the architect's and the developer's interests and are, at a minimum, good starting points for addressing these issues.

Conclusion

Maintaining high professional and ethical standards can significantly prevent some of the copyright-related problems that architects, contractors and developers may face. Additionally, taking safeguards by proactively registering copyrights with the U.S. Copyright Office, entering agreements with others (i.e., contractors and developers) that clearly define copyright ownership and rights of use and implementing sound employee agreements prohibiting the unauthorized transfer of architectural files can prevent infringement as well as provide a number of options should copyright infringement occur. This can allow architects, contractors and developers to focus on creating new and original building designs, instead of asserting or defending claims of copyright infringement. GBJ

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Endnotes

1. 17 U.S.C. § 102(a) (2006).
2. *Id.* § 411(a).
3. *See* Oravec v. Sunny Isles Luxury Ventures, L.C., 527 F.3d 1218 (11th Cir. 2008).
4. Pub. L. No. 101-650, §§ 701-706, 104 Stat. 5089, 5133-34 (codified in scattered sections of 17 U.S.C.)
5. *See* Richmond Homes Mgmt. v. Raintree, Inc., 862 F. Supp. 1517, 1524 (W.D. Va. 1994).
6. *See* H.R. Rep. No. 101-735 (1990).
7. 17 U.S.C. § 101 (2006).
8. *Id*.
9. *Id*.
10. 527 F.3d 1218 (11th Cir. 2008).
11. H.R. Rep. No. 101-735 (1990).
12. 17 U.S.C. § 102(a)(8) (2006); *see also* T-Peg, Inc. v. Vt. Timber Works, Inc., 459 F.3d 97, 109-10 (1st Cir. 2006).
13. Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991).
14. Arthur Rutenberg Corp. v. Dawney, 647 F. Supp. 1214, 1216 (M.D. Fla. 1986). Interestingly, architectural drawings that are only distributed by the architect to subcontractors for bidding purposes or filed with governmental authorities for permitting are generally not deemed to have been published under the Copyright Act, thereby affecting the application of § 410 to those plans if ultimately copied. *See* Intown Enters., Inc. v. Barnes, 721 F. Supp. 1263, 1266 (N.D. Ga. 1989).
15. *See* Donald Frederick Evans & Assocs., Inc. v. Cont'l Homes, Inc., 785 F.2d 897, 904 (11th Cir. 1986).
16. *See* Original Appalachian Artworks, Inc. v. Toy Loft, Inc., 684 F.2d 821, 824 (11th Cir. 1982).
17. *See* Milliken & Co. v. Shaw Indus., 978 F. Supp. 1155, 1159 (N.D. Ga. 1997).
18. 17 U.S.C. § 502 (2006).
19. *Id.* § 504(a).
20. *Id.* § 504(b). Although the rationale for this recovery scheme is to force the potential infringer to realize that it is cheaper to buy than to steal, it is doubtful that potential infringers actually make this cost/benefit analysis prior to copying another's copyrighted work. *See* Walker v. Forbes, Inc., 28 F.3d 409, 412 (4th Cir. 1994).
21. 17 U.S.C § 504(b) (2006).
22. *Id.*
23. Andreas v. Volkswagen of Am., Inc., 336 F.3d 789, 795 (8th Cir. 2003).
24. 17 U.S.C. § 504(c) (2006).
25. *Id.* § 504(c)(1).
26. *Id.* § 504(c)(2).
27. *Id.* § 412.
28. *Id.*
29. *Id.* § 505. The Eleventh Circuit is the only circuit that has interpreted this section to support the award of attorney's fees to a defendant whose prior offer of judgment amount made pursuant to FED. R. CIV. P. 68 is deemed to be more favorable than an actual judgment amount. *See* Jordan v. Time, Inc., 111 F. 3d 102, 105 (11th Cir. 1997) (per curiam). This is despite the fact that it seems extremely difficult to consider such a defendant to be a prevailing party, as required by § 505 and as pointed out by several other circuit courts. *See, e.g.*, Harbor Motor Co. v. Arnell Chevrolet-Geo, Inc., 265 F.3d 638, 646-47 (7th Cir. 2001); Crossman v. Marcoccio, 806 F.2d 329, 334 (1st Cir. 1986).
30. *See* AMERICAN INTELLECTUAL PROPERTY ASSOCIATION REPORT OF ECONOMIC SURVEY (2007).
31. 17 U.S.C. § 412 (2006).

Stopping Infringing Goods at the Docks:

An Overview of the International Trade Commission

by Larry Roberts and Wilson White

Patent holders attempting to bar infringement through traditional court litigation face increasingly difficult standards and protracted legal battles. Most recently, in 2006 the U.S. Supreme Court issued a decision in *eBay, Inc. v. MercExchange, LLC*[1] that altered the landscape for patent owners seeking an injunction against infringers.

Previously, a patent owner was virtually assured of obtaining a permanent injunction against the infringer if the patent owner prevailed in court. Under the *eBay* decision, however, a patent owner now has to satisfy the traditional four-pronged test for injunctive relief: (1) it has suffered an irreparable injury; (2) remedies available at law are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction.[2] As a result, injunctive relief for a patent owner is by no means assured.

Meanwhile, with the possible exception of certain "rocket dockets" in various federal court jurisdictions

across the country, patent owners continue to be frustrated by the clogged federal court system and the length of time to bring a case to trial. In the majority of cases, the infringer continues its conduct as the case awaits trial. Although this continued infringement adds to the damages that the patent owner can recover if he prevails, the market for the patented product may erode to such an extent that the patent owner might never recover. Thus, patent owners need an avenue for speedier resolution of patent infringement cases.

As a result, patent owners are increasingly choosing the U.S. International Trade Commission (ITC or Commission) as an alternative forum for the enforcement of patent rights. The ITC is a quasi-judicial governmental agency that conducts investigations into allegations of certain unfair practices in import trade. Among other duties, the ITC is empowered under Section 337 of the Tariff Act of 1930, as amended, to combat unfair import trade practices and to enforce U.S. intellectual property rights at the border. Section 337 makes unlawful the import of articles or goods that infringe U.S. patents, copyrights and trademarks.[3] If imports are found to violate Section 337, an exclusion order may be issued directing the U.S. Customs Service to prevent these products from entering the United States.[4] In addition to an exclusion order, Section 337 also permits the ITC to issue cease and desist orders to stop the use and sale of infringing products that have already been imported into the United States.[5]

The ITC Procedure

Section 337 was originally drafted to help level the playing field for domestic manufacturers against foreign companies that imported infringing products into the United States, and its powers are limited to imported goods. Nonetheless, many U.S. companies have outsourced their manufacturing operations overseas, and many foreign companies have set up manufacturing operations in the United States. The ITC's jurisdiction is thus able to affect the operations of both domestic and foreign companies and has become an advantageous forum for enforcing patent rights.

To initiate an action before the ITC, an aggrieved patent owner files a complaint requesting a Section 337 investigation. There are two basic requirements for establishing ITC subject-matter jurisdiction: unfair trade importation and domestic industry. The importation element simply means that the goods are manufactured outside the United States and imported into the country. The domestic industry requirement ensures that "an industry in the United States relating to articles protected by the patent . . . exists or is in the process of being established."[6] The ITC can also assert in personam[7] and in rem[8] jurisdiction to adjudicate and enforce its decisions under Section 337. In rem jurisdiction is required for the issuance of exclusion orders barring the importation of infringing goods at the border. In certain circumstances, in personam jurisdiction may be required to enforce the violation of an order issued by the ITC.

After a complaint is filed, an ITC staff attorney reviews the complaint for sufficiency and recommends to the Commission whether to initiate a Section 337 investigation. The ITC normally has 30 days to determine whether an investigation is warranted.[9] Historically, the ITC rarely declines to undertake an investigation.

Once an investigation is instituted, an ITC staff attorney participates fully in the litigation as an independent party representing the public interest. Normally, the same ITC staff attorney who had determined that there were sufficient grounds to warrant an investigation fills this role. As an independent party to the litigation, the ITC attorney is responsible for developing relevant information and advocating on behalf of the public. Because the ITC attorney has already determined that an investigation is warranted, the positions of the ITC attorney are normally aligned with the position of the patent owner. Furthermore, if the patent owner is successful, the ITC attorney is responsible for monitoring compliance with orders entered in the investigation, investigating possible violations of such orders and initiating or participating in Commission enforcement proceedings. Therefore, in addition to its own resources, an ITC complainant may benefit greatly from the experience, advocacy and public resources that the ITC attorney can bring to bear.

At the commencement of an ITC investigation, the ITC also assigns the case to an administrative law judge (ALJ). Within 45 days of instituting an investigation, the ALJ sets a target adjudication date for the matter.[10] For most ITC cases, the target date is within 15 months after initiating the investigation. In cases where the target date is within 15 months, the ALJ must file an initial decision on the case three months before the target date.[11] Therefore, a patent owner may have an initial determination of whether its patent rights have been violated within one year of filing its complaint.

By way of example, assume that a patent owner files an ITC complaint on Jan. 1. A staff attorney will decide by Feb. 1 whether an investigation should be conducted. Discovery will commence shortly after Feb. 1 and will conclude by Sept. 1. The ALJ will likely conduct a trial/hearing during the month of October, and post-trial briefings will be completed by Dec. 1. The ALJ will issue his initial determination sometime in January of the following year, ahead of the 12-month target date set by the ALJ. This condensed timeline stands in stark contrast to a typical scheduling order in a federal district court patent infringement case, where discovery alone may take well over a year.

The ALJ's initial determination is reviewed by the Commission, which issues its final determination of whether Section 337 has been violated. The Commission's final determination also outlines the remedy if a violation has been found. The ITC does not have the power to award monetary damages but can issue exclusion and cease-and-desist orders.

Exclusion orders can be either "limited" or "general" in scope. A limited exclusion order covers specific goods originating from specific sources. Despite the implications of its name, limited exclusion orders generally have a broad scope in that they may apply to all models and types of the infringing product and will apply to future products of the type found to infringe. The order is "limited" in that it will apply only to the specifically identified type of products from the specifically identified source. In contrast, a general exclusion order requires the U.S. Customs Service to exclude all infringing articles from entry into the United States, regardless of their source or national origin. An ITC complainant may obtain a general exclusion order if he can successfully show that the order is necessary to prevent circumvention of a limited exclusion order and that there is a pattern of violation with difficulty in identifying the source of the infringing goods.[12]

Once the Commission has issued its final decision, any remedy issued by the Commission is subject to a 60-day presidential review period.[13] If the president does not disapprove of the ITC's decision and remedy within the 60-day period, the ITC decision is considered final. The president can disapprove of the ITC's decision only for policy reasons, and a disapproval by the president renders the decision virtually null and void. The decision to disapprove of an ITC decision rests within the sole discretion of the executive branch and is not appealable to or reviewable by any court. The president very rarely, however, vetoes the decision of the ITC. In fact, the president has disapproved of only a handful of ITC decisions in the history of Section 337.[14]

After the presidential review period, the burden is on the ITC respondents to file an appeal with the U.S. Court of Appeals for the Federal Circuit. The ITC, and not the patentee, is the respondent party in any appeal before the federal circuit. Therefore, the patentee does not have the burden of establishing the correctness of the agency's decision on appeal; that burden is borne by the ITC.

Advantages of Using the ITC

ITC procedure offers clear advantages over traditional court litigation. The speed of ITC litigation exceeds even that of some so-called "fast-track" federal district courts. Litigation that would take two years or more in federal district court is compressed to mere months at the ITC. The speed and efficiency of ITC litigation, as well as the benefits of an exclusion order, present an attractive alternative for patent owners seeking to enforce U.S. patent rights.

Injunctive relief is also easier to obtain than in traditional litigation. Since *eBay*, district courts have faithfully applied the four-factor test in deciding whether a permanent injunction was warranted. Permanent injunctions have been denied in nearly all cases where the patent holder was not actively competing in the market.[15] An ITC complainant, however, is not required to meet the requirements of the four-part balancing test. If the Commission determines that there is a violation of Section 337, the Commission is authorized to issue an exclusion order. With respect to infringing imports, an exclusion order at the ITC has the same practical effect as a permanent injunction.

Another advantage of patent litigation at the ITC is the ability to join various companies involved in the sale and importation of the accused infringing products into one proceeding, without regard to venue issues applicable in federal district court. A finding of a Section 337 violation would subject each of the respondents to an exclusion order. Also, the ITC's in rem jurisdiction over imported goods allows complainants to join foreign companies that may typically be outside the personal jurisdiction of a federal district court.

If an ITC complainant is successful in obtaining an exclusion order, the enforcement of the order is within the purview of the U.S. Customs Service, saving the complainant the difficulty and expense of monitoring continued infringing activity. Also, when an ITC complaint is filed, the ITC is responsible for effectuating service on the respondents, eliminating the expense and inconvenience of trying to serve foreign companies.

In addition, if the ALJ sides with the patentee in his initial determination, the burden on the patentee lessens considerably and increases substantially for the respondents. The burden is on the respondents to petition the Commission for review of the ALJ's initial determination. Although only one commissioner's vote is necessary to trigger review of an initial determination, the filing of a petition does not guarantee that the initial determination will be reviewed.[16] Any portions of the initial determination that are not reviewed by the Commission automatically become the final decision of the Commission.

Although ITC litigation is an alternative to federal district court litigation, an ITC action does not preclude resort to federal district courts for legal and monetary damages. Therefore, a patent owner may file a complaint at the ITC seeking injunctive relief and simultaneously pursue an action in the district court for monetary damages. In cases where an ITC action is co-pending with a federal district court action, the district court defendants have a statutory right to have the district court action stayed pending resolution of the ITC action.[17] Section 1659 also permits the transfer of the Commission's record upon dissolution of the ITC case.[18] Although the findings of the ITC are not afforded res judicata effect in the district courts,[19] the district court judge has discretion to give an ITC finding whatever persuasive value he deems fit. In addition, a ruling by the federal circuit on an ITC appeal may have an even greater persuasive, if not binding, effect on a district court judge whose rulings may eventually end up before the same appellate court.

Conclusion

Given the increasing costs and delay associated with litigating patent cases in federal district courts, companies with significant patent portfolios should consider the ITC as an attractive alternate or additional forum to enforce their U.S. patent rights. GBJ

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Endnotes

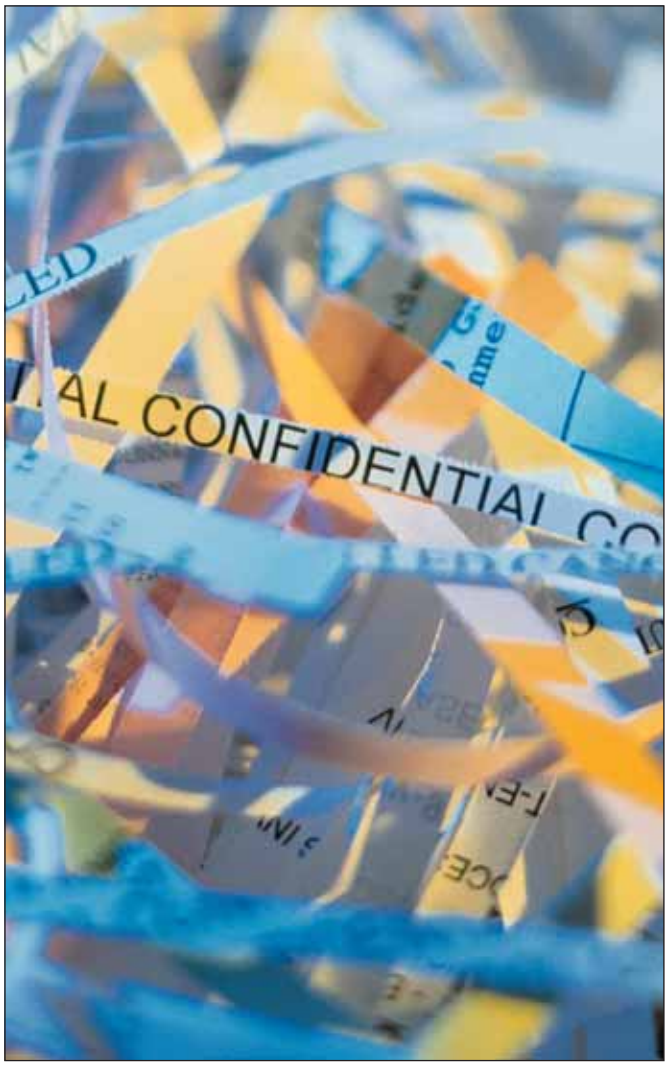
1. eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006).
2. *Id.* at 391.
3. 19 U.S.C. § 1337(a)(1)(B), (C) (2008). In 2006, 33 new Section 337 investigations were instituted at the ITC, and all but four involved allegations of patent infringement. *See* United States International Trade Commission: The Year in Trade 2006, USITC Publication 3927 at 2-12 (July 2007), *available at* http://hotdocs.usitc.gov/docs/pubs/year_in_trade/PUB3927.PDF. The remaining four cases involved allegations of trademark infringement. *Id.*
4. 19 U.S.C. § 1337(e).
5. *Id.* § 1337(f). The ITC has no jurisdiction over infringement by domestically manufactured articles.
6. *Id.* § 1337(a)(2). The mere ownership of a patent or the marketing and sales related to the patent are not sufficient to establish a domestic industry. Section 337 requires substantial activities such as investment in equipment, research and development, or labor related to the exploitation of the patent. *See, e.g., id.* § 1337(a)(3).
7. In personam jurisdiction is established by service of the complaint and notice of investigation of all named respondents. 19 C.F.R § 210.11(a)(1) (2008).
8. In rem jurisdiction is established through allegations in the verified complaint of "specific instances of alleged unlawful importations or sales." *Id.* § 210.12(a)(3).
9. *Id.* § 210.10(a).
10. 19 U.S.C. § 1337(b)(1); 19 C.F.R. § 210.51(a).
11. 19 C.F.R. § 210.42.
12. 19 U.S.C. § 1337(d)(2).
13. *Id.* § 1337(g), (j).
14. *See generally* Robert T. Edell, *The International Trade Commission: Final Determinations, Presidential Review, and Appeal*, 10 AIPLA Q.J. 160 (1982).
15. *See, e.g.*, Sundance, Inc. v. DeMonte Fabricating Ltd., No. 02-73543, 2007 U.S. Dist. LEXIS 158 (E.D. Mich. Jan. 04, 2007); Paice LLC v. Toyota Motor Corp., No. 2:04-CV-211-DF, 2006 U.S. Dist. LEXIS 61600 (E.D. Tex. Aug. 16, 2006); z4 Techs., Inc. v. Microsoft Corp., 434 F. Supp. 2d 437 (E.D. Tex. June 14, 2006).
16. *See generally* 19 C.F.R. § 210.43(d).
17. 28 U.S.C. § 1659(a) (2008).
18. *Id.* § 1659(b).
19. Tex. Instruments, Inc. v. United States Int'l Trade Comm'n, 851 F.2d 342, 344 (Fed. Cir. 1988).

Keeping Your Genies in the Bottle:

10 Steps to Protect Your Most Sensitive Secrets

by Warren R. Hall Jr. and Brett E. Coburn

If, as has been said, intellectual property is the currency of the future, then the future has arrived. Yesterday's spy movie gadgets are today's reality: from pint-sized recording devices to minute cameras, to portable electronic storage media capable of putting a bookshelf in your pocket or an entire library in your briefcase. It seems that portability of information is matched only by portability of employment. It is ironic that the proverbial "gold watch" signifying 25 years of tenure with an employer has largely gone the way of the vanishing wristwatch, a victim of the Information Age with its ever-present competing offerings.



In recent years, the combination of increasingly portable data and an increasingly portable workforce has created a perfect storm of opportunities for a company's proprietary information to fall into the hands of a competitor. Resulting legal problems are invariably expensive, time-consuming and frustrating. No matter what your company spends or what resources are

deployed, the effort is likely to be a "recovery," not a "rescue." Once out, your intellectual property genies are unlikely to go back into the bottle. Your best chance is to secure your genie bottle on the front end, by spending a fraction of the time and money that you would waste later racing around after your genies once they escape.

Under Georgia law, a trade secret is information

> . . . which is not commonly known by or available to the public and which information:
>
> Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
>
> Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[1]

Thus, one of the main battlegrounds in trade secrets litigation is whether your intellectual property genies were reasonably protected. Appropriate protective measures can reduce the risk of theft in the first instance, and can also protect legal rights (by garnering trade secret protection for sensitive information) and create new legal rights (such as contractual protection for non-trade-secret confidential business information) for protecting a company's secrets. Such measures include identifying sensitive information, limiting access to it and creating and implementing policies and contractual arrangements that facilitate protection of such information. This article presents a series of practical steps that companies should take to protect their sensitive information from misappropriation and to help ensure that appropriate legal remedies are available in the event that misappropriation occurs and litigation becomes necessary.

