



Georgia Bar Journal

August 2007 ■ Volume 13 ■ Number 1



Gerald M. Edenfield
45th State Bar President



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The Annual CLE Program and Luncheon

presented by The Agricultural Law Section of the State Bar of Georgia,
The Walter F. George School of Law of Mercer University and ICLE



The Cutting Edge of Agricultural Law

Chaired by **Nowell Berreth** of **Alston & Bird LLP**, this seminar will focus on Georgia's largest industry, agriculture. With the new corn-based ethanol plant in Camilla and the efforts to produce cellulosic ethanol from Georgia's abundant pine trees, agriculture promises to be an even larger part of our state's economy. Come be on the cutting edge and learn about these exciting developments from some of the country's leading experts in agricultural law.

SPEAKERS

Allen Olson, *Moore Clarke Duvall & Rodgers*

Jill Stuckey, *Director of Alternative Fuels for the Georgia Environmental Facilities Authority*

Bill Boone, *Georgia Agriculture Innovation Center*

Theodora Retsina, *President of Georgia-based company American Process Inc., focused on cellulosic ethanol processes*

Tony Flagg, *General Manager of the new corn-based ethanol plant in Camilla, Georgia*

Terry Centner, *Professor at the University of Georgia*

Bob Reynolds, *Alston & Bird*

Walter Kelley, *Chapter 12 U.S. Bankruptcy Trustee for the Middle District of Georgia*

Susan Schneider, *Professor of Agricultural Law at the University of Arkansas*

Mike Brown, *Alston & Bird*

Jason Willcox, *Moore Clarke Duvall & Rodgers*

With a luncheon address by **Joe D. Whitley**, *Alston & Bird, former U.S. Attorney for the Northern and Middle Districts of Georgia and the first General Counsel of the U.S. Department of Homeland Security*



TOPICS: *Ethanol and other biofuels, immigration issues facing Georgia agribusinesses, the 2008 Farm Bill, biosecurity issues, food law and food safety, nuisance law and farm bankruptcies.*

Those attending will receive 6 CLE hours

Friday, September 21, 2007 (8:30 a.m.)

Mercer University School of Law, Macon, Georgia
Luncheon held at the Woodruff House on the Mercer campus

To register, contact ICLE at 1.800.422.0893 or online at www.iclega.org
Questions? Contact Nowell Berreth at 404.881.4481



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State Bar of Georgia

We're here for you!

Law Practice Management Program

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

Consumer Assistance Program

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

Lawyer Assistance Program

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

Fee Arbitration

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

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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; sarah@gabar.org.

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by Gerald M. Edenfield



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The Opportunities For Service Are Plentiful

Words cannot describe how honored I am to accept the gavel that symbolizes the awesome responsibility of serving as president of the State Bar of Georgia. But I indeed accept it proudly and with much excitement about the challenges and opportunities ahead of us these next 12 months.

First, I want to express my sincere congratulations and appreciation to my predecessor, Jay Cook, for a job well done as our president for 2006-07. Jay blazed quite a trail for us, and the State Bar will benefit for many years to come from his service. Jay's passion for our profession and our system of justice was evident in every action he took during the past year. I am truly blessed to follow in his footsteps and in those of all who preceded him in this office.

Before I elaborate on what I see as our opportunities and challenges over the next 12 months, I want to share with you some of the things I have learned as a Georgia lawyer.

**"I challenge you
to become the rock where
liberty and justice can
stand upon to gaze
into the possibility of a
better tomorrow."**

To paraphrase the poet Tennyson, we are all part of that we have met. Thus, I hope you will indulge me for a glimpse of who I am and what I believe we can accomplish this year to help strengthen the administration of justice for the rich, the poor, the just and the unjust.

I was born and reared on a row crop farm in Bulloch County, near Statesboro. The summers were long and hot, the work backbreaking and arduous. My parents had little regard for child labor laws, but they did have a high regard for hard work and rearing their children to be good citizens.

The only lawyer I knew was my brother Avant. Although Judge Newell Edenfield was a lawyer (and distant cousin), he lived in Atlanta and had escaped the farm about six decades before I did. I became an adult while selling Fuller brushes during the summer and working at a wholesale beer warehouse loading trucks, linen trucks, selling patent medicine from New Orleans to San Juan—notwithstanding attending the University of Georgia and Mercer University Law School.

After law school, I began practicing at a medium-sized firm in Atlanta where I worked for approximately 10 years. I then returned to Statesboro to practice general law with an emphasis on trial practice. These experiences have afforded me a diverse background. More importantly, I have had the opportunity to observe and

work with lawyers and courts from all geographic areas and from all types of practices.

So as Tennyson noted, these people and experiences have shaped me. All in all, I have enjoyed it and prefer to be in the presence of lawyers and judges because I always learn a valuable lesson and enjoy myself while I am learning.

I have reached a few conclusions:

- I am PROUD to be a Georgia lawyer!
- Some of the best citizens in this state are lawyers, and I am proud