Identify your most sensitive information.

Your company, or your client's company, likely has more secret information than it thinks. Although some secrets are obvious, such as customer lists and strategic marketing plans, other types of information can be similarly sensitive and damaging if they fall into the wrong hands. Financial data, cost and overhead information, sales data broken down by product or customer and designs or schematics for existing products or services can be devastating if revealed to a competitor.

The Georgia Trade Secrets Act (GTSA) identifies types of information that can often constitute trade secrets as "technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers . . . ."[2] Most other states have adopted variations of the Uniform Trade Secrets Act that define trade secrets similarly, although not always identically.[3]

Understand also, however, that the sun does not rise and set solely on trade secrets. In Georgia and many other states, parties can contractually protect confidential information from disclosure for a limited period of time even if the information does not constitute a trade secret.[4] Thus, when identifying proprietary information that you want to protect, you should look beyond trade secrets. As long as the information is not readily available outside your company and has not been publicly disclosed by someone with authority to make such disclosure, you should seriously consider protecting all proprietary information and tangible things using the techniques outlined below.

For example, financial records and cost and sales data each could provide a savvy competitor with tools to spot weaknesses or opportunities, such as struggling product lines or submarkets, or particular products on which your costs are running over budget. Cost information also can allow a competitor to pinpoint the optimum price at which it can capture sales (and thus market share), but still maximize profits. Sales or profit data organized by product lines or business groups will identify to a competitor where it should focus its competitive efforts. Product design plans can allow a competitor to identify how and why its products compare to your company's—and thus how to improve its competitive product or point out any deficiencies in your products.

The stakes are high in competitive business environments. A crafty competitor can use even seemingly benign information to gain a competitive edge. So, when evaluating your company's or your client's secrets, remember that even secrets that are not true "trade secrets" can often be worthy of protection.

Limit access to sensitive information.

Once you have identified your proprietary information, whether it be trade secrets or merely confidential business information, your first step in protecting it is to restrict access within your organization. This is an important but sometimes overlooked aspect of data security. Even sensible executives can be lulled into a false sense of confidence if they feel that their secrets are secure from external threats.

Two reasons suggest why limiting in-house access to your secrets is a prudent first step. First, Georgia courts have at times been hesitant to grant trade secret protection for information that is freely available within a company's walls, even if the information is entirely secure from outsiders.[5] Second, in the authors' experience the greatest threat to a company's proprietary information is from "inside jobs"—misappropriations by current or recently departed employees. Limiting access within a corporation to secret information

narrows the pool of potential misappropriators. Simply put, internal document and information security is a vital first step in enhancing the odds of protecting your company's information.

Carrying out this important step, however, is another matter. Restricting internal access to a wide range of secrets is time-consuming and fraught with difficulties. As an initial matter, most companies are not in the business of collecting proprietary information for its own sake—the information exists and is valuable often because the company's employees can use, and often need, it to perform their jobs and beat competitors in the marketplace. Thus, locking up your data from your employees can easily defeat the very purpose of having it.

The key, therefore, is to categorize your secret information into "buckets," and grant employees access only to the buckets of information that they legitimately need to perform their jobs. In such a system, sales representatives would certainly have access to pricing and sales buckets, but would not necessarily need access to the product design buckets or the corporate financial buckets. Likewise, a field service technician would need access to detailed drawings and schematics, especially for new products, but would not need information on customer sales figures or cost data. Accountants might need access to all financial data, but virtually none of the secrets related to the actual goods or services being offered and sold.

Although it may be impossible to accurately and efficiently segregate access to all buckets of your sensitive information, remember that the GTSA requires efforts to maintain secrecy that are "reasonable under the circumstances."[6] If your efforts to restrict internal access are apparent and rationally applied, a court or jury may respect the effort and overlook any loopholes arising from trying to apply a relatively static protection system to a dynamic business environment.

Impose meaningful physical and electronic security measures.

Premises and electronic security are commonplace in most organizations, but it is important to think of security in the context of protecting your proprietary information. Restricting workplace physical access to permit only employees, agents and invitees is a basic step. For purposes of establishing your reasonable efforts to maintain secrecy, be mindful of the need to document and verify your security features. Be prepared to explain how vendors and visitors are handled, and whether their access to your facility is limited and chaperoned. After-hours access to the facility is another potential physical security loophole to consider closing or, at least, limiting.

Although physical security is important, most proprietary information today exists in electronic format—so electronic security is perhaps the most vital line of defense. Think of your proprietary information as valuables inside a home. The first lines of electronic security are the gates, walls, doors and windows; these are your firewalls, passwords and other internet security to keep outsiders out and let only insiders in.

Your second line of electronic security is more akin to theft and shoplifting countermeasures often seen in retail stores. This is critical because experience shows that the biggest threats to your secrets can come from insiders. Although insiders, employees and other agents often need access to proprietary information to do their jobs, their access need not be absolute. Security and IT specialists can help your company or client take steps to customize access to sensitive electronic files by making them read-only, prohibiting copying or printing, and/or restricting e-mail transfers or remote access. In this era of high-capacity flash and thumb drives, gigabytes (i.e., boxloads) of data can walk out of your office literally in the palm of a hand. Electronic security countermeasures cannot be ignored.

Implement a document protection plan.

Under Georgia law as well as the Uniform Trade Secrets Act generally, your trade secrets and confidential information need not be subject to lockbox security—that is, security so tight that your business cannot derive meaningful value from it. Instead, protections must be "reasonable under the circumstances." Understand that this means that not every document or item of proprietary information is likely to require, or warrant, the same level of protection and secrecy. Certain information, for example, customer contact data and purchasing histories, derive their very value from enhancing your company's sales or sales opportunities. Thus, it would defeat the purpose if the lists were so closely maintained that sales representatives and customer support staff could not access them. Such information may legitimately circulate more widely than, say, financial data, which often is not critical to daily sales efforts.

Who in your company is best positioned to resolve these difficult questions regarding the treatment of proprietary information? Do your employees know to whom to direct such questions? Is there a process for ensuring that your business taps into the right resources to make appropriate judgment calls on where to draw the line between secrecy and use? Can certain information otherwise subject to strict security be disclosed to a vendor, customer or joint venturer if necessary to land a sale, close a deal or launch a new enterprise? If yes, under what conditions?

Although the answers to these questions are rarely simple, an easy first step is to institute a confidential information policy to set forth ground rules for the treatment of proprietary information at your company. Start with identifying broad classifications of data identified above. Certain general rules should immediately

follow: (a) identify the person or committee responsible for making decisions about the use and disclosure of proprietary information; (b) ensure that all potentially sensitive documents are marked "CONFIDENTIAL—Property of XYZ Corporation"; and (c) prohibit the disclosure of data pertaining to finances, sales, products or customers outside of the company without written approval from the appropriate company officer or confidential information committee.

These steps will not answer every question or guarantee the correct outcome, but having a process and some basic rules are significant steps toward security levels that are "reasonable under the circumstances." Remember that perfection is the goal, but not the legal standard.

Protect sensitive information through contract.

Contractual obligations on employees are one of the most important tools to prevent theft of your sensitive information and to provide additional legal rights beyond statutory or common law trade secret protection in the event of a theft. As an initial matter, ensure that you comply with applicable state laws regarding when and under what circumstances employers may impose new agreements on their employees. In some states, including Georgia,[7] continued employment is sufficient consideration for such agreements, and employees can be asked to sign them at any time during employment.[8] Other states, however, such as North Carolina and Texas, require that such agreements be signed at the outset of the employment relationship, or that the employee receive additional consideration, beyond continued employment, for signing an agreement after he or she has already started working.[9]

It is essential that all employees (or other agents or representatives) with access to your company's sensitive information be bound by a nondisclosure agreement (NDA). As noted above, nondisclosure provisions can be used to protect not only trade secrets, but also confidential information that does not rise to the level of a trade secret.[10] NDAs should expressly prohibit the use or disclosure of confidential documents and information in other tangible forms, as well as intangible confidential information that resides in an employee's memory or experience.

In addition to nondisclosure obligations, you should also contractually require employees to return all company property immediately upon separation, or at any earlier time upon the company's request. Return-of-property provisions should apply to both tangible property (such as hard-copy documents) and electronic documents and information, and should encompass all copies and derivatives of such information.

A number of other types of contractual provisions can provide additional protection for your sensitive information. Noncompetition, customer nonsolicitation and employee nonrecruitment clauses or independent agreements can limit an employee's ability to work effectively for a competitor, and thereby potentially reduce the chance that a defecting employee will successfully use your secret information in a competitive manner. Ensuring compliance with applicable state law is again essential, as many states, and Georgia in particular, have strict rules regarding the enforceability of restrictive covenants.

Proprietary rights assignment provisions can also be important in protecting your company's trade secrets and confidential information, as such provisions can eliminate any uncertainty as to who owns materials created by an employee during his or her employment. Note that several states (Georgia not included) require certain limitations on an employee's obligation to assign proprietary rights to his or her employer.[11] Employers should also consider contractual provisions requiring employees to devote all of their professional time to their duties on behalf of the company. Such provisions can provide an additional hook for limiting unauthorized use or disclosure of confidential information. Last, agreements with employees should require employees to submit to an exit interview, which, as discussed below, can be an important tool for assessing whether a departing employee poses a risk of stealing or disclosing sensitive information.

Implement employment policies that promote protection of sensitive information.

In addition to demanding contractual limits on an employee's actions, your company should develop and implement policies to protect trade secrets and other confidential information. Such policies can be implemented in connection with and in furtherance of your document protection plan, as part of your employee handbook or as separate, free-standing policies.

As a starting point, your policies should prohibit the unauthorized disclosure of your sensitive information, as well as the use of such information for any reason other than in furtherance of the company's business. Additionally, company policy should require proper tracking and documentation of all authorized transmittals of confidential information or trade secrets. You also should specifically reserve the right to monitor employee telephone, facsimile and e-mail communications, but be sure to comply with applicable state and federal laws regarding employee privacy.[12]

Implementing these policies can be just as important as the actual content of policies themselves. Information security policies should be discussed specifically during new employee orientation, and you should require all new employees to certify in writing that they have received and understand these policies. This written certification should relate specifically to policies regarding protection of confidential information and trade secrets and should be in addition to any general certification that you might require regarding receipt of employment policies generally. Assuming that you are implementing new policies or changing your existing ones, do not forget to roll these policies out to current employees and to obtain similar written certifications from them. After employees are initially taught about a company's information protection policies, it is important to circulate periodically refresher memoranda, require follow-up training and require renewed written certification regarding these policies. You should clearly document all efforts in this regard, in the event that it is ever necessary to demonstrate the "reasonable steps" that you have taken to protect sensitive information.

Implement policies for handling departing employees.

As departing employees are frequently the source of stolen or leaked information, businesses must take special care in how they handle such departures. It is a good

idea to conduct exit interviews with all departing employees. During this meeting, you should remind employees of their confidentiality obligations, as well as any other post-employment contractual obligations. You should also take this opportunity to collect all company property from the employee and to obtain a written statement from the employee certifying that he or she has returned all company property in his or her possession and has complied fully with any contractual return of property obligations. You might also attempt to obtain details about the employee's new employment—a lack of cooperation from the employee during such an inquiry would be an obvious red flag concerning potential theft of sensitive information. Be sure to maintain written records of all matters discussed during the exit interview, as well as all property returned by the employee.

In instances where employees are offered or entitled to severance or bonus payments upon departure, you might wish to consider deferring such payments to ensure good behavior post-departure. Such an arrangement could take many forms and would require planning with regard to severance and bonus provisions in employment agreements or general employment policies. The general idea of such an arrangement would be to make payment of all or part of a severance or bonus contingent on a departing employee's adhering to his or her contractual obligations or other requirements.

Implement data retention policies.

As much of today's proprietary information exists in electronic form, such information is frequently misappropriated in electronic form. Computer hard drives and e-mail accounts of employees therefore often yield critical evidence of theft of sensitive information or other improper conduct. It is essential that information systems are in place on demand to protect and retain hard drives, e-mail accounts and other data sources accessible to employees. Depending on the size and nature of your workforce, you may wish to consider implementing a policy of preserving and performing at least a high-level examination of electronic data relating to all departing employees.

In connection with these data retention efforts, diligently document the chain of custody of the media holding the electronic information. More important, to avoid potential spoliation of evidence should litigation arise, it is critical to preserve electronic media in as pristine a form as possible before you examine it.[13] Stated differently, always work from a copy (often called an "image" or "ghost image"), not the original media (which should be preserved in as close to mint condition as possible).

Your human resources, legal and IT departments must work together to implement data retention policies successfully. Each department possesses special expertise and skills that will greatly facilitate successful data retention and theft detection. To facilitate interdepartmental cooperation, you should consider setting up a work team across these departments to handle suspicious situations quickly, effectively and discreetly.

Involve counsel early.

Counsel (whether outside or in-house) should be brought into the loop at the first hint of a suspicious situation. They can provide critical guidance about how to navigate through the early stages of your investigation in a way that will leave you well-positioned for any litigation that may result. Importantly, counsel may be able to cover your investigation with the protection of privilege. They can also provide advice regarding the potential need for rapid legal action, such as seeking a temporary restraining order and preliminary injunction to prevent further misappropriation of your secrets. Counsel will also provide input about whether the situation at hand may require the assistance of outside experts, such as computer forensics experts. In short, involving counsel early will give your company a leg up on enforcing its legal rights and seeking redress for theft of its secrets, should the need arise.

Get executives and management to buy into making necessary investments to protect information.

Do not wait until your secrets are compromised to take the initiative to protect them. Once you lose a secret, you cannot unring the bell or put the genie back into the bottle. If your competitor obtains your trade secrets and other confidential proprietary information, this can have dire consequences for your company's financial success.

Implementation of the steps discussed above cannot succeed without the support of a company's top management. It is therefore important to convey the gravity of this issue to the company's executives and management and to get them interested in making the changes necessary to protect your sensitive information. They need to understand the value of relatively modest proactive measures to protect such information, and that such efforts are far preferable to and less costly than the damage control measures that would be necessary in the event of a misappropriation. GBJ

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Endnotes

1. O.C.G.A. § 10-1-761(4) (2000).
2. *Id.*
3. *See, e.g.*, FLA. STAT. § 688.002(4) (2008) (defining "trade secret" to be "information, including a formula, pattern, compilation, program, device, method, technique, or process"); N.C. GEN. STAT. § 66-152(3) (2008) (defining "trade secret" to be "business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process").
4. *See, e.g.*, TDS Healthcare Sys. Corp. v. Humana Hosp. Ill., Inc., 880 F. Supp. 1572, 1585 (N.D. Ga. 1995) (noting that non-trade-secret confidential information may be protected by contract, as long as such limitation contains a reasonable time limit); Salsbury Labs., Inc. v. Rhone Merieux Labs., Inc., 735 F. Supp. 1545, 1549 n.4 (M.D. Ga. 1988) ("Georgia courts will protect confidential information only through the terms of a valid and enforceable contract . . . .").
5. Amerigas Propane, L.P. v. T-Bo Propane, 972 F. Supp. 685, 700-01 (S.D. Ga. 1997) (finding that the plaintiff "did not protect the secrecy of the customer lists in any careful manner" because, although employees were required to sign confidentiality agreements, "copies of the customer lists freely floated around the office without any system in place to track or monitor the whereabouts of the lists"); Bacon v. Volvo Serv. Ctr., Inc., 266 Ga. App. 543, 545, 597 S.E.2d 440, 443-44 (2004) (finding that client lists were not the subject of reasonable efforts to maintain secrecy where the information was not password-protected on company's computer network and employees were not instructed that the information was confidential); Equifax Servs., Inc. v. Examination Mgmt. Servs., Inc., 216 Ga. App. 35, 39-40, 453 S.E.2d 488, 493 (1994) (finding employer's requirement that each of its thousands of employees sign an identical confidentiality agreement was alone insufficient to constitute a reasonable step to maintain the secrecy of information).
6. O.C.G.A. § 10-1-761(4)(B) (2000).
7. Thomas v. Coastal Indus. Servs., Inc., 214 Ga. 832, 832, 108 S.E.2d 328, 329 (1959).
8. Note, however, that even in states such as Georgia where continued at-will employment serves as sufficient consideration for a confidentiality agreement, continued employment cannot support such an agreement where an existing employment agreement already guarantees a definite term of employment. *See, e.g.*, Glisson v. Global Sec. Servs., LLC, 287 Ga. App. 640, 642 & n.8, 653 S.E.2d 85, 87 & n.8 (2007) (finding continued employment insufficient to support an additional restrictive covenant signed while an employee was in the middle of a two-year employment contract that did not permit employer to terminate him for refusal to sign additional covenant).
9. *See, e.g.*, Reynolds & Reynolds Co. v. Tart, 955 F. Supp. 547, 553 (W.D.N.C. 1997) (under North Carolina law, "a covenant entered into *after* an employment relationship already exists must be supported by new consideration, such as a raise in pay or a new job assignment"). Similarly, the Supreme Court of Texas has held:
   > "[T]he consideration given by the employer in the otherwise enforceable agreement must give rise to the employer's interest in restraining the employee from competing," and if this particular consideration is never provided by the employer, the covenant not to compete cannot be enforced. Absent such consideration, "the covenant is not ancillary to or part of the otherwise enforceable agreement" . . . .

   Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson, 209 S.W.3d 644, 650 (Tex. 2006) (quoting Light v. Centel Cellular Co., 883 S.W.2d 642, 647 & n.15 (Tex. 1994)).
10. *See, e.g.*, Albany Bone & Joint Clinic, P.C. v. Hajek, 272 Ga. App. 464, 467 n.5, 612 S.E.2d 509, 512 n.5 (2005) ("Nondisclosure covenants limit a former employee's ability to use or to disclose confidential information that does not rise to the level of trade secrets, for example, information about the former employer's operations, customers, and suppliers.").
11. *See, e.g.*, CAL. LAB. CODE § 2870 (2008); MINN. STAT. § 181.78 (2007); N.C. GEN. STAT. § 66-57.1 (2008); WASH. REV. CODE § 49.44.140 (2008).
12. *See, e.g.*, the Electronic Communications Protection Act, 18 U.S.C. § 2511(2)(d) (2007) (requiring employee consent to interception of e-mails); CONN. GEN. STAT. § 31-48d (2008) (requiring prior written notice to employees before conducting electronic monitoring); DEL. CODE ANN. tit. 19, § 705 (2008) (requiring written notice to employees before monitoring e-mail, telephone or internet usage).
13. *See, e.g.*, Nucor Corp. v. Bell, 251 F.R.D. 191, 197-99 (D.S.C. 2008) (sanctioning former employee and his new employer for failure to preserve computer hard drive where, among other things, employee used his new employer's laptop computer while under a duty to preserve evidence, thereby destroying potentially relevant information); Optowave Co. v. Nikitin, No. 6:05-cv-1083-Orl-22DAB, 2006 WL 3231422, at *11 (M.D. Fla. Nov. 7, 2006) (imposing sanctions against litigant who allowed employee's computers to be reformatted without first preserving the evidence on those machines).

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SUNTRUST
Seeing beyond money

Georgia Bar Foundation Awards $6,737,500 in Grants

by Len Horton

At its annual grants meeting on Sept. 18, , the Georgia Bar Foundation (the Foundation) awarded $6,737,500 in grants to 42 different organizations out of 89 applicants. The amount awarded was the greatest in the history of the Foundation, as was the total amount requested, which amounted to $9,901,200.

"I am pleased we were able to provide record-setting funding to these important organizations," said Joe Brannen, president of the Georgia Bar Foundation. "Without our support, many of these non-profits would have to suffer layoffs or, at the least, be less effective in doing their work."

The primary purpose of the Foundation is to provide civil legal services to the poor. Atlanta Legal Aid and Georgia Legal Services, which both receive funds from the Legal Services Corporation, together received $4 million. This, too, was a record. Both Steve Gottlieb and Phyllis Holmen are nationally recognized leaders in the effort to provide civil legal representation to the disadvantaged.

Also in this category of civil legal services to the poor, Catholic Charities Immigration Services received $60,000. Under the able leadership of Sue Colussy, this organization mentors lawyers new to immigration law and educates detainees with immigration issues.

The Georgia Appellate Practice and Educational Resource Center received $792,000 to fund staffing for post-conviction death penalty representation. Led by Tom Dunn, this organization always faces funding challenges due to the unpopular clientele served. Dunn is taking on this problem, and the Georgia Bar Foundation is helping.

The Georgia Law Center for the Homeless provides free legal assistance to the homeless and tries to solve the problems that cause homelessness in Georgia. Filling a unique niche in Georgia's efforts to provide civil legal services for the poor, this organization received $50,000.

The Law and Public Service Program of Mercer Law School, under the leadership of Tim Floyd, received

$25,000 to provide law students with the opportunity to engage in direct legal services for the poor.

The Pro Bono Project, co-sponsored by the Georgia Legal Services Program and the State Bar, received full funding ($116,000) for operational support and $25,000 to provide technical support and assistance to pro bono programs, local bar associations, State Bar committees and sections. This grant concentrates on helping them integrate technology into their programs.

GreenLaw, which focuses on providing civil legal services to communities facing loss of breathable air, drinkable water and natural beauty through toxic pollution, received $37,500. This organization, led by Justine Thompson, has notched several notable successes.

The Foundation continued to provide support for domestic violence shelters. The Liberty House of Albany received $15,000 to fund civil legal services for domestic violence victims needing assistance with divorce, child's custody, etc. Silke Deeley, executive director, is a recognized expert in dealing with domestic violence problems.

Citizens Against Violence ($10,000), also known as Safe Haven, in Statesboro, Halcyon Home for Battered Women ($10,000) in Thomasville, Savannah Family Emergency Shelter ($15,000) and Northeast Georgia Council on domestic violence ($45,000), which supports five separate shelters in northeast Georgia, all received support.

Three years ago, under an initiative started by then Georgia Bar Foundation President Rudolph Patterson, programs to deal with the problems of children at risk were encouraged throughout the state. Based on proven methods created by Ed Menifee, children are being taught how to participate in the free enterprise system in order to stay away from trouble with the law and to become full participants in our nation's economic system. The Foundation expanded its

Georgia Banking Executive Re-elected President of the Georgia Bar Foundation

by Len Horton

J. Joseph Brannen, president and CEO of the Georgia Bankers Association (GBA), was re-elected president of the Georgia Bar Foundation at the annual grants meeting on Sept. 18. Brannen is the second banking industry executive to lead the Georgia Bar Foundation for two consecutive terms.

"I continue to be humbled by the trust of the many lawyers who asked me to accept a second term as president of the Georgia Bar Foundation," said Brannen. "During these challenging times, it is an awesome responsibility to lead this foundation in its efforts to assist thousands of Georgia's disadvantaged families. We shall strive to maintain our support for Georgia Legal Services, Atlanta Legal Aid and other law-related grantees."

Rudolph Patterson, president emeritus of the Georgia Bar Foundation, said, "It is a great tribute to Joe that lawyers wanted him to serve a second term as our president. He is particularly well suited to steer us through rough financial waters at a time when our grantees are facing never-before-seen challenges."

Brannen has led the Georgia Bankers Association since 1980. GBA is the trade and professional association representing Georgia's 380 banks and thrift institutions. In 2004, GBA was recognized as the most politically influential business association in the state of Georgia. Before coming to GBA, Brannen worked eight years for Sen. Sam Nunn.

He also is on the Boards of Directors of the Georgia Chamber of Commerce and the State YMCA. He is past president of the Georgia Society of Association Executives. He chairs the Board of the Graduate School of Banking at Louisiana State University and is the former chairman of the American Bankers Association's State Association Division.

Brannen is a native of Statesboro and a graduate of the University of Georgia. He and his wife, Vilda, live in Atlanta.

2008-09 Grant Awards
Georgia Bar Foundation

Adopt-A-Role Model Program	$20,000
Ash Tree Organization, Inc.	$35,000
Athens Justice Project	$50,000
Atlanta Legal Aid	$1,120,000
Atlanta Volunteer Lawyers Foundation (AVLF)	$250,000
BASICS Program of State Bar of Ga.	$180,000
Booker T. Washington Community Center	$10,000
Catholic Charities Immigration Services	$60,000
Children's Tree House	$10,000
Citizens Against Violence, Inc. (Safe Haven)	$10,000
Civil Pro Bono Family Law Project	$50,000
Disability Law and Policy Center of Ga.	$50,000
Exchange Club Family Resource Center of Rome	$20,000
Ga. Advocacy Office, Inc.	$5,000
Ga. App. Practice & Ed. Resource Center	$792,000
Ga. Appleseed Center for Law and Justice	$40,000
Ga. Commission on Interpreters via AOC	$50,000
Ga. First Amendment Foundation, Inc.	$20,000
Ga. Innocence Project	$35,000
Ga. Law Center for the Homeless	$50,000
Ga. Legal Services Program	$2,880,000
GF&C Mentoring via Hubbard Alumni Association	$15,000
Golden Isles Children's Center	$10,000
GreenLaw	$37,500
Halcyon Home for Battered Women, Inc.	$10,000
Institute of Govt. at UGA, Latino Project	$15,000
Law & Public Service Program—Mercer Law School	$25,000
Liberty House of Albany—DV Legal Assistance	$15,000
Metro Savannah Baptist Church	$8,000
NE Ga. Council on Domestic Violence	$45,000
Odyssey Family Counseling Center	$25,000
Pro Bono Project of SBG and GLSP	$116,000
Pro Bono Project of SBG and GLSP—Tech.	$25,000
Savannah Family Emergency Shelter (S.A.F.E.)	$15,000
Southern Center for Human Rights	$40,000
State Bar LRE Program	$88,400
State YMCA of Ga., Inc.	$20,000
Supreme Court Committee on Child, Marriage & Family Law	$50,000
Supreme Ct. of Ga. Committee on Civil Justice	$150,600
Truancy Intervention Project Georgia	$100,000
Voices for Georgia's Children	$20,000
YLD High School Mock Trial	$70,000
YLD High School Mock Trial National Competition	$100,000
TOTALS	**$6,737,500**

efforts to assist children at risk in Georgia, and, as a result of those new efforts, programs were created in Columbus, Forsyth and Macon.

In this same category, Adopt-A-Role Model ($20,000) in Macon, Ash Tree Organization ($35,000) and Metro Savannah Baptist Church ($8,000) in Savannah, Booker T. Washington Community Center ($10,000) in Macon, Children's Tree House ($10,000) in Columbus, Exchange Club Family Resource Center of Rome ($20,000), the Georgia Advocacy Office ($5,000), serving all Georgia, GF&C Mentoring in Forsyth ($15,000), Golden Isles Children's Center ($10,000) in Brunswick and Odyssey Family Counseling Center ($25,000) in Atlanta all received support.

The Truancy Intervention Project (TIP), created by Terry Walsh, also falls within this category, receiving $100,000. This program recruits and trains volunteer lawyers to represent children absent from school and present in juvenile court. Encouraged by the Georgia Bar Foundation to expand TIP throughout the state, Executive Director Jennifer Pennington is working to bring this program, which began in Fulton County, to interested communities throughout Georgia.

Another organization focusing on children at risk is the Atlanta Volunteer Lawyers Foundation (AVLF), led by Marty Ellin. AVLF has created some of the most innovative programs to assist children, such as the Fulton County guardian ad litem program, and is a model for how to assist children at risk. Partnering on an as-needed basis with the Barton Clinic at Emory University and other experts throughout the nation, AVLF received $250,000. Already a number of other communities have implemented similar programs based on the AVLF model.

Even though the Foundation's focus has been on children, adults at risk also received significant support. The BASICS program, led by Ed

Menifee, is widely recognized as one of the most effective programs to assist prisoners upon their release into society. Using many of the ideas created by Menifee in the Southwest Atlanta Youth Business Organization, BASICS boasts one of the best recidivism rates of any program seeking to assist people being let out of prison. Exemplified by Menifee's "best day of my life" attitude, BASICS often succeeds in convincing inmates that the best days of their lives are ahead of them. This program, which has become a signature program of the Georgia Bar Foundation, received $190,000.

The Athens Justice Project ($50,000), is a program based on the Georgia Justice Project and created by John Pickens and grown by Doug Ammar that creates an artificial family for people in trouble with the law. When participants realize that the staff cares about them, these troubled people begin to care about the staff. And as they bond with the staff, they try to become people worthy of the trust given to them. The program works. It is a tribute to the initial work of Ammar and Pickens and the ongoing work of the Athens community, particularly the professors and students at the University of Georgia School of Law.

One of the most widely discussed organizations in the state is the Georgia Innocence Project ($35,000). Using DNA evidence to uncover mistakes made in our criminal justice system, this organization provides one of our judicial system's most needed services.

Another area of focus for the Georgia Bar Foundation is to improve the justice system. The Georgia Appleseed Center for Law and Justice received $40,000. Sharon Hill is leading this public-interest law center in attacking a number of social justice issues. Replacing the patchwork quilt of juvenile law statutes with a unified juvenile code is one area of her focus. Looking over this leader's shoulder provides a powerful lesson in how to get things done.

Working with Georgia Appleseed, Voices for Georgia's Children received $20,000. This organization works to improve the well-being of children in Georgia. This award will be used to fund a part-time project manager for JustGeorgia, a coalition to improve justice and safety for children by way of a modernized juvenile code.

The Georgia Commission on Interpreters deals with one of the most important problems of any judicial system. If a defendant cannot speak the language used in court, justice becomes difficult. This important organization is fighting to tear down the barrier of language and increase the probability that justice for all is a reality in Georgia. The Georgia Commission received $50,000.

Steve Bright, president of the Southern Center for Human Rights, is widely known for his work to ensure that people in Georgia's prisons and jails are not subject to unconstitutional practices. Staffed by some of the brightest minds available in the United States, this organization is fearless and valiant in its pursuit of fairness inside our prisons and jails. The Southern Center received $40,000.

As many of you know, the Supreme Court Committee on Civil Justice received significant support from the Georgia Bar Foundation last year to fund one of the most detailed legal needs surveys in the history of the United States. This year that same committee asked for assistance to develop and promote a statewide plan to provide civil legal assistance to the poor based on the legal needs survey results from last year. This is one of the most important initiatives in the history of Georgia's civil justice system and is a major priority of the Supreme Court of Georgia under the leadership of Chief Justice Sears. The committee received $150,600.

Another area of importance to the Foundation is law-related education. The reorganized Law-Related Education Program, once housed at the University of Georgia, has been relocated to the State Bar. This program is well-known for its efforts to bring the teaching of civics back into our school system. Under the leadership of Deborah Craytor, this program is now situated where it can have an even greater impact on children. It received $88,400.

The Latino Project, led by Anna Boling, received $15,000. The program helps make available information about Georgia's laws to Latino and other communities in the state by translating educational documents about our laws.

The Georgia First Amendment Foundation was created in 1994 to educate the public about sunshine laws in effect in Georgia. Hollie Manheimer, executive director, leads the organization and has become well-known for her expertise on the First Amendment. This organization received $20,000.

The State YMCA of Georgia, Inc., received $20,000 to continue support of the Youth Judicial Program, which creates a model Supreme Court. Youths write briefs and deliver oral arguments as they learn from experience how the Supreme Court of Georgia operates. This program, which is very popular with the public and with lawyers, has been supported by the Georgia Bar Foundation since the 1980s. Gerald Wade, its long time executive director, is now back running the organization.

Another educational initiative is the Supreme Court Commission on Children, Marriage and Family Law. Its objective is to convey the importance of raising children in enduring, stable marriages. It is working to accomplish this by providing continuing legal education programs and a one-day summit for community leaders. This program received $50,000.

The Young Lawyers Division High School Mock Trial Program is one of the most popular and successful programs supported by the Georgia Bar Foundation. Led by Stacy Rieke and with the support of Justice George Carley, high school mock trial encourages excellence in the lost art of reasoning. It received $70,000. It also received another $100,000 to fund the National Mock Trial Championship that is being held in Atlanta in May 2009.

These grant awards show the beneficial result of lawyers and bankers working together with the support of the Supreme Court of Georgia in attacking some of the most important problems we face. It is a partnership that has generated more than $90 million in grant awards since its implementation in 1986. GBJ

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

SunTrust Pays Higher IOLTA Interest Rates

by Len Horton

Beginning Oct. 1, 2008, SunTrust is paying 65 percent of the Federal Fund Rate on IOLTA accounts in Georgia. IOLTA stands for Interest On Lawyer Trust Accounts. By order of the Supreme Court of Georgia, banks providing IOLTA accounts to lawyers pay interest on the balances to the Georgia Bar Foundation. These monies are used primarily to fund civil legal assistance to Georgians who cannot afford to pay for legal representation.

Acknowledging current IOLTA account balances are at cyclical lows and asserting that funding a number of law-related programs is a challenge at this time, Jenner Wood, CEO of SunTrust Central Group, said, "We are pleased that the interest earned will fund the work of the Georgia Bar Foundation for programs such as aiding children and representing the disadvantaged in legal proceedings."

With their decision, SunTrust joins Wachovia and the Bank of America in meeting this new standard. Wachovia was the first major bank to meet this new standard more than a year ago. Now Georgia's top three banks are meeting this new rate needed for civil legal services and a number of other law-related programs to receive badly needed additional funding.

Joe Brannen, the second Georgia banking executive to be president of the Georgia Bar Foundation, said, "We are really pleased that SunTrust is giving this important support to the Georgia Bar Foundation especially at this challenging time. As president of the Georgia Bar Foundation, I know how badly these additional funds are needed. I thank SunTrust for their decision to pay higher rates on IOLTA accounts. The additional funds will enable us to make an even greater difference in the lives of Georgians in need."

The Georgia Bar Foundation was created for charitable, religious and educational purposes in 1964. It is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive IOLTA funds primarily to support civil legal services for the poor. It is also charged with improving the administration of justice; assisting in providing legal education to pre-college, educational programs for Georgia's children; assisting in funding programs for Georgia's children who may become involved with the legal system but who, because they are not a party to a lawsuit, may not be entitled to legal or other assistance; assisting in funding non-degree legal education programs for adults if it is perceived to be necessary to advance local or national understanding of democracy and our governmental systems; and to foster the kind of professionalism in the practice of law which contributes to the public good.

The Foundation has a 19-member Board of Trustees, 16 of whom are appointed directly by the Supreme Court of Georgia and three of whom are members by virtue of being officers of the State Bar of Georgia.

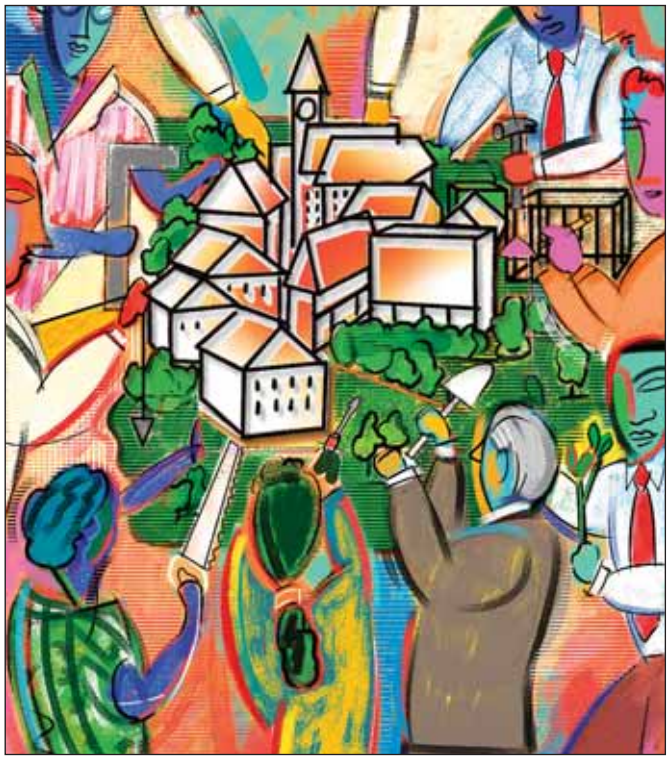
Creating a Culture of Giving

by Lauren Larmer Barrett

Culture—it's a word we use in a variety of ways. In this context, the definition that best fits is: the set of shared attitudes, values, goals and practices that characterizes an institution or organization. Our profession is generally accused of having a culture of deceit and greed. The perception by the public and our own colleagues is unfortunate and harmful—harmful to the public, harmful to the profession in general and particularly harmful to the individual attorneys whose self-esteem can be eroded by this misconception.

The public is not likely to have much faith in the justice system if they regard it as greedy and dishonest. Our profession is harmed when individuals who would make wonderful attorneys and jurists are turned off by that view and choose not to go to law school, or who leave the practice without making the contribution they are capable of doing. It's difficult to feel that you are mistrusted by those you meet just because you have a J.D. There are many ways to encourage a positive mindset among the members of the profession. One of the best is to encourage giving.

Giving is a topic that has been in the news a lot in the past two years or so. The incredible outpouring of support for the victims of Hurricane Katrina and the more recent tornados was inspiring. The generosity of the



public for the victims of fires and floods throughout the world has been heartwarming. The positive public attention encourages more people to help, it provides opportunities to seek more assistance and it adds something positive to the news cycle every day. One of the biggest benefits of giving does not lie in the recognition it generates; it does not lie in the gratitude of the recipient, but rather, it is found within the donor. Generosity actually creates a mental and physical change in the giver. It releases higher levels of positive chemicals in the brain. It lowers stress levels because it pulls the giver's attention away from their own issues as they help someone else with their problems. It

increases self-esteem because the giver is able to give something that is greatly valued by the recipient. A recent study by the Harvard Business School found that the best way to increase your own happiness was to give to others. In that study, a small group of people received bonuses from their employer. They were asked to assess their happiness level, on a scale of one to five, before and after they received and spent the bonus. Those who donated at least one-third of the bonus averaged one full point higher on the scale of one to five.

So, we know that giving is good for both sides of the equation. But, the percentage of individuals and organizations that donate significantly is still very small. What can be done to increase that percentage? What can be done to create the right culture? Three things: educate, encourage and recognize.

The reasons for philanthropy must be broadcast far and wide. Support for the social fabric of our communities; the benefits to the individuals that are helped; and the reduction in the need for future support that occurs as a result of current assistance are all part of the equation, as are the above emotional and psychological benefits to the donors. There are hundreds of thousands of citizens throughout our state who can be helped by donations to our many worthy nonprofits. There are, of course, countless charities to support. The legal profession has so many opportunities to give since the law is a constantly evolving environment, and the charitable needs evolve as well. Addressing the avenues of enhancing the system of justice, supporting the attorneys who serve that system and assisting the community served by it are well beyond the scope of this article.

An equally important component of encouraging philanthropy is leading by example. The chances of a law firm's associates donating to a law related nonprofit are much greater if they see the partners and the firm supporting it. Mentoring is an important part of firm and organization culture. While being a good mentor includes many factors, demonstrating one's commitment to the profession and the community by supporting charities is a key factor, and the finest sort of example.

Every component of our profession can assist in encouraging giving by recognizing the generosity of attorneys, firms, corporations and associations. Bar associations, trade organizations, law related nonprofits, corporate counsel departments and law firms can all recognize attorneys as they give. Electronic newsletters seem to be the communication vehicle of choice for many companies and organizations. Those newsletters are an excellent way to share information about monetary donations as well as volunteer opportunities. When you notice that one of your clients or vendors has donated to a charity you support, please let them know you noticed. Believe me when I say that next time that business is getting ready to donate or sponsor, they will remember that their business partners noticed their efforts—and the check may very well be bigger next time. Bar and trade associations can do the same thing for their members. While doing a good deed is its own reward, it never hurts to let people know you are aware of their good deeds.

A culture of giving for the legal profession is obtainable and simple to achieve. Give—as an individual, as an organization, as a firm. Notice and recognize when those around you do the same. Give—because it feels good, because it does good and because you can. That's all it takes. GBJ

Lauren Larmer Barrett is the executive director of the Lawyers Foundation of Georgia and can be reached at lfg_lauren @bellsouth.net.

The Dooly County Courthouse at Vienna

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

In Vienna, agitation for a new courthouse commenced just as the rails of The Georgia Southern and Florida Railroad arrived in 1888. Almost straight away county leaders commissioned the noted Atlanta architect, William Parkins to design a symbol for Dooly County's newfound railroad-inspired aspirations.

After his brief partnership with Alexander Bruce and a subsequent association with New York architect, Lorenzo Wheeler, and the notorious New South promoter, Hannibal Kimball, William Parkins resumed architectural practice on his own. Between 1888 and 1892, he designed four of Georgia's most picturesque court buildings: the 1888 Gordon County Courthouse at Calhoun, the 1892 Polk County Courthouse at Cedartown, the 1892 Terrell County Courthouse at Dawson and his exceptional Dooly County Courthouse at Vienna also completed in 1892. It is no coincidence that such fanciful public architecture was

Photo by Wilber W. Caldwell

Built in 1890, William Parkins, architect

created by Parkins immediately following his association with Wheeler and Kimball. Surely William Parkins had been influenced by the charisma of Hannibal Kimball and his compelling New South propaganda. There were few men in Georgia who had been able to resist Kimball's seductive intensity and conviction. Just as surely, Parkins had been deeply influenced by the wild eclectic fantasies of architect, Lorenzo Wheeler, who had come south to join Kimball in 1884 as the designer of Atlanta's fabulous Kimball House II. After his collaboration with Wheeler on the 1886 Randolph County Courthouse at Cuthbert and the 1887 Oglethorpe County Courthouse at Lexington, Parkins created his most overtly fanciful courthouse designs. Here was a modern flamboyant voice for the unfettered aspirations of four Georgia villages that had been seduced by the mythical promises of the New South.

Although the 1960 remodeling of the old 1890 Dooly County Courthouse presents attractive and functional modifications to the old building, it is a long distance from a pure restoration. The glassed-in enclosure of the second story porch now appears massive where originally an airy open-arched balcony overlooked Vienna's public square. In addition, the great conical dome of the high tower was not replaced, leaving a rather incomplete, unbalanced stub in place of what was once the building's most fanciful element. Happily the impossibly slender tourelle still decorates the low tower with its Romanesque archaded arched corbeling. Despite its modern facelift, the picture beside the square at Vienna today is still evocative of the era when everyone thought that the tiny village was about to be lifted up and out of the sea of poverty that surrounded it and cast the place headlong into the abundance of the industrial age. Such a fantastic vision, required a fantastic symbol, and William Parkins, perhaps more than any other regional architect of the period, was adroit at delivering Romantic architectural fantasies for a people who were desperately clinging to the crumbling remnants of the Romantic age.

Indeed, the Picturesque as an expression of an artistic ideal was closely tied to Romanticism. Certainly this connection, along with its reliance on powerful historical associations, accounted for the popularity of Picturesque architecture in the Deep South. There were 49 Picturesque court buildings erected in Georgia between 1880 and 1907. The dominance of the Picturesque in the Romantic Age has been described as the "triumph of picture over geometry—the conquest of poetry over mathematics." This suggested of course, "the victory of imagination over reason." Certainly nothing could have been more apt for rural Georgia in the era when the railroads were spreading the wildly imaginative hopes of a largely mythical New South.

In 1824, only three years after the creation of Dooly County, the town of Vienna, originally called Berrien, was laid out. By 1833, the village had a population of 33, but no courthouse was constructed. In 1836, the county seat was moved to the larger village of Drayton on the banks of the Flint River at the western boundary of the sprawling new county. A small courthouse was erected there, but this arrangement did not last long. Probably owing to pressure for a more central location, the seat of county government was returned to Berrien in 1839. At this time, there was a movement to change the name of the place to Centerville, but in 1841, residents settled on the name Vienna. A log courthouse was constructed at about this time. This building burned in 1847 destroying all of the county's records, and in 1848 a 40′ x 50′ two-story frame courthouse, probably similar to those at nearby Tazwell, Preston and Cusseta was erected on Vienna's ample square. In his 1849 *Statistics of the State of Georgia*, George White could only say that Dooly County roads were good, but "the situation (in Vienna) ... renders unhealthy." He estimated the town's population to be about 100.

With the 1888 arrival of The Georgia Southern and Florida Railroad, Vienna began to stir. The town's population exceeded 500 in 1890, and by the end of the decade, Vienna boasted a few sawmills. By 1905, the village had become a town of over 1,000, and by 1910 her population had reached 1,500. But as elsewhere, agriculture, and specifically the growing of cotton, remained the county's economic mainstay. For all of her New South dreams, Vienna never became more than a prosperous local market town in the service of King Cotton. GBJ

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

Kudos

Ingwersen & Taylor LLP announced that associate **Abbey Flaum** is the newest **board member** at **Prevent Blindness Georgia**. Prevent Blindness Georgia was established in 1965 as an affiliate of Prevent Blindness America, the nation's leading volunteer eye health and safety organization. For more than 40 years, they have served thousands of Georgians each year with early detection vision screenings, current information on eye health and safety and assistance with eye examinations and glasses.

Aspatore Books published chapters written by three partners at **Morris, Manning & Martin, LLP**. **Ross Albert** and **Heath Linsky** co-authored a chapter on the regulatory aspects of international deals, while **Chuck Beaudrot** wrote a chapter on tax law. Both works are part of Aspatore's "Inside the Minds" series.

In September, Atlanta attorney **Don Keenan** of The Keenan Law Firm was honored as one of America's **top 100 Irish-American lawyers**. Keenan was the only southern lawyer to receive this honor. The entire "Irish Legal 100" list can be found in *Irish Voice Newspaper* and *Irish America Magazine.*

Yates

McKenna Long & Aldridge LLP announced that 16 Atlanta attorneys were named to the **2009 edition of *The Best Lawyers in America***: **David L. Balser, J. Stephen Berry, Wayne N. Bradley, Charles E. Campbell, L. Craig Dowdy, J. Randolph Evans, Jeffrey K. Haidet, David M. Ivey, Mark S. Kaufman, James D. Levine, Clay C. Long, Gary W. Marsh, James C. Rawls, William F. Stevens, Patricia E. Tate** and **Dennis L. Zakas**.

Corporate and technology attorney **John Yates** returned as chair of the **Metropolitan Atlanta Chamber of Commerce Political Action Committee**. The Chamber asked him to chair the organization on an interim basis through next year's legislative session. He first chaired the organization, which he helped found, in 2004.

The **Georgia Law Center for the Homeless** celebrated its **25th anniversary** in October. U.S. Rep. John Lewis appeared as the featured speaker. The event was attended by community leaders, homeless service organizations, business leaders, funders and citizens. Each year, the Law Center assists almost 1,000 people who are homeless with a variety of legal issues.

Henn

Goins

Reddy

White

Kilpatrick Stockton LLP partner **Charlie Henn** was selected as a recipient of a **2009 Marshall Memorial Fellowship**. Now in its 26th year, the fellowship hosts individuals from the political, public, corporate, media and nonprofit sectors for a three- to four-week travel experience designed to strengthen the transatlantic relationship.

In November, associate **Jonathan D. Goins** was recognized for community service as one of **Outstanding Atlanta's Class of 2008**. Outstanding Atlanta is a nonprofit organization that honors involvement by professionals ages 21-36. The honorees were selected for exemplifying excellence in work ethics, diversity and volunteerism.

Shyam Reddy was selected to serve on the **Board of the University of Georgia Alumni Association**. Reddy is an attorney in the firm's corporate department.

Intellectual property associate **Wilson White** was elected to serve on the **board of Partnership Against Domestic Violence** in Atlanta. For more than 30 years, Partnership Against Domestic Violence has provided professional, compassionate, and empowering support to battered women and their children in metro Atlanta.

Thomas Kesler, an attorney in the firm's corporate department, was selected to serve on the **Atlanta Community ToolBank's Board of Directors**. The Atlanta Community ToolBank provides durable tools and supplies to charitable organizations of all kinds, for use in volunteer service projects.

Angela Frazier, an associate in the firm's litigation department, was selected to serve on the **Atlanta Volunteer Lawyers Foundation (AVLF)**. AVLF was created through the joint efforts of the Atlanta Council of Younger Lawyers, the Gate City Bar Association and the Atlanta Legal Aid Society in 1979 to offer lawyers an opportunity to provide civil legal representation for the poor. Since then, AVLF has provided representation for indigent clients through the efforts of volunteer private attorneys, its student clinical program and various outreach programs.

> Six Atlanta attorneys at **Fisher & Phillips LLP** were selected for inclusion in the **2009 edition of *The Best Lawyers in America***. The attorneys, who specialize in labor and employment law, are managing partner **Roger K. Quillen** and partners **Donald B. Harden, C.L. "Tex" McIver, Ann Margaret Pointer, John E. Thompson** and **James M. Walters**.

> **Hollowell, Foster & Gepp, P.C.**, announced that **Randy C. Gepp** was recertified as a **labor and employment law specialist** in the state of Florida. He was one of the first designated employment specialists in Florida. Also, Gepp was once again selected as a Georgia Super Lawyer in the area of employment litigation representing management.

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James, Bates, Pope & Spivey LLP announced that partner **Duke R. Groover** was named **chairman** of the **business & commercial law section of the Georgia Defense Lawyers Association.** Groover practices in the areas of complex litigation, business, commercial, construction, insurance and employment law.

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Richard H. Deane Jr., a partner in the Atlanta office of **Jones Day**, became a **fellow** of the **American College of Trial Lawyers**, one of the premier legal associations in America. Fellowship is extended by invitation only to "experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality."

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Joy Lampley Fortson, president of the Georgia Association of Black Women Attorneys, was selected for the **Leadership Georgia Class of 2009**. Leadership Georgia stands apart as one of the nation's oldest and most successful leadership-training programs for young business, civic and community leaders with the desire and potential to work together for a better Georgia. Lampley Fortson is a litigator with the U.S. Department of Homeland Security, Office of the Chief Counsel.

> Atlanta entertainment attorney **Alan S. Clarke** received the **Ben White Distinguished Service Award** from **Georgia Lawyers for the Arts** at their 33rd annual gala in November. The award represents the very best in the legal profession: professionalism, integrity and an unwavering commitment to providing legal services to worthy individual artists and nonprofit arts organizations who cannot otherwise afford assistance.

On the Move

In Atlanta

> 
Lyman


Fox

Thompson Hine LLP intellectual property and life sciences practice **partner Beverly Lyman** will lead the Atlanta office's newly formed intellectual property practice. Lyman focuses her practice on chemical, medical and life sciences patent evaluation, enforcement, transactions and prosecution, as well as handling trademark, trade secret and copyright matters.

Chris Fox joined the firm as an **associate** in the business litigation practice group. Fox has represented companies and individuals in commercial matters, issues of professional liability, employment disputes, wrongful death cases and in general litigation. The firm's Atlanta office is located at One Atlantic Center, Suite 2200, 1201 W. Peachtree St., Atlanta, GA 30309; 404-541-2900; Fax 404-541-2905; www.thompsonhine.com.

> **Fisher & Phillips LLP** announced that **James E. Rollins Jr.** joined the firm as **partner**. Rollins focuses his practice on employment law and civil rights.

In addition, **Kim Kiel Thompson** and **Shannon R. Stevenson** joined the global immigration practice as **partners** and **Brock P. McCormack** joined the group as an **associate**. Thompson's practice focuses on immigration and nationality law. Stevenson's practice focuses on corporate immigration law. McCormack focuses his practice on immigration and nationality law. The firm's Atlanta office is located 1500 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; www.laborlawyers.com.

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Hunton & Williams attorney **Timothy V. Johnson** was promoted to **counsel.** Johnson's practice focuses on corporate and asset-based lending transactions. The Atlanta office is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.

> **Coleman Talley LLP** announced that **John W. Boykin** was admitted as a **partner** in the transaction practice group, and **Ronit Hoffer** joined the firm as an **associate**. Prior to joining the firm, Boykin was a partner with Epstein Becker & Green, P.C., in Atlanta. His practice is concentrated in commercial lending, commercial real estate transactions, commercial leasing, corporate law and tax law. Hoffer's practice is concentrated in affordable housing real estate, leasing and regulatory matters. Prior to joining the firm, she was an associate with Dorough & Dorough in Decatur. The firm is located at 7000 Central Parkway NE, Suite 1150, Atlanta, GA; 770-698-9556; Fax 770-698-9729; www.colemantalley.com.

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Morris, Manning & Martin, LLP, selected associate **Michele Madison** to become a **partner** in its healthcare group, effective Jan. 1, 2009. A veteran of the health care industry, Madison is widely respected for her insights into the health care regulatory environment and information technology. The office is located at 1600 Atlanta Financial Center, 3343 Peachtree Road NE, Atlanta, GA 30326; 404-233-7000; Fax 404-365-9532; www.mmmlaw.com.

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Heather C. Wright announced that **The Wright Firm, LLC**, relocated their offices to The Fryer Law Building in Buckhead. The Wright Firm continues to represent individuals and small businesses in a variety of civil matters. The firm's new address is 70 Lenox Pointe NE, Atlanta, GA 30324; 404-720-0602; Fax 404-920-0407; www.thewrightattorneys.net.

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Reams


Bingham


Budd

Stephen Reams was elected to **membership** at **Stites & Harbison** in the firm's construction group, effective January 2009. He was previously counsel with the firm. Also, **Ron C. Bingham II** joined as a **member** of the creditors' right & bankruptcy service group. **James A. Budd**, a member of the real estate and banking service group, joined the firm as **counsel**. The office is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.

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Fodor


Curran

Marchman & Kasraie, LLC announces the addition of partner **Salmeh Fodor** to the firm's name. The firm will now be known as **Marchman, Kasraie & Fodor, LLC**. Additionally, the firm announced **Diana Parks Curran** joined as of counsel. Curran's practice concentrates on government contracts and federal procurement law, with an emphasis on construction and leasing issues. The firm is located at 1755 The Exchange, Suite 339, Atlanta, GA 30339; 678-904-0085; Fax 770-874-0344; www.mkflawllc.com.

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The Baudino Law Group, PLC, welcomed **Kenneth B. Hodges III** to the firm. As the senior attorney, he will manage the Atlanta office and represent Baudino's various national clients in a variety of corporate, transactional and litigation matters. Hodges is the outgoing district attorney of the Dougherty Judicial Circuit in Albany, where he served three consecutive terms. The firm's Atlanta office is located at 1201 Peachtree St., 400 Colony Square, Suite 2020, Atlanta, GA 30361; 404-685-8199; Fax 404-685-8286; www.baudino.com.

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Lori S. Melton joined **Banta Immigration Law Ltd**. as a **partner** specializing in business immigration law. The firm is located at 1175 Peachtree St. NE, 100 Colony Square, Suite 700, Atlanta, GA 30361; 404-249-9300; Fax 404-249-9291; www.bantalaw.com.

In Albany

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Blake N. Brantley announced the formation of his firm **Blake N. Brantley, LLC**. The firm focuses on workers' compensation from the claimant's standpoint, automobile accidents and DUI cases. Brantley, formerly with Underwood Law Offices, P.C., also serves as solicitor for the municipal courts of Camilla and Warwick. The firm is located at 415 Pine Ave., Suite 101, Albany, GA 31701; 229-436-4900; Fax 229-883-9670; www.blakebrantley.com.

In Forest Park

> **Hancock, Dempsey & Everett** became a branch of Atlanta-based specialty litigation firm **Freeman, Mathis & Gary, LLP** (FMG). Hancock attorneys **Jack Hancock,** partner, and **Brian R. Dempsey, Pamela**

F. Everett, Paul I. Hotchkiss, Michelle Youngblood Terry and **G. Robert Oliver** joined FMG. The firm's new Forest Park office is located at 518 Forest Parkway, Suite 100, Forest Park, GA 30297; 404-366-1000; Fax 404-361-3223; www.fmglaw.com.

In McDonough

> **Alex R. Roberson** announced the opening of **Alex R. Roberson, P.C**. The firm handles cases involving real estate law, foreclosures, leases, personal injury, estate planning, business law, eminent domain, criminal law, contracts, guardianship, homeowners associations and wills and trusts. The firm is located at 70 Macon St., Suite 201, McDonough, GA; 678-759-0627; Fax 678-759-0629; www.robersonlegal.com.

In Savannah

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Kirk


Lovett


Mafera

HunterMaclean named attorneys **Adam Kirk, Bates Lovett** and **Jennifer Vardeman Mafera partners** in the firm's Savannah office. Kirk practices in the areas of taxation, corporate law and real estate law, with a focus on affordable housing and financing. Lovett is an experienced trial attorney who advises, represents and litigates on behalf of HunterMaclean's clients. Mafera concentrates her practice in the area of commercial real estate and has extensive experience representing developers in the acquisition, leasing, financing and sale of office, retail and mixed-use properties. The office is located at 200 E. Saint Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

In Valdosta

> **Coleman Talley LLP** announced that **Eric Collins** joined the firm as an **associate** in its litigation practice group. Previously, he was a partner with Pullin, Fowler & Flanagan, in Beckley, W.Va. His practice is concentrated in insurance defense litigation, civil rights defense litigation and commercial litigation. The firm is located at 910 N. Patterson St., Valdosta, GA 31601; 229-242-7562; Fax 229-333-0885; www.colemantalley.com.

In Houston, Texas

> **Karen R. Miniex** announced the opening of **The Miniex Rogers Law Group, PLLC** (MRLG). The firm handles cases involving real estate and construction litigation, estate planning, wills and trusts, family law, personal injury and contracts. MRLG is located at Lyric Centre, 440 Louisiana St., 9th Floor, Houston, TX 77002; 713-236-7705; Fax 713-236-7716; www.themrlawgroup.com.

In Washington, D.C.

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Robert A. Enholm became **executive vice president** of **Citizens for Global Solutions,** a nonprofit organization in Washington, D.C., committed to the idea that global institutions are required to address global problems and that the United States has an important role to play in them. Enholm practiced law in Atlanta from 1989 to 2002. The organization is located at 418 7th St. SE, Washington, DC 20003; 202-546-3950; Fax 202-546-3749; www.globalsolutions.org.

> **Carol DiBattiste** was appointed **senior vice president of privacy, security, compliance and government affairs** with LexisNexis. In her new role, DiBattiste will be responsible for a range of company policies and activities. She will represent LexisNexis on privacy matters, set the company's privacy policies, direct privacy compliance, and oversee internal and external privacy education and training for the company. LexisNexis is located at 1150 18th St. NW, 6th Floor, Washington, DC 20036; 202-785-3550; www.lexisnexis.com.

Outsourcing Legal Work—Risky Business?

by Paula Frederick

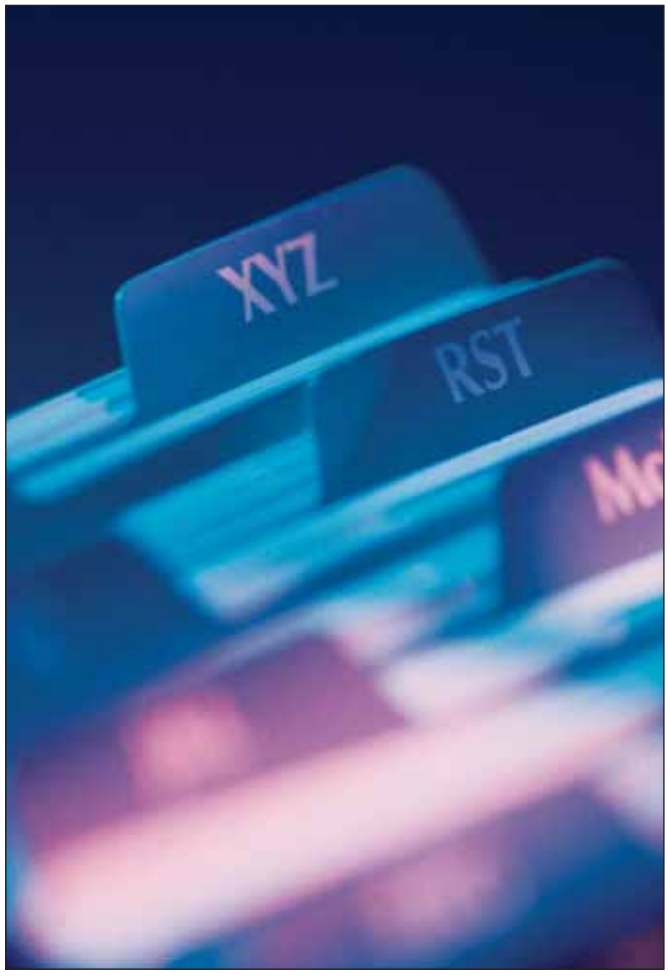
"You're not going to like this," you warn your partner, "but hear me out. I've been reading up on these outsourcing groups—foreign companies that we could use on a temporary basis—and I think we need to consider using one."

"Well, we are swamped," your partner admits, "but you've got to be kidding! Do you really want a bunch of people in Timbuktu whose credentials we know nothing about rummaging through our confidential client files?"

"Of course not!" you acknowledge. "But we aren't just going to pick a company out of the phone book! We would have to do some due diligence—get some references, verify the credentials of the staff, review samples of their work…

But think about it! We could e-mail them the discovery in the Benson case—it's over 35,000 pages—and they say they could have the privilege reviews done in just 72 hours! For $25 an hour we would get work done by lawyers who graduated from some of the best U.S. law schools and who are licensed in the States."

"I'm not sure it's ethical," your partner insists. "I've got concerns about whether these outsourcing groups



can really guarantee that our confidential information will be secure. And how much of the work is being done by nonlawyers? Seems to me it's the unlicensed practice of law unless they are using lawyers licensed in Georgia. And do we have to tell the client? Benson's going to worry that these foreign lawyers don't know what they are doing."

A quick call to the Bar answers some, but not all of your partner's questions. Since you must supervise the work and review everything that will be submitted as your work product, using the outsourcing group does not automatically violate the Unlicensed Practice of Law statute. A lawyer who seeks to outsource work to a foreign country needs to carefully vet the company it will use, with particular emphasis on competence and safeguarding client confidentiality.

The State Bar of Georgia has not taken any position on the outsourcing phenomenon, but the American Bar Association recently issued Advisory Opinion 08-451, "*Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services*."

In general, the ABA opinion finds that outsourcing legal work to an offshore entity is much the same as using a temporary lawyer within the United States. Recognizing the added difficulty of maintaining direct control and supervision of a temporary worker who is not in the United States, the opinion recommends extraordinary measures, including a requirement that the client consent to the use of temporary staff and to sharing confidential information with the outside entity.

To help determine whether the outsourcing provider is competent to handle the job, the ABA opinion recommends reference checks, background checks, interviewing the principal lawyers involved and even assessing their educational background. The outsourcing lawyer should gain an understanding of how the entity checks for and handles conflicts among its clients—would it undertake work for law firms on opposite sides of the same case?

To ensure confidentiality of client information, the opinion suggests obtaining information about the entity's computer network and investigating the security of the premises where the work will be done. The opinion also addresses how outsourced work may be billed.

Fans of outsourcing claim that it allows lawyers to provide lower-cost services to clients, and enables small firm lawyers to take on large cases that they otherwise would lack the resources to handle. Since there is no specific authority in Georgia, any Georgia lawyer considering outsourcing legal work should minimize the risks by carefully reviewing and following the ABA opinion. GBJ

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

Discipline Summaries

(August 14, 2008 through October 23, 2008)

by Connie P. Henry

Disbarments

Richard A. Bramhall
York, Penn.
Admitted to Bar in 1974

On Oct. 6, 2008, the Supreme Court of Georgia disbarred Attorney Richard A. Bramhall (State Bar No. 075750). Bramhall was disbarred in Pennsylvania for violation of his firm's partnership agreement by failing to report or remit attorneys fees.

Ulysses Thomas Ware
Norcross, Ga.
Admitted to Bar in 1991

On Oct. 6, 2008, the Supreme Court of Georgia disbarred Attorney Ulysses Thomas Ware (State Bar No. 737758). Ware was convicted in the U.S. District Court for the Southern District of New York of conspiracy to commit securities fraud and securities fraud.

Keino Dwan Campbell
Southfield, Mich.
Admitted to Bar in 1998

On Oct. 6, 2008, the Supreme Court of Georgia disbarred Attorney Keino Dwan Campbell (State Bar No. 106111). The Court had previously suspended Campbell with conditions for one year following his suspension from the Michigan bar.

In aggravation of discipline, Campbell acted willfully and dishonestly in engaging in the unauthorized practice of law in the state of Colorado, in advertising and accepting legal fees for services that he was not authorized to provide, in failing to comply with the order of the Supreme Court of Colorado that enjoined him from the unauthorized practice of law; and in failing to provide restitution of fees and a list of all Colorado clients from whom he received fees.

Jamila Harrison
Atlanta, Ga.
Admitted to Bar in 2002

On Oct. 6, 2008, the Supreme Court of Georgia disbarred Attorney Jamila Harrison (State Bar No. 332402). This matter was before the Court pursuant to two Notices of Discipline. The following facts are admitted by default: Harrison represented a client in immigration proceedings and filed an application for asylum that contained numerous false statements. The application also contained false affidavits bearing forged signatures and a fabricated death certificate. Harrison advised her client to sign the false documents and to perjure himself in the immigration proceedings. Harrison was currently under suspension for failure to respond to the Investigative Panel. In aggravation of discipline the Court found that Harrison acted willfully and dishonestly; she abandoned her law practice and has not provided her current address; she failed to respond to disciplinary authorities; and a second Notice of Discipline for disbarment was filed simultaneously with this case.

In the second case Harrison represented the brother of the client in the above case in immigration proceedings. Harrison advised him to enter into a fraudulent marriage to support a sponsorship petition in the event that the asylum application failed. Harrison filed the asylum application, which also contained false statements; forged signatures and a false death certificate. Harrison advised her client to sign the false documents and to perjure himself in the immigration proceedings.

R. Scott Cunningham
Dalton, Ga.
Admitted to Bar in 1976

On Oct. 6, 2008, the Supreme Court of Georgia disbarred Attorney R. Scott Cunningham (State Bar No.

202225). Cunningham was convicted of three felony counts in the U.S. District Court of the Northern District of Georgia, Rome Division. Cunningham was convicted of one count of money laundering and two counts of conducting monetary transactions over $10,000 in criminally derived property.

The Court found in aggravation that this is Cunningham's third disciplinary infraction, having received a 12-month suspension in March 2003 for commingling of funds in his escrow account, and a public reprimand in 1993. Members of the public were harmed by the client's fraudulent scheme which was greatly facilitated by Cunningham, and Cunningham does not acknowledge that he made serious errors in judgment. In mitigation the Court found that Cunningham generally does a competent job handling matters for his clients; and that he was cooperative with the federal authorities.

Christopher A. Frazier
Savannah, Ga.
Admitted to Bar in 1978

The Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Christopher A. Frazier (State Bar No. 274625) on Oct. 6, 2008. Frazier admits a prisoner hired him for post-conviction proceedings and that he was paid a $1,000 retainer by the client's mother. He failed to communicate with the client; failed to provide any legal services; and failed to refund the retainer after being discharged. At the time he filed his Petition, Frazier was under an interim suspension for his failure to respond to a Notice of Investigation.

Suspensions

John Alfred Roberts
Atlanta, Ga.
Admitted to Bar in 1991

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of John Alfred Roberts (State Bar No. 608705) on Oct. 6, 2008, and ordered that he be suspended from the practice of law for a period of six months. During the representation of defendants in a civil action, Roberts filed on one client's behalf a "Notice of Suggestion of Bankruptcy" approximately two months before he filed the bankruptcy petition. This filing created a misapprehension about his client in the superior court case. Roberts did not engage in any intentionally fraudulent or deceitful conduct, but was negligent in his actions.

Mitigating factors include Roberts' long history of public service; his cooperation in the disciplinary proceedings; and his sincere remorse. The proceedings in superior court were not delayed or stayed as a result of Roberts' inappropriate filing. In aggravation of discipline the Special Master noted Roberts' prior disciplinary history, which consists of an Investigative Panel reprimand and a Review Panel reprimand.

need help?

Lawyer Assistance Program Confidential Hotline

800-327-9631

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

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

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

2008-09 Lawyer Assistance Committee

Chairperson
Robert T. Thompson Jr., Atlanta

Vice Chairperson
Mitchell Stephen Rosen, Atlanta

Members
*Michael D. Banov, Marietta
Henry R. Bauer Jr., Atlanta
Robert A. Berlin, Macon
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Charles L. Newton II, Atlanta
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*William W. Porter, Marietta
Jeffrey David Talmadge, Roswell
Lemuel Herbert Ward, Atlanta

Executive Committee Liaison
A. Thomas Stubbs, Decatur

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*Steve Brown, Atlanta
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Mary S. Donovan, Macon
Allan Legg Galbraith, Atlanta
Calvin S. Graves, Atlanta
N. Wallace Kelleman, Stone Mountain
Homer S. Mullins, Princeton
Darrell P. Smithwick, Lawrenceville

Staff Liaison
*Sharon L. Bryant, Atlanta

**denotes non-attorney*

Gary Dale Simpson
Duluth, Ga.
Admitted to Bar in 1978

On Oct. 6, 2008, the Supreme Court of Georgia ordered that Attorney Gary Dale Simpson (State Bar No. 647675) be suspended from the practice of law for four years. Simpson's readmission is contingent upon findings by the Review Panel that he has continued to receive treatment by a physician and has provided certification that he is fit to return to the practice of law. The Review Panel must concur with the psychiatrist's certification and Simpson must be current with restitution payments.

In Docket No. 5037, Simpson's trust account for First American showed a shortage of approximately $300,000. Simpson failed to render a full accounting, and under an agreement, is paying restitution.

With regard to Docket No. 5038, Simpson wrote three checks, totaling approximately $3,000, on his trust account for which there was insufficient funds. Simpson has reimbursed the parties.

With regard to Docket No. 5039, while acting as the closing attorney for the purchase of real property, Simpson failed to obtain title insurance or return the funds collected and failed to timely file the warranty deeds. He eventually filed the deeds and returned the funds.

Simpson is suffering from Adult Deficit Disorder and Executive Dysfunction and is receiving treatment from a psychiatrist. Justice Hunstein dissented.

Suspension and Public Reprimand

Stephen Lee Stincer
Savannah, Ga.
Admitted to Bar in 2003

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Stephen Lee Stincer (State Bar No. 682551) on Oct. 6, 2008, and ordered that he be given a public reprimand and be suspended from the practice of law for one month. Stincer was assigned to conduct discovery for a products liability case in federal court. He did not forward discovery requests to his client nor respond to the discovery requests. He failed to inform the partner on the case and he made misrepresentations to the district court. As a result, the court dismissed the client's answer and defenses.

At the time of his misconduct, Stincer had personal problems along with stress at work. He eventually resigned and took a three-month sabbatical from the practice of law. He sought treatment and was diagnosed with extreme anxiety. He has provided documentation of his medical treatment, acknowledges his misconduct, is remorseful and avers that it will not happen again.

Review Panel Reprimand

Waymon Sims
Atlanta, Ga.
Admitted to Bar in 1979

On Oct. 6, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline filed by Waymon Sims, (State Bar No. 648825) and ordered that he be administered a Review Panel Reprimand. Sims admits that a client hired him to represent the client in a suit on a note and mortgage filed by a finance company. Sims failed to respond to discovery or to a motion for summary judgment. He filed discovery requests and nominally defended the action but did so only to obtain information and documents for possible use in a separate suit against the finance company regarding its lending practices. Sims admits that instead of conducting such discovery, he should have withdrawn from representation and that due to his failures to respond, summary judgment was entered in favor of the finance company, which extinguished any rights his client had to the real property.

In mitigation of discipline Sims expressed sincere remorse. Sims accepted a formal letter of admonition in 1992 and received a Review Panel Reprimand in 1998. Justices Melton and 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 Aug. 13, 2008, four lawyers have been suspended for violating this Rule, and four have been reinstated. GBJ

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

27 Ways to Save Money and Safeguard Your Firm's Finances with Practice Management

by Natalie Kelly

Instead of writing our traditional year-end checklist for practice management, below is a list of some financial management techniques to help in these tough economic times. As we have been getting more requests for information on dealing with firm finances, our hope is these techniques will help make you and your firm more secure financially. Some of these may also work well for your personal finances.

Even with good systems in place to handle your firm's money, you can further batten down your financial hatches by adhering to the following tips.

Check Your Office's Financial Procedures

Stop now and review your financial management procedures. Look for inefficiencies that can cost you. As an extreme example, we have recently seen a rise in the number of thefts perpetrated in law firms by bookkeepers and other staff with access to bank accounts. Be sure to have staff deliver paper bank statements to you unopened.

Also, make sure you are the only person with access to online account passwords. You should make sure you are reconciling all bank accounts each month. If you don't know what your bank balances are right now or haven't looked at them for a week or so, go ahead and take a look and notice who else in your office can do the same.

Reconcile Accounts

Reconcile your bank accounts to make sure you are not being defrauded and to also make sure cash is flowing. Reconciliation can help you anticipate fiscal slowdowns or identify any bottlenecks that could affect normal business operations. You should take advantage of revenue surpluses to shore up your firm's reserves. If your firm doesn't have reserves or doesn't know what amounts you have in reserves, it's time to ensure you are monitoring your firm's savings just as closely as you would your operating capital.

Get Staff on Board

Involve staff in the overall financial concern of the firm. By letting staff see the bottom line, where appropriate, and having them understand their role in marketing and supporting the firm, you may find that they become more productive and loyal. In fact, staff could very well be the source of your firm's most effective money-saving ideas.

Introduce Change

Get yourself and others used to the idea that things may have to change financially in your firm. The firm won't just keep doing things the way they have always done them without good, sound reasons. Some firm luxuries may have to be put on hold or eliminated in order to span a tide of tight financial times. For solos and smaller firms, you may also do some things differently as far as financial procedures go. For instance, you might set up and adhere to a budget in your practice.

Use Common Financial Sense

Don't let the firm spend what the firm doesn't have. Settlements and expected settlements are two different things. Don't write the check until the order has been signed and the deposited check has cleared.

Tighten Up on Variable Expenses

Review your spending for office supplies and other items you use regularly that fluctuate in price. While you will not be doing away with the things you need for your practice, you can begin to look and see if there are some easy ways to cut out excessive expenditures.

Monitoring Requests

Don't just give rubber stamp authority to your administrators or office managers. Pay attention to the invoices handled by your trusted employees as well as the ones that require your approval.

Avoid Counterproductive Cuts

Don't cut costs that can cost you—getting rid of a storage service fee that increases the cost of you housing documents yourself may be counterproductive financially. Make sure your cuts make good financial sense for your firm, both short and long term.

Get Your Firm's Head Out of the Sand

Stop being an "ostrich office." Review financial statements and bank account balances for your office regularly. You can hold monthly meetings (partners/owners/management) and make sure you are aware of everything relating to your firm's finances. If you are solo, keep an eye on overall success for meeting your budget.

Check Your Credit

Check your firm's credit—review lines of credit, monitor business loans and the overall financial status of the firm. This is a key step for budgeting and future financial planning.

Send Out Bills Regularly

Don't fall into the trap of not sending out bills as you complete work. With the time for payment realization and the curve of the bell of gratitude both being short, it makes good financial sense to get bills out regularly. We generally recommend monthly bills for clients that you have not already billed at the time of service completion (like with a will) or upfront payments (as perhaps with a criminal case).

Get a Checkup

A general office management consultation might be exactly what the doctor ordered for a practice ailing financially. Perhaps some of the problems in your practice can be remedied after an office visit by our department to help with topics like productivity, profitability and overall firm management.

Talk to the Bar if Something Goes Wrong

If you bounce a trust account check and are contacted by the State Bar, don't make the mistake of not responding. Always follow the rule of knowing how much money you have in your trust account and how much of that balance belongs to which clients.

Clip Coupons

Look for discount programs and early bird discounts when registering for CLE events and the like. By staying on top of your needs and your calendar, you will probably be amazed at how much you can save with smaller discounts here and there. Make sure you have everyone keeping an eye open for where the firm can save some money.

Alternative Billing Practices

Check the productivity and profitability of your billable hour revenue. Consider alternative billing methods to capitalize on the overall expense of billing at an hourly rate.

Check Your Pay

Evaluate all of your compensation plans for viability. Your office may not be able to sustain continued raises without attaching additional requirements to production or profitability. Tying compensation to performance for the future may be an option that you had not undertaken or examined very clearly. Rethink how and why you compensate the way you do at every level in your firm.

Maximize Your Use of Technology

Maximize the use of technology to work more efficiently and to get to the billing phase of your work even faster. Technology can help save money and, when used properly, make your firm money.

Put Agreements with Clients in Writing

ALWAYS use written fee agreements, engagement and non-engagement letters to cover the financial transactions of your firm.

Don't Fall for Scams

Check out all international business transactions or services obtained online thoroughly as many seemingly legitimate engagements have turned out to be banking wire scams. While you can often do business without meeting clients face-to-face, be extra careful with these types of clients and transactions.

Dust Off Your Resume

If you have been on the unfortunate end of a merger, downsizing or law firm layoff, or think you may be in danger of this, go ahead and prepare yourself by updating your resume. Focus on skills and achievements that make you a valuable employee and don't overlook job search resources like your law school's career placement office. Do a "firm resume," too.

Weed Out Vendors

Cull vendors and service providers for quality and economically feasible products. You may be able to cut some costs with another office supply vendor. So, check to see if they can provide what you need at a lower cost without sacrificing your standards of quality.

Go Green

Convert your office to a cost-saving green plan. You can help your office and the environment at the same time.

Reduce Paper

Reduce paper and avoid some of the costly charges associated with producing and storing traditional paper in a modern law office. Compare what it costs to produce, store and deliver paper to what it takes to maintain the same data on your computer system.

Take a Break

Vacations and time off can keep you and your staff productive and prevent you from wearing your-

selves to a point of counter-productivity and ultimately having to take more costly time off due to illness or making mistakes that could cost the firm.

Network More

You may have to market yourself and your practice even more as the economy dips. By letting others know you are looking for more business, you might be able to make more effective "referrals" between yourself and other practices.

Ask for Help

If you find that your finances are in critical condition, be sure to identify the core problem and seek appropriate assistance. Some endangered law firms are able to take proactive steps early enough to keep from having to close their doors.

Check Out Finance-Related Resources

The Law Practice Management Resource Library items can help with topics like collecting receivables, writing fee agreements and leveraging staff for more profitability. Be sure to review the library listings and contact us for any helpful titles.

Financial management is at the core of any business operation. The more you think of a law practice as a business, the more you should understand the absolute need for sound financial operations; and in tough economic times, the need to be financially secure becomes even more clear. Hopefully, these financial resource tips can help you build a financial management plan that will keep your firm safe until this economical storm passes. If you need more assistance, however, we are just a call away. GBJ

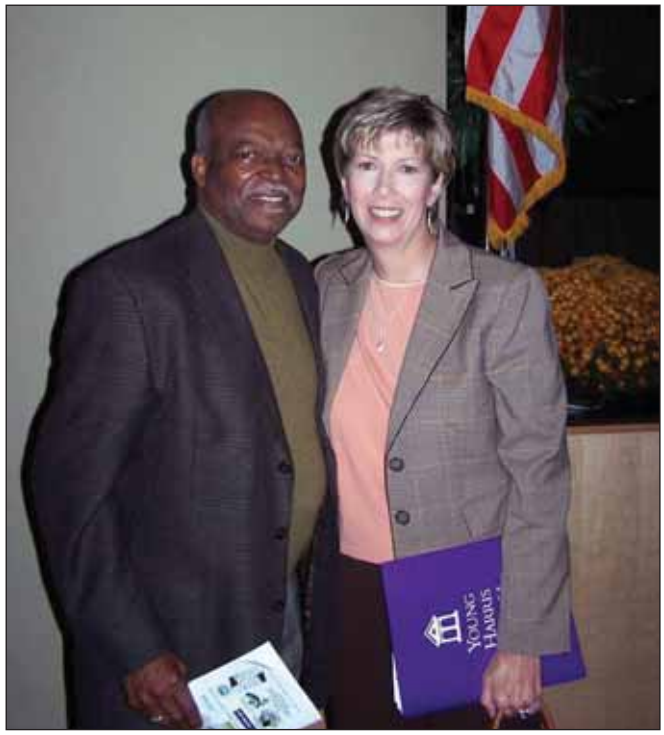
Natalie R. Kelly is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at nataliek@gabar.org.

Adding Hats to Their Legal Wardrobe...

by Bonne Cella

Competently wearing the hat of college president, Cathy Cox returned to her hometown of Bainbridge to deliver the keynote address for the 10th Annual Georgia Literary Festival. The traveling festival, held this year at the Kirbo Center at Bainbridge College, recognizes Georgia authors and celebrates the joy of reading and writing—something Cox has embraced since childhood growing up with the library literally at her back door. The Decatur County Courthouse was also within her designated boundary and provided her with never-ending steps to play on and fueled her dreams of studying law.

These early Southwest Georgia environs coupled with family political blood running in her veins influenced Cox's first hat choices—those of journalist for *The Post Searchlight* and *The Gainesville Times* and then as practicing attorney—the first female attorney in Decatur County. The distinguished Mercer University Law School alumnus soon added more hats to her collection when she became the first female legislator elected from her county, the first woman to be inducted into the Bainbridge Rotary



Photos by Bonne Cella

Luther Conyers Jr. caught up with Cathy Cox after she delivered the keynote address at the Georgia Literary festival in Bainbridge. Conyers was her 8th grade Georgia History teacher.

(Left to right) Former Judge John D. Crosby will assume Sen. Joseph Carter's senate hat.

Past President Rob Reinhardt (2004-05) takes an order from wife, Susan.

Club and Georgia's first female secretary of state. An impressive performance in 2006 almost had her wearing the hat as Georgia's first female governor.

Today, as the 21st president of Young Harris College and the first female president, Cox dons her new hat with honor and dignity—no doubt she will make many valuable contributions in the name of higher education.[1]

Cox isn't the only one to wear many hats. When attorney and Sen. Joseph Carter took off his senate hat and tossed it into the ring for superior court judge, John D. Crosby picked it up and threw it back into the senate race. Crosby, an attorney who served 20 years as a Tift County Superior Court judge won his new hat with a resounding show of support. His good friend, the late Henry Bostick, influenced Crosby's decision to run. Bostick, also an attorney, served with distinction for several terms as Tift's representative in the House. "I was impressed at how Henry represented the people. The greatest asset we have (as legislators) is to listen to people, and I'm a pretty good listener." Good luck Sen. Crosby—we know your senate hat will be a good fit.

Former State Bar President Rob Reinhardt has sported many different hats in his personal and professional life and was recently seen at Longhorn Steakhouse wearing a chef's hat and apron. No, he didn't prepare the victuals, but he skillfully served tables for the annual "Celebrity Waiter Event" to benefit The Tift County Foundation for Educational Excellence. As a founding board member, Reinhardt has seen this organization establish chairs, offer incentive grants and recognize outstanding teachers with monetary gifts for the last 20 years. The waiters were "tipped" more than $30,000 and no one at Reinhardt's table complained about the food being cold because it was served with such *flair!* GBJ

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

Endnote

1. In 1930, Young Harris College President Joseph A. Sharp died and his wife, Ella Standard Sharp acted in the interim until a new president was found. Cox is the first woman selected to serve as president.

Networking, Socializing and CLEs

by Derrick W. Stanley

The most recent section events have offered a variety of opportunities for networking, socializing and earning CLE credits. Lunch discussions were held at the Bar Center and local establishments with one common theme—above expected attendance. This trend is demonstrative of the importance of belonging to sections and the value of the membership.

On Sept. 11, the Franchise and Distribution Law Section, chaired by Perry McGuire, held a roundtable discussion titled "Alternative Remedies to Franchise Termination." Lisa Storey of Arby's and Rupert Barkoff of Kilpatrick Stockton facilitated the discussion. This event also provided an opportunity for new members to join the section.

The Appellate Practice Section, chaired by Jay Bogan, presented a CLE luncheon on Oct. 1. "Governmental Appellate Practice Exposed: A Perspective from Former Governmental Appellate Advocates" was presented by Amy Weil, Adam Hames and Paul Kish. Weil provided input from her experience gained as the former appellate chief for the U.S. Attorney's Office, Northern District of Georgia while Hames, former attorney general of Georgia, and Kish, former chief assistant federal public defender, shared information they learned while in their official capacities.

On Oct. 23, the Creditors' Rights Section, co-chaired by Harriet Isenberg and Janis Rosser, held its annual luncheon at Maggiano's in Buckhead. After enjoying a home-style Italian lunch, the attendees viewed a presentation by Mike Harper, clerk, State Court of Fulton County, on the new developments that resulted in the improvements to the garnishment office and a demonstration of the county's new website, www.fultoncjis.com, which provides docket information.

"Design Patents After Egyptian Goddess—The New Playing Field for Designs" was presented to the Intellectual Property Section Patent committee, chaired by Bradley Groff. Those in attendance learned that in *Egyptian Goddess v. Swisa (en banc 2008),* the Court of Appeals for the Federal Circuit set aside more than 20 years of precedent, eliminating the "point of novelty" test for design patent infringement and how this holding affects the value and enforceability of existing design patents and how to maximize design patent protection for your clients under the new standard.

The Entertainment and Sports Law Section held a social event at STATS Restaurant to welcome new members to the section and the Bar. The event also provided section members an opportunity to wish those who were attending the 20th annual Entertainment and Sports Law Conference, which was held in Cabo San Lucas, Nov. 12–16, a bon voyage (see sidebar on page 67). The event saw a wonderful turnout of section officers, members and students who enjoyed the unique environment and networking opportunity.

In addition to these events, ICLE also sponsored programs with the sections including the Business Law and Technology Law Institutes.

For information on joining a section, please go to www.gabar.org/sections, or send an e-mail to Section Liaison Derrick Stanley at derricks@gabar.org. GBJ

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

20th Annual Entertainment & Sports Law Conference in Conjunction with the 14th Annual Intellectual Property Law Institute

The Intellectual Property Law and Entertainment & Sports Law sections held their annual institute in Cabo San Lucas, Mexico from Nov. 12-16.

This joint event allowed over 150 lawyers to complete their annual CLE credit requirements. This year's institute consisted of 30 different sessions and a plenary. Topics covered many aspects of entertainment, sports and intellectual property law. Additionally, case law updates were given for trademark, patent and entertainment law.

Special guest speakers were also present from MusicNet, HBO Entertainment, YouTube LLC and Disney Music group to name a few. ICLE assisted with making this event a success. Please go to www.iclega.org for upcoming institutes and additional educational opportunities.

(Left to right) Panel members Lawrence Cooper, Richard Nolen, Rebecca Crumrine and Randall Kessler discussed Celebrity Divorce and Asset Protection.

(Left to right) Michael Turton, Charlene Marino, Charlie Henn, Lauren Sullins, Bakari Brock, Renae Bailey and Lauren Estrin at the Opening Night Reception.

Photos by Derrick W. Stanley

Members of the Entertainment Industry 2008 panel *(back row: left to right)* James Zumwalt, Jonathan D. Haft, Michael Olsen and Dennis Lord *(front row: left to right)* Coy Martin, Alan J. Kaufman and Cameron Strang.

(Left to right) Van Pearlberg, Justice Carol W. Hunstein and Hon. J. Stephen Schuster relax after the Professionalism Seminar.

(Left to right) Lauren Fernandez Staley, Joe Staley, Larry Maxwell, Francisca Vanherle and David Lilenfeld enjoy dinner in the desert.

Make your plans now to attend the Annual Entertainment and Sports Law Conference with the Intellectual Property Law Institute, Nov. 11-15, 2009, at the Paridisus Palma Real Resort in Punta Cana, Dominican Republic.

Getting the Most Out of Casemaker:

An Overview of the Advanced Search Features—Part IV

by Kimberly White

In the October 2008 *Bar Journal*, we showed you how to narrow down your search by using the proximity feature; which allows you to choose how close your search terms appear together in your opinion results. Now we will cover the final advanced search feature which will assist you with determining the order in which you want your search results to appear.

The "Result Order" feature allows you to decide how your opinions will be listed when you conduct your search. This will allow you to weed out the opinions that are least applicable to your topic and should not be included. You can choose for your result order to be in date descending, rank or date ascending order (see fig. 1).

Date Descending

"Date Descending" is the default result order option (see fig. 2). When conducting your search, you type your keywords into the full document search query. Results will be listed in date descending order, meaning that the most recent opinion where your keywords are mentioned is listed first. For example, if you type in the keywords "nuptial" and "agreement," the most recent case where the keywords "nuptial" and "agreement" appear will be listed first (see fig. 3).

Rank

"Rank" is the same as if you are searching through keywords using an everyday internet search engine (i.e. Yahoo, Google, etc.) Your results are weighed by the following criteria: relative word ordering, word proximity, database frequency, document frequency and the position of the keywords in the opinion. Using an internet search engine, when you type keywords, results are given based upon how often other users choose them when typing in the same keywords. For instance, when you type the keywords "nuptial" and "agreement" into the full document search query and change the result order to rank (see fig. 4), your results will appear based on Casemaker's ranking algorithm. This ranking formula will assist you by making the opinions that may be more relevant to your keywords appear first (see fig. 5).

Date Ascending

"Date Ascending" is the opposite of "Date Descending," meaning that you want to view your results with the oldest case listed first (see fig. 6). Using the same keywords, "nuptial" and "agreement" in the full document search query, and changing the result order to "Date Ascending," the first case that appears is from 1948 (see fig. 7).

Using the "Result Order" option, in conjunction with the "Word Forms" and "Proximity" search features, will ensure you are locating the case information that you need. The "Word Forms" option allows you to view different variations of your keywords. The "Proximity" feature allows you to determine how you see your keywords in the opinions, and the "Result Order" feature allows you to decide the order in which cases will be listed in your results.

Whether you are practicing solo or working for a large firm, easy, affordable access to legal research is fundamental. The State Bar of Georgia not only offers Casemaker to its members at no additional cost, but it also provides training and ongoing assistance for usage. Casemaker training classes are scheduled two days out of every month; two classes per day. If you wish to sign-up for Casemaker training, please visit the State Bar of Georgia's website, www.gabar.org, and complete the registration form. GBJ

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

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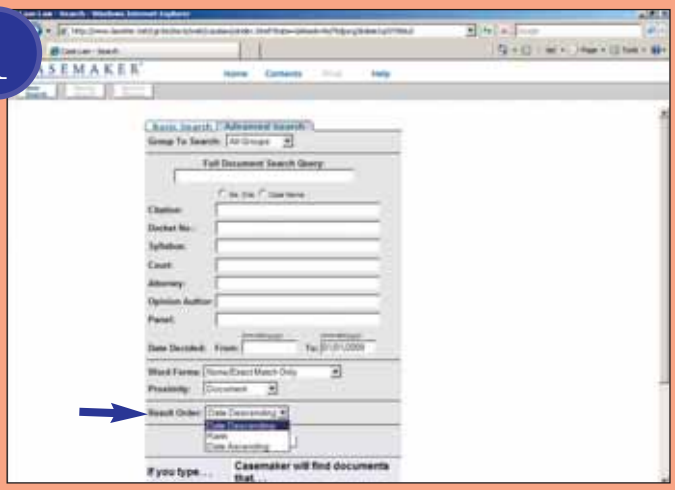
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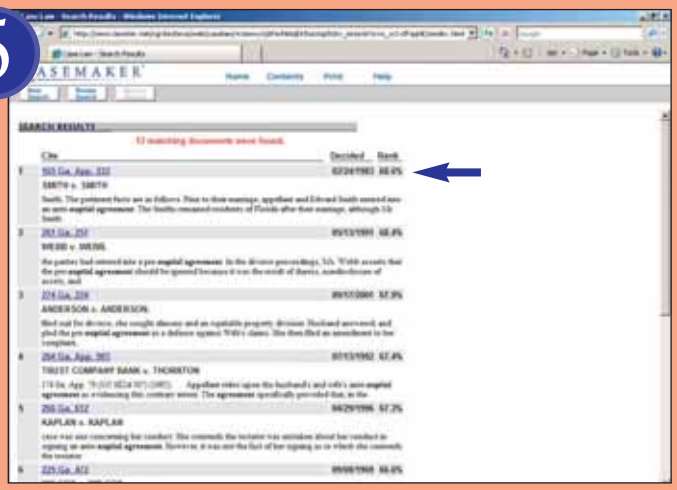
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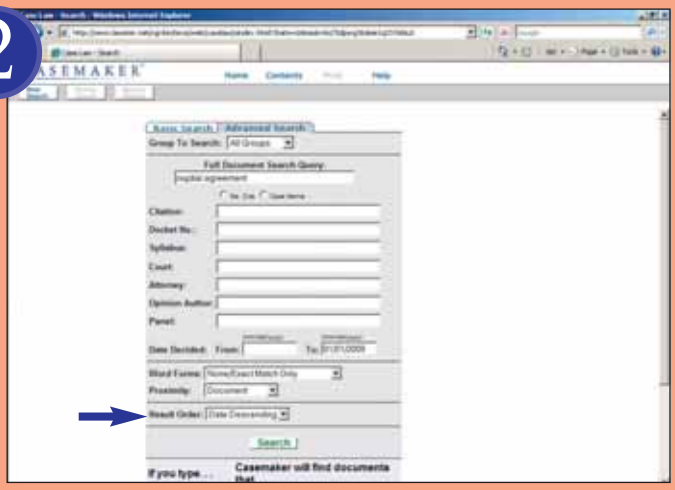
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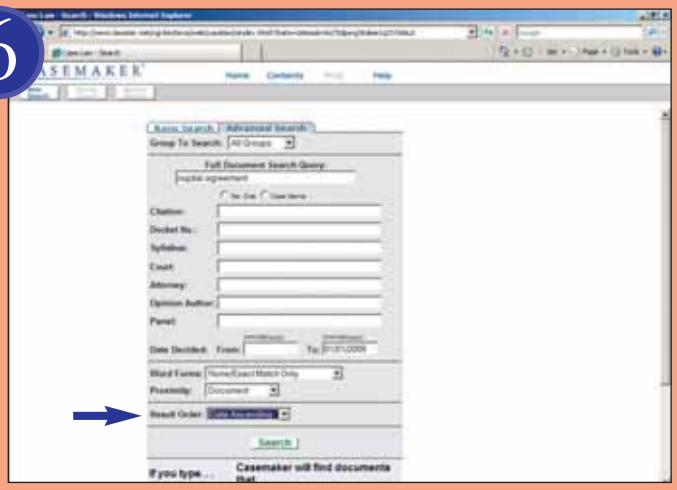
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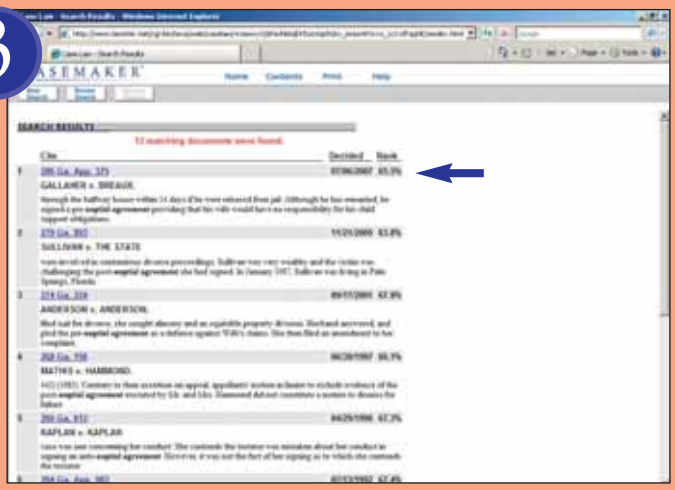
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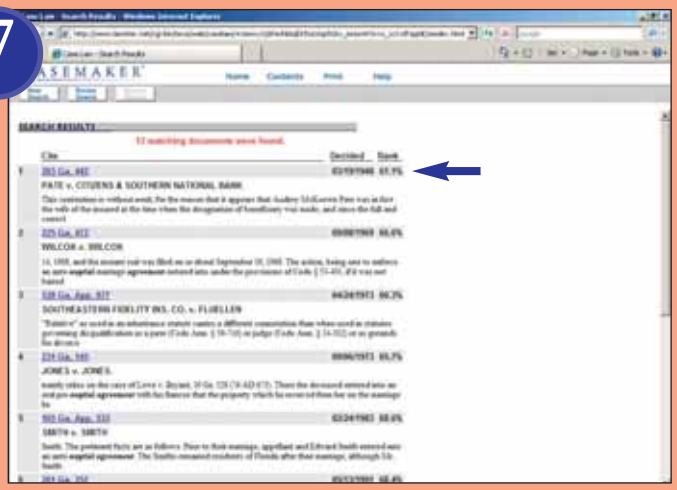
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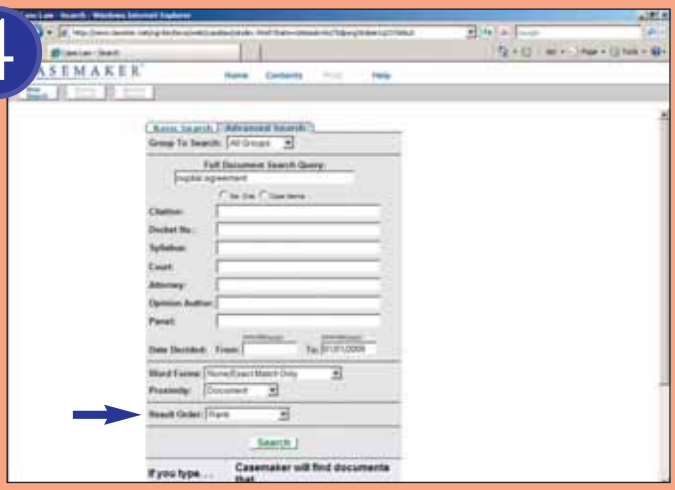
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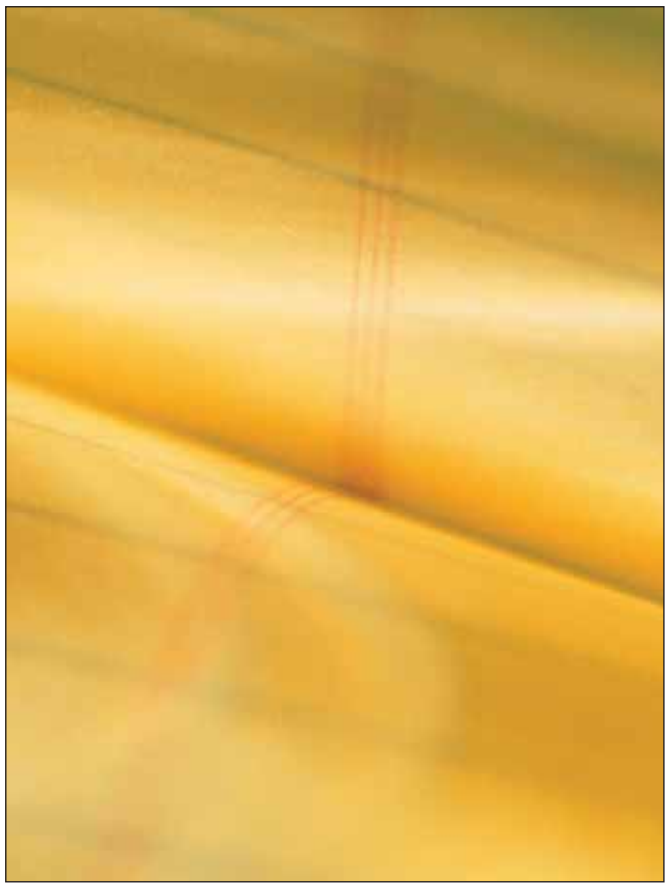
That Other Citation Manual

by Karen J. Sneddon and David Hricik

The ability to cite authority correctly is an important skill in an attorney's repertoire. Poor citation format has been criticized by judges and can be viewed by opposing counsel as evidencing lack of attention to detail.[1] The belief in uniformity in citation format inspired the development and use of citation manuals. *The Bluebook* remains the most popular citation manual (if "popular" is ever the right word to use when describing a citation manual).[2]



However, a more recent manual, *ALWD*,[3] is increasingly being used in law schools across the country.[4] *ALWD* was written in large part due to two specific criticisms with *The Bluebook.* The first criticism was the lack of stability over time. There are 18 editions of *The Bluebook,* each one different. Although the sometimes arbitrary changes that occurred from one edition to the next in *The Bluebook* had long been criticized, the tipping point occurred a few years ago, when a new edi-

tion of *The Bluebook* purported to alter the use and meaning of signals (*see, e.g.,* and so on) after decades of stability. Enough was enough, or so many thought. The second criticism concerned the fact that *The Bluebook* was not user friendly, let alone easy to learn. *The Bluebook* was not written to be learned, like a textbook, but instead is a reference book.

ALWD was published in 2000 in large part in reaction to these criticisms. *ALWD* purports to be more uniform than *The Bluebook* (commas are never used in signals, for example), and is structured to be a textbook, not a reference book. As a result, it is easier for novices to absorb the intricacies of citation. *ALWD* is in its third edition. Today, many law schools use *ALWD* to teach citation format to students and devote little class time to *The Bluebook*.[5] In fact, some students graduate without ever having to review *The Bluebook*.

Not only is *ALWD* changing how students learn citation, but it is changing *The Bluebook*. For example, *The Bluebook's* "Bluepages" mimics user-friendly features of *ALWD*.[6] In addition, some courts, including the U.S. Court of Appeals for the 11th Circuit,[7] now permit briefs to comply with either *The Bluebook* or *ALWD*.

Given the impact of *ALWD* on education and practice, we thought we would introduce a few of the substantive differences between the two. The two citation manuals share many similarities, but there are some noticeable differences, as the chart shows.

Whether "*see, e.g.,*" is better than "*see e.g.*" no doubt presents a fierce academic debate. The practical problem is that these differences may lead to misapprehension about the author of a legal brief. A reader unaware of *ALWD* may conclude the author is "guilty" of "sloppy bluebooking," when in fact the author may be an excellent and precise "allwooder." Despite the acceptance of *ALWD* by the 11th Circuit, the lack of uniformity between the two manuals led the Supreme Court of Florida to reject a rule permitting briefs to comply with either manual. The Supreme Court of Florida stated that:

> uniformity in reporting is more important to the appellate courts, and ultimately to the public, than allowing practitioners the flexibility of using multiple citation manuals to reference sources. Although we appreciate that there may be reasons that individuals prefer one citation system over another, we conclude that those reasons do not justify amending the rule to allow alternative systems of citation. If at some point the Committee concludes that another citation

The Difference	Example from *The Bluebook*	Example from *ALWD*
Abbreviations of Case Names	Int'l Table 6	Intl Appendix 3
Court Abbreviations	Ga. Ct. App. Table 1	Ga. App. Appendix 1
Spacing for Pinpoint Reference to a Footnote	n.45 Rule 3.2(b)	n. 45 Rule 7.1
Non-Consecutively Paginated Journal	David Hricik & Chase Scott, *Metadata: Ethical Obligations of the Witting and Unwitting Recipient*, 13 Ga. B.J., Apr. 2008, at 30. Rule 16.4, Table 13	David Hricik & Chase Scott, *Metadata: Ethical Obligations of the Witting and Unwitting Recipient*,13 Ga. B.J. 30 (Apr. 2008) Rule 23, Appendix 5
Use of Block Quotes	Use block formatting only if the quote is of 50 words or more Rule 12	Use block formatting if the quote is 50 words or more *or* the quote exceeds four lines of typed text Rule 47.5(a)
Treatises	Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* vol. 6A, § 1497, 70-79 (2d ed., West 1990). Rule 15	6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1497, at 70-79 (2d ed. 1990). Rule 22
Student Authors	Brian Craddock, Note, *Signed, Your Coach: Restricting Speech in Athletic Recruiting in* Tennessee Secondary School Athletic Ass'n v. Brentwood Academy, 59 Mer. L. Rev. 1027 (2008). Rule 16.6.2	Brian Craddock, Student Author, *Signed, Your Coach: Restricting Speech in Athletic Recruiting in* Tennessee Secondary School Athletic Ass'n v. Brentwood Academy, 59 Mer. L. Rev. 1027 (2008). Rule 23.1(a)(2)
Commas & Numbers	2600 Rule 6.2 (a)(vii)	2,600 Rule 4.2(h)(1)
Punctuation in Signals	*See, e.g.,* Rule 1.2	*See e.g.* Rule 47.5(a)

system is superior, we certainly would be willing to consider that proposal. However, we decline to adopt multiple systems of citation at this time.[8]

Although a particular court may not recognize the use of *ALWD*, its widespread use in law schools is likely to continue. So, when you see a document in practice that seems to reflect a lack of attention to citation, the author may simply be following the conventions of that other citation manual. GBJ

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

David Hricik is an associate professor at Mercer Law School who has written several books and more than a dozen articles. Mercer's Legal Writing Program is currently ranked as the no. 1 legal writing program in the country by *U.S. News & World Report*.

Endnotes

1. *See, e.g., In re Goldberg,* 248 B.R. 209, 212-13 (Bankr. S.D. Ga. 2000) (interpreting prior case law's treatment of authority based upon citation forms used and, as a result, rejecting motion to amend a prior judgment that argued that the court had misread that case law).
2. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).
3. ALWD & Darby Dickerson, AWLD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (3d ed., Aspen Publishers 2006). The citation manual is pronounced "all wood." Additional information about *ALWD* can be found at http://www.alwd.org/publications/citation_manual.html.
4. There are other citation manuals. One citation manual that was not successful was *The University of Chicago Manual of Legal Citation*. The hallmark of this manual was its flexibility. Individual states may also have citation manuals. *See, e.g.,* NEW YORK LAW REPORTS STYLE MANUAL: NEW YORK'S OFFICIAL STYLE MANUAL (2007) (called *The Tanbook*).
5. For one student's thoughts on the *Bluebook- ALWD* debate, see Eric Shimamoto, *To Take Arms Against a See of Trouble: Legal Citation and the Reassertion of Hierarchy*, 73 UMKC L. REV. 443 (2004).
6. *See, e.g.,* Christine Hurt, *The Bluebook at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49 (2007).
7. *See* 11th Cir. R. 28-1(k).
8. Amendments to Florida Rules of Appellate Procedure, 827 So. 2d 888, 890-91 (Fla. 2002).

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Giving is Always in Season

by Avarita L. Hanson

If you weren't aware of the events this autumn, you must have been trapped on an uninhabited, primitive distant island. The presidential election, America's financial crisis and the challenges of the war on terrorism have dominated the front pages of newspapers and magazines, and have been the main topics of conversation at the water cooler. Many of us have felt a bit overwhelmed by the constant onslaught of information from candidates, political pundits and financial analysts.

Yet, in the midst of troubles, I found some simple things to be true. First, as professionalism requires, if you have good habits—like staying focused, balanced and finishing what you set out to do with excellence—you will weather the current storms and see the sunshine again. Second, if you give of yourself, you not only realize that your troubles are not as bad as you think, you find that doing good makes you feel good and even look good at times.

I experienced these things first hand in early October when I answered a call to duty from Atlanta's Carver School of Early College. I was asked to install their student government officers and explain to them their responsibilities as leaders. Carver School of Early College is unique not only because it is on the campus of Carver High School, but it is also named after Dr. George Washington Carver, a brilliant African-American scientist, educator, innovator and leader, who from his base at Tuskegee Institute in Alabama educated and inspired students and local farmers to maximize their opportunities with agricultural science. The school affords its students the opportunity to attend college at Georgia State University and earn up to 80 college credits while still attending high school.

Photo by Kay Weaver

Avarita L. Hanson, executive director, Chief Justice's Commission on Professionalism, installs student government officers at Atlanta's Carver School of Early College.

In my charge to the students, I asked them why they attend that particular high school. Like a good mentor and coach, I suggested that their response should be, "I attend this school because it prepares me to be a college graduate, and a productive, law-abiding, successful citizen of the United States and the world." In order for the students to achieve these goals, I gave them three simple lessons to follow: stay focused, stay balanced and stay the course. I also reminded them that success requires you to get in the game of life, stay in the game and finish the game.

I also shared others' views on learning and success. Oprah once said, "Success equals preparation and luck." And former Harvard University President Charles William Eliot said, "Observe keenly, reason soundly and imagine vividly." These messages were my gifts to the Carver School of Early College student government leaders. I also received a gift that day. I left with a feeling of reassurance that our country's future is in good shape with young leaders poised to assume the requirements of citizenship and leadership.

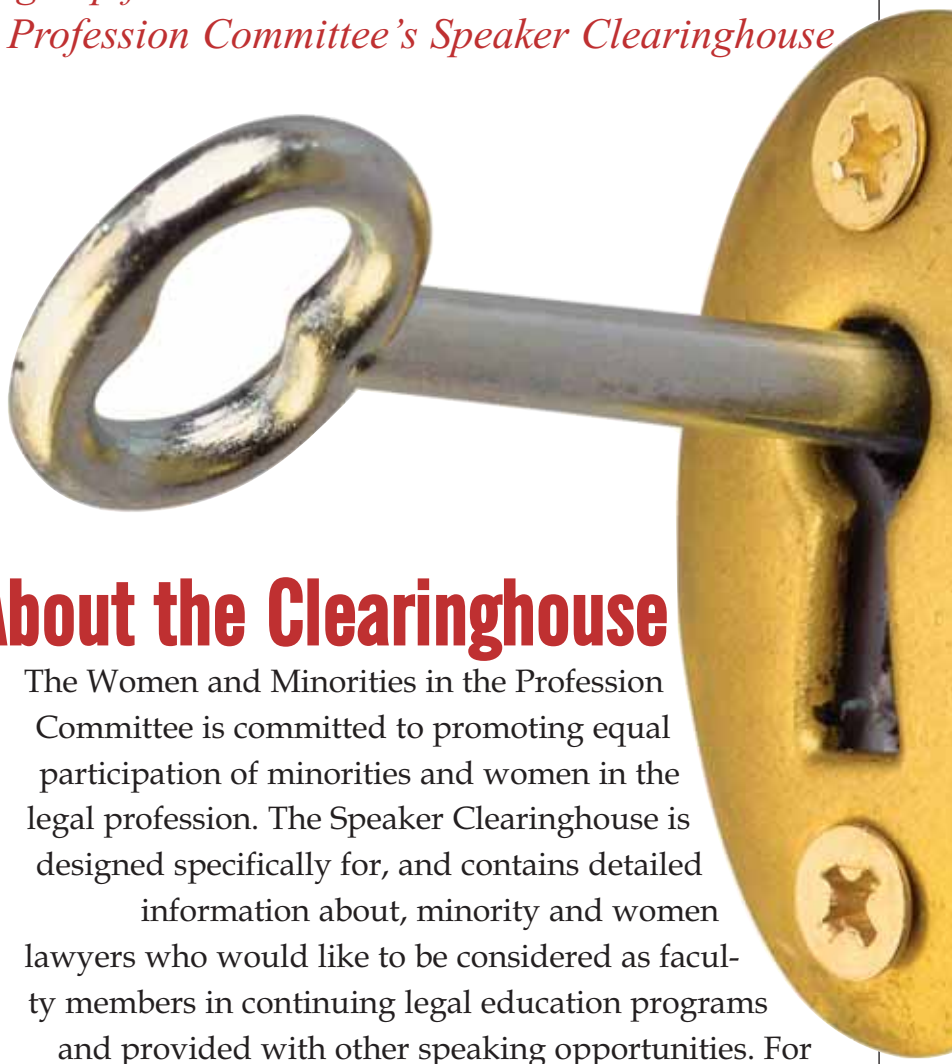
If any of you are asked to speak at a school event, I urge you to accept the invitation and share your knowledge and be generous with your gifts. The State Bar has multiple resources to help you. In preparing for my visit to the school, I contacted Deborah Craytor, director of the State Bar's Law-Related Education Program. She gave me some good ideas and resource materials that were a great tool in introducing the high school students to the law.

This time of year is often defined as the season of sharing. Giving good cheer and wise counsel is always in season. Let us all be generous with our gifts this season and always. GBJ

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

Unlock *your* Potential

Sign up for the Women & Minorities in the Profession Committee's Speaker Clearinghouse



About the Clearinghouse

The Women and Minorities in the Profession Committee is committed to promoting equal participation of minorities and women in the legal profession. The Speaker Clearinghouse is designed specifically for, and contains detailed information about, minority and women lawyers who would like to be considered as faculty members in continuing legal education programs and provided with other speaking opportunities. For more information and to sign up, visit **www.gabar.org.** To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit **www.gabar.org**.

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

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Atlanta, Ga.
Emory University School of Law (1996)
Admitted 1996
Died August 2008

Hon. Thomas R. Bryan Jr.
Paducah, Ky.
University of Georgia School of Law (1962)
Admitted 1962
Died January 2008

William Reid Childers Jr.
Monroe, Ga.
University of Georgia School of Law (1967)
Admitted 1967
Died October 2008

John M. Cogburn Jr.
Griffin, Ga.
Emory University School of Law (1968)
Admitted 1968
Died October 2008

Donald Finley Daugherty
Atlanta, Ga.
Vanderbilt University Law School (1979)
Admitted 1981
Died October 2008

Charles A. Gravitt Sr.
Jonesboro, Ga.
John Marshall Law School (1969)
Admitted 1969
Died June 2008

Jennifer Lynn Hampton
Franklin, Ga.
University of Chicago Law School (1993)
Admitted 1993
Died September 2008

Paul M. Hawkins
Atlanta, Ga.
Emory University School of Law (1959)
Admitted 1958
Died September 2008

Richard Herbert Johnston
Fayetteville, Ga.
Emory University School of Law (1962)
Admitted 1961
Died October 2008

Henry M. Kellum
Atlanta, Ga.
Mercer University Walter F. George School of Law (1971)
Admitted 1972
Died August 2008

Kenneth W. Krontz
Douglasville, Ga.
Emory University School of Law (1976)
Admitted 1976
Died April 2008

Julian P. Lawson
Atlanta, Ga.
George Washington University Law School (1961)
Admitted 1968
Died July 2008

Michael Gerard Leeper
Atlanta, Ga.
John Marshall Law School (2001)
Admitted 2002
Died September 2008

James P. McLain
Atlanta, Ga.
University of Georgia School of Law (1950)
Admitted 1950
Died November 2008

Claira E. Mitcham
Ludowici, Ga.
Woodrow Wilson College of Law (1977)
Admitted 1977
Died June 2008

Hon. James B. O'Connor
Chauncey, Ga.
Mercer University Walter F. George School of Law (1951)
Admitted 1950
Died September 2008

Lindsay A. Robertson
Braselton, Ga.
Emory University School of Law (1980)
Admitted 1980
Died September 2008

Hon. H. Jack Short
Moultrie, Ga.
University of Georgia School of Law (1948)
Admitted 1947
Died September 2008

Hon. Patrick J. Ward
Cairo, Ga.
Emory University School of Law (1966)
Admitted 1966
Died October 2008

Debra Young Kaplan
Melbourne, Fla.
Emory University School of Law (1979)
Admitted 1979
Died October 2008

James Polk McLain died in November 2008. McLain was born in Atlanta on Sept. 27, 1923. Like many young men his age, he served his country in the Pacific theatre during World War II attaining the rank of lieutenant. Upon returning from the War, McLain enrolled in the University of Georgia and graduated in 1947 with a Bachelor of Science degree in psychology and was honored by being inducted in the Psi Chi honor society.

Following graduation, McLain enrolled in the University of Georgia School of Law. He graduated with a J.D. degree and passed the Bar in 1950. He began working for C&S Bank after graduation before organizing the firm now known as McLain & Merritt with Marvin H. Shoob in 1957. It was also in 1957 that McLain married his wife, Jeanette Reed Lewis, with whom he had four boys.

McLain was very active in the Atlanta community and beyond. He served on the Boards of Trustees of Oglethorpe University, Columbia Theological Seminary, Queens College, Presbyterian College, the Atlanta Humane Society, the Scottish Rite Children's Medical Center; was a fellow of the Society of Antiquaries of Scotland; and was a master falconer. McLain was also quite active in professional activities. He served as president of the Atlanta Lawyers Club, president of the Atlanta Estate Planning Council, chairman of the Board of Trustees of the Atlanta Lawyers Foundation, fellow of the American College of Trust and Estate Counsel, and a law instructor at Georgia State University. McLain was a member of Peachtree Presbyterian Church for more than 50 years and served as a deacon and an elder, chairman of the Board of Deacons, and was on the Board of trustees of the Peachtree Presbyterian Trust Fund.

The Hon. **James B. O'Connor** died in September 2008. He was born on Jan. 17, 1929, and grew up in the Jay Bird Springs community, near the city of Chauncey in Dodge County. At the age of 19, he graduated from Duke University with an A.B. degree. He obtained his law degree from Mercer University in 1951, where he served as editor-in-chief of the *Mercer Law Review* in 1950. He also served in the U.S. Army Judge Advocate General Corps from 1951-55. While in the Army, he became a jump master, was awarded the Spirit of Honor medal and achieved the rank of major.

He was admitted to practice in Georgia in 1950 at the age of 21 and began his law practice in McRae. From 1965-80, he served as judge for the Oconee Superior Court Circuit. In 1980, he took senior status and served throughout Georgia for many years, during which time he was often called upon to handle the most difficult of cases.

O'Connor chaired the Judicial Council of Georgia from 1978-80. He was also instrumental in creating the original Pattern Jury Instructions in Georgia. Many lawyers who practiced before him in the courts of Georgia have commented that he was one of the finest trial judges in the state.

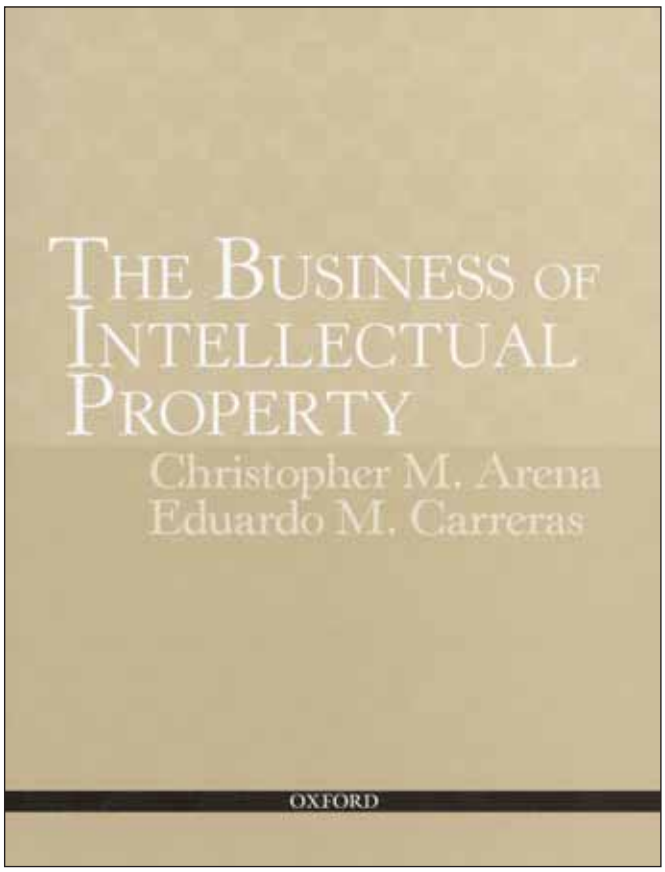
After O'Connor retired from senior status he enjoyed his remaining years fishing, hunting and managing his timber farm in Dodge County near Jay Bird Springs. GBJ

The Business of Intellectual Property

by Christopher M. Arena and Eduardo M. Carreras
Oxford University Press, 2008, 412 pages

reviewed by Shane Nichols

Readers are likely to purchase *The Business of Intellectual Property (TBIP)* with the expectation that the rather generic title promises a broad treatment of the role of intellectual property law in modern business. Happily, the authors deliver on the title's promise with a book that will be useful to lawyers and business managers alike. Arena and Carreras—both experts in the creation and protection of intellectual property—apparently shared a bold vision for the scope of their book. Ranging from philosophical to academic to practical, *TBIP* covers the waterfront of intellectual property law, yet never sacrifices depth or detail to realize that bold vision in just over 400 pages.



TBIP develops the reader's interest through a series of anecdotes about the winners and losers in the challenging game of intellectual property: The Coca-Cola Company won by protecting its trademarks, trade secrets and other intellectual property earlier than everyone else; Apple Computer won by recognizing the value inherent in controlling access to the intellectual property in recorded music; Texas Instruments won by recognizing early on that it could protect its markets in the United States from foreign chip manufacturers by concurrently asserting its patents in federal district courts and in the International Trade Commission (then-CEO Mark Shephard reportedly triggered this recognition with the innocent question, "What about our patents?"); and so on. The authors' storytelling does not come across as reveling in the past; rather, these timeless examples of intellectual property success stories provide a foundation that helps the business reader appreciate the significance and value of the remainder of the book's teachings.

Although Arena and Carreras are now partner-level attorneys with Woodcock Washburn—a firm that specializes in intellectual property law—both authors are better known for their careers as in-house IP counsel. Prior to returning to private practice, Carreras spent over 20 years as intellectual property counsel at The Coca-Cola Company, including serving as chief IP counsel. Arena returned to private practice after stints as chief IP counsel at both BellSouth Corporation and Cingular Wireless. The authors' credentials shine through in *TBIP* as they successfully weave together business and legal concepts in a way that provides an accessible resource for business managers seeking to understand the nuances of intellectual property law. Notably, *TBIP* is similarly valuable as a resource for lawyers in its treatment of intellectual property issues from the business-oriented perspectives of their clients.

The authors' apparent primary objective is to educate business managers on the importance of intellectual property in a rapidly changing business environment. They repeatedly use business language to frame their points in economic terms—e.g., analyzing and re-analyzing Karl Marx's definition of capitalism in the context of the information age. *TBIP* argues that recent changes in the business environment caused in part by efforts to create, protect and enforce intellectual property are more transformative than evolutional. The authors suggest that Marx's traditional definition of capitalism may no longer be viable, as the ownership of the means of production changes from those owning equipment and raw materials to those with the wherewithal to create, own and extract value from knowledge.

Although the authors reveal their philosophical side with frequent references to Marxist economic concepts and competing theories of behavior-based business strategies, the book is most valuable as a resource of practical advice on managing intellectual property assets. Much of the heart of the book's content is presented in a traditional "funnel" format—advancing from general to more and more specific. The book includes, for example, a chapter providing a high-level description of various types of intellectual property protection, and provides guidelines for identifying which of the forms applies to a given need. Another chapter discusses the motivations and risks of innovation, and includes a brief case study of BellSouth, which was highly successful in its effort to align individual and organizational motivations to encourage innovation in the aftermath of its separation from AT&T. Other practical advice includes an admonition to maintain focus on the fundamental inquiry as to whether particular innovations can advance the objectives of the company. The authors keenly observe that the question, "How can we make money from that idea?", too often takes a back seat to the question, "Can we get a patent on that?" Following a section providing a case-study intensive discussion of the extraction of value from intellectual property, the authors close with a final summary of the goals and rewards of a properly designed and managed intellectual property strategy.

Business readers seeking practical and specific advice on managing intellectual property will find *TBIP* useful as a quick reference treatise. The authors have even included five appendices that provide incredibly specific details on topics ranging from "Intellectual Property Law 101 for Business Owners" to "Intellectual Property Program Self-Assessment Tool." Although these topics are covered elsewhere in the book, the authors appear to have sought to provide a one-stop resource for business managers wrestling with an intellectual property crisis or planning a program for creating and enforcing intellectual property assets over the next 20 years. Many of the appendices have been helpfully formatted as checklists for ease of use and organization.

TBIP fills a gap in the business literature addressing modern intellectual property issues. In the heady days of the dot-com boom, Kevin G. Rivette and David Kline created a minor commotion in the business world with their book *Rembrandts in the Attic*. For many business managers in the late 1990s, *Rembrandts* served as a call to arms to "the new competitive battlefield, intellectual property." This call inspired countless efforts by business managers to identify and exploit previously latent assets by seeking patent protection for existing technologies. During that era—in which business method patents were still relatively novel—*Rembrandts* was an important book that prompted many managers to create value for their businesses from erstwhile-untapped assets.

In the time since it was published, however, the business environment has changed significantly in ways that render portions of *Rembrandts'* primary message obsolete. Since, the dot-com bubble burst, the Patent Office has been deluged in patent applications of questionable validity and patent infringement litigation has become ubiquitous and increasingly more expensive. In *TBIP*, Arena and Carreras successfully elevate the discussion that began in earnest with *Rembrants* to a level that is applicable to a more mature business climate. *TBIP* provides a broader historical view of intellectual property that makes *Rembrandts* appear faddish in comparison. The authors dwell on the successes of companies like Coca-Cola, BellSouth and W.L. Gore, while reminding readers of failed companies like Kozmo.com—a "business without innovation"—which nonetheless attracted investments of $280 million to a business model that contemplated a service that generated no revenues: free deliveries of anything to anyone at any time. The authors certainly could not have predicted that *TBIP* would be published in the same year that the business world would experience historic levels of volatility and failure and that the Federal Circuit Court of Appeals would narrow the scope of patent-eligible subject matter for business method patents (*In re Bilski*). Nonetheless, the timing of the release of *TBIP* makes Arena and Carreras's cautionary tales and unwavering focus on elevating substance over form appear downright prescient. GBJ

Shane Nichols is a partner at King & Spalding, specializing in IP law. Primarily a litigator, he represents clients in federal district courts across the United States, the U.S. ITC, appeals to the Federal Circuit and the 11th Circuit Courts of Appeals, and in courts around the world. He specializes in patent litigation and counseling, and also helps his clients resolve IP disputes involving trade secret misappropriation and claims of infringement of copyright and trademark rights.

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DEC 15
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Lexis Nexis
Marietta, GA
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Child Custody and Visitation
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6 CLE Hours

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ICLE
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Taxation of LLC and LLP
Atlanta, GA
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DEC 17
NBI, Inc.
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December-February

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JAN 12
Atlanta Tax Forum, Inc,
Tax Legislative Update
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1 CLE Hours

JAN 12-13
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Atlanta, Ga.
11.8 CLE Hours

JAN 12-16
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43rd Hekerling Institute on Estate Planning
Orlando, Fla.
28 CLE Hours

JAN 13
Lorman Education Services
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JAN 15
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Atlanta, Ga.
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6 CLE Hours

JAN 16
ICLE
Jury Trial
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

JAN 21-23
Prosecuting Attorneys' Council of Georgia
2009 Introduction Drug Prosecution Course
Pine Mountain, Ga.
14 CLE Hours

JAN 21-23
Prosecuting Attorneys' Council of Georgia
2009 Fundamentals of Prosecution
Pine Mountain, Ga.
13.3 CLE Hours

JAN 22
ICLE
Law Practice Management
Atlanta, Ga.
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Formal Advisory Opinion Issued Pursuant to Rule 4-403(d)

The second publication of this opinion appeared in the June 2006 issue of the *Georgia Bar Journal*, which was mailed to the members of the State Bar of Georgia on or about June 5, 2006. The opinion was filed with the Supreme Court of Georgia on June 15, 2006. The State Bar of Georgia filed a Petition for Discretionary Review and Brief of Petitioner with the Supreme Court of Georgia on June 30, 2006, pursuant to Rule 4-403(d). On July 27, 2006, the Supreme Court of Georgia issued an Order granting review of Formal Advisory Opinion No. 05-11. On September 22, 2008, the Supreme Court of Georgia issued an Order adopting Formal Advisory Opinion No. 05-11 and retracting Formal Advisory Opinion No. 99-1. Because of the extensive discussion contained in the Order, the full text of the Order has been made part of the opinion. Following is the full text of the opinion issued by the Supreme Court. In accordance with Bar Rule 4-403(e), this opinion is binding upon all members of the State Bar of Georgia, and the Supreme Court shall accord this opinion the same precedential authority given to the regularly published judicial opinions of the Court.

STATE BAR OF GEORGIA
FORMAL ADVISORY OPINION NO. 05-11
Approved and Issued On September 22, 2008
Pursuant to Bar Rule 4-403
By Order of The Supreme Court of Georgia
Thereby Replacing FAO No. 99-1
Supreme Court Docket No. S06U1854

COMPLETE TEXT FROM THE ORDER OF THE SUPREME COURT OF GEORGIA

PER CURIAM.

We granted a petition for discretionary review brought by the State Bar of Georgia asking this Court to adopt an opinion of the Formal Advisory Opinion Board ("Board") and retract an earlier version of the Formal Advisory Opinion ("FAO"). At issue is Proposed Opinion 05-11, which is a re-drafted version of FAO 99-1.[1] Both opinions address the ethical propriety of an attorney defending a client pursuant to an insurance contract when the attorney simultaneously represents a company in an unrelated matter and that company claims a subrogation right in any recovery against the defendant client. Having examined FAO 99-1 in light of the issuance of the Georgia Rules of Professional Conduct, we agree that the new Rules require a different result than that reached in FAO 99-1 and that Proposed Opinion 05-11 should be adopted and FAO 99-1 retracted.

In FAO 99-1, issued on May 27, 1999, the Board applied Standards 30, 35 and 36 and Ethical Considerations 5-14 and 5-15 to the question presented and concluded

> an attorney may not simultaneously represent clients that have directly adverse interests in litigation that is the subject matter of either one of the representations. Whether or not this is the case ... depends upon the nature of the representation of the insurance company.
>
> If it is, in fact, the insurance company that is the true client in the unrelated matter, then the interests of the simultaneously represented clients in the litigation against the insured client are directly adverse even though the insurance company is not a party to the litigation and the representations are unrelated. The consent by the clients provided for in Standard 37 is not available in these circumstances because it is not obvious that the attorney can adequately represent the interests of each client. This is true because adequate representation includes a requirement of an appearance of trustworthiness that is inconsistent with the conflict of interest between these simultaneously represented clients.
>
> If, however, as is far more typically the case, it is not the insurance company that is the true client in the unrelated matter, but an insured of the insurance company, then there is no simultaneous representation of directly adverse interests in litigation and these Standards do not apply. Instead, the attorney may have a personal interest conflict

under Standard 30 in that the attorney has a financial interest in maintaining a good business relationship with the insurance company. This personal interest conflict may be consented to by the insured client after full disclosure of the potential conflict and careful consideration. The Standard 37 limitation on consent to conflicts does not apply to Standard 30 conflicts. Such consent, however, should not be sought by an attorney when the attorney believes that the representation of the insured will be adversely affected by his or her personal interest in maintaining a good business relationship with the insurance company for to do so would be to violate the attorney's general obligation of zealous representation to the insured client.

In its 2006 re-examination of the question presented in FAO 99-1, the Board applied Rule 1.7 of the Rules of Professional Conduct and Comment 8 thereto and concluded that the attorney's representation of the insured would be an impermissible conflict of interest under Rule 1.7(a) if the insurance company is the client in the unrelated matter, and that consent of both clients would not be available to cure the impermissible conflict because the conflict necessarily "involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." Rule 1.7(c)(3). This was the same result as was reached when Standards 35 and 36 were applied in FAO 99-1, though Proposed Opinion 05-11 clarifies that the attorney's successful representation of the insured client would reduce or eliminate the potential subrogation claim of the insurance company client, making advocacy on behalf of one client in these circumstances advocacy against a simultaneously represented client.

In addressing the far more typical case of the client in the unrelated matter being an insured of the insurance company rather than the insurance company itself, the Board in Proposed Opinion 05-11 again echoed FAO 99-1 in its finding that there would be no impermissible advocacy against a simultaneous representation client, but the attorney might have a conflict with the attorney's own interests under Rule 1.7(a), since the attorney would have a financial interest in maintaining a good business relationship with the non-client insurance company. In a departure from FAO 99-1, the Board in Proposed Opinion 05-11 opines that "the likelihood that the representation [of the insured] will be harmed by this financial interest makes this a risky situation for the attorney," noting that while Rule 1.7(b) permits the personal conflict to be cured by consent of all affected clients under some circumstances, consent is not available to cure the conflict if the conflict triggers Rule 1.7(c)(3), i.e., the conflict "involves circumstances rendering it reasonably unlikely that the lawyer [would] be able to provide adequate representation to one or more of the affected clients." Thus, Proposed Opinion 05-11 corrects an error in FAO 99-1, which had required only the consent of the insured client to the personal interest conflict, and replaces the "warning" contained in FAO 99-1 ("No attorney, however, should seek such consent [to an attorney's personal interest conflict] if he or she believes that his or her business interest will, in fact, adversely affect the quality of the representation with the insured client") with the ethical requirement of Rule 1.7(c).

Inasmuch as FAO 99-1 no longer provides the most current ethical guidance to the members of the State Bar of Georgia since it is not based on the current ethical rules, and Proposed Opinion 05-11 interprets the current ethical rules, clarifies a point made in FAO 99-1, corrects an error in FAO 99-1, and recognizes the conversion of the warning contained in FAO 99-1 into an ethical requirement, we conclude that it is appropriate to adopt Proposed Opinion 05-11 and retract FAO 99-1.[2]

Formal Advisory Opinion 05-11 approved. All the Justices concur.

Endnotes

1. With the issuance of the Georgia Rules of Professional Conduct, the Standards of Conduct were replaced and the Canons of Ethics, including Ethical Considerations and Directory Rules, were deleted. At the request of the Office of General Counsel of the State Bar of Georgia, the Board undertook a review of the FAOs issued by this Court that were based on the Standards of Conduct and Canons of Ethics to determine the impact, if any, of the issuance of the Georgia Rules of Professional Conduct.
2. Our approval of FAO 05-11 makes it "binding on all members of the State Bar [of Georgia]." Rule 4-403(e) of the Georgia Rules of Professional Conduct.

FORMAL ADVISORY OPINION NO. 05-11

QUESTION PRESENTED:

May an attorney ethically defend a client pursuant to an insurance contract when the attorney simultaneously represents, in an unrelated matter, the insurance company with a subrogation right in any recovery against the defendant client?

SUMMARY ANSWER:

In this hypothetical, the attorney's successful representation of the insured would reduce or eliminate the potential subrogation claim of the insurance company that is a client of the same attorney in an unrelated matter. Thus, essentially, advocacy on behalf of one client in these circumstances constitutes advocacy against a simultaneously represented client. "Ordinarily, a lawyer may

not act as an advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated." *See*, Rule 1.7, Comment 8. This is true because adequate representation of any client includes a requirement of an appearance of trustworthiness that is inconsistent with advocacy against that client.

Thus, if the insurance company, *as opposed to an insured of that company*, is in fact the client of the attorney in the unrelated matter, then this representation would be an impermissible conflict of interest under Rule 1.7(a) and consent of both clients, as sometimes permitted under Rule 1.7 to cure an impermissible conflict, would not be available. *See,* Rule 1.7(c)(3).

If, however, as is far more typically the case, it is not the insurance company that is the client in the unrelated matter, but an insured of the insurance company, then there is no advocacy against a simultaneous representation client and the representation is not prohibited for that reason. Instead, in such circumstances, the attorney may have a conflict with the attorney's own interests under Rule 1.7 (a) in that the attorney has a financial interest in maintaining a good business relationship with the non-client insurance company. The likelihood that the representation will be harmed by this financial interest makes this a risky situation for the attorney. Nevertheless, under some circumstances the rules permit this personal interest conflict to be cured by consent of all affected clients after compliance with the requirements for consent found in Rule 1.7(b). Consent would not be available to cure the conflict, however, if the conflict "involves circumstances rendering it reasonably unlikely that the lawyer [would] be able to provide adequate representation to one or more of the affect clients." *See*, Rule 1.7(c). The question this asks is not the subjective one of whether or not the attorney thinks he or she will be able to provide adequate representation despite the conflict, but whether others would reasonably view the situation as such. The attorney makes this determination at his or her own peril.

OPINION:

Correspondent asks whether an attorney may ethically defend a client pursuant to an insurance contract when the attorney simultaneously represents, in an unrelated matter, the insurance company with a subrogation right in any recovery against the defendant client. In this hypothetical, the attorney's successful representation of the insured would reduce or eliminate the potential subrogation claim of the insurance company that is a client of the same attorney in an unrelated matter.

> This situation is governed by Rule 1.7, which provides:
>
> (a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).
>
> (b) If client consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents, preferably in writing, to the representation after:
>
> (1) consultation with the lawyer;
> (2) having received in writing reasonable and adequate information about the material risks of the representation; and
> (3) having been given the opportunity to consult with independent counsel.
>
> (c) Client consent is not permissible if the representation:
>
> (1) is prohibited by law or these rules;
> (2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
> (3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

If the representation of the insurance company in the unrelated matter is, in fact, representation of the insurance company, and not representation of an insured of the company, then we get additional assistance in interpreting Rule 1.7 from Comment 8 which states that: "Ordinarily, a lawyer may not act as an advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated." This is true because adequate representation of any client includes a requirement of an appearance of trustworthiness that is inconsistent with advocacy against that client. This prohibition is not because Georgia lawyers are not sufficiently trustworthy to act professionally in these circumstances by providing independent professional judgment for each client unfettered by the interests of the other client. It is, instead, a reflection of the reality that reasonable client concerns with the appearance created by such conflicts could, by themselves, adversely affect the quality of the representation.

Thus, in this situation there is an impermissible conflict of interest between simultaneously represented clients under Rule 1.7(a) and consent to cure this conflict is not available under Rule 1.7(c) because it necessarily "involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients." *See, generally*, ABA/BNA LAWYERS MANUAL ON PROFESSIONAL CONDUCT 51:104-105 and cases and advisory opinions cited therein. *See, also*,

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1495 (1982) (lawyer may not accept employment adverse to existing client even in unrelated matter; prohibition applies even when present client employs most lawyers in immediate geographical area, thereby making it difficult for adversary to retain equivalent counsel).

If, however, as is far more typically the case, it is not the insurance company that is the client in the unrelated matter, but an insured of the insurance company, then there is no advocacy against a simultaneous representation client and the representation is not prohibited for that reason. Instead, in such circumstances, the attorney may have a conflict with the attorney's own interests under Rule 1.7 (a) in that the attorney has a financial interest in maintaining a good business relationship with the non-client insurance company. The likelihood that the representation will be harmed by this financial interest makes this a risky situation for the attorney. Nevertheless, under some circumstances the rules permit this personal interest conflict to be cured by consent of all affected clients after compliance with the requirements for consent found in Rule 1.7(b). Consent would not be available to cure the conflict, however, if the conflict "involves circumstances rendering it reasonably unlikely that the lawyer [would] be able to provide adequate representation to one or more of the affect clients." *See*, Rule 1.7(c). The question this asks is not the subjective one of whether or not the attorney thinks he or she will be able to provide adequate representation despite the conflict, but whether others would reasonably view the situation as such. The attorney makes this determination at his or her own peril.

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

Pursuant to 28 U.S.C. § 2071(b), and 28 U.S.C. §§ 332(d)(1) and 358, notice and opportunity for comment is hereby given of proposed amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit, and of proposed amendments to Addendum Three, Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct or Disability.

A copy of the proposed amendments may be obtained on and after Dec. 1, 2008, from the court's website at www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia 30303; 404-335-6100. Comments on the proposed amendments may be submitted in writing to the clerk at the above street address by Jan. 2, 2009.

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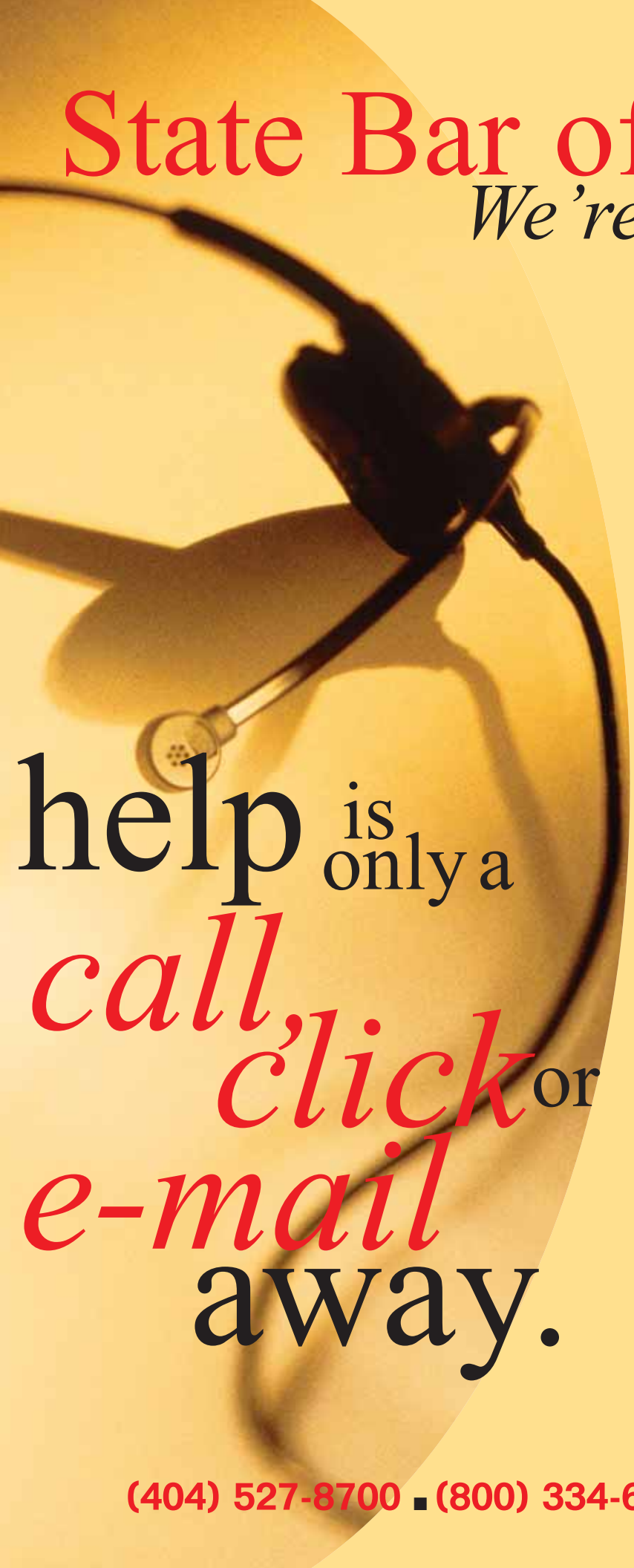

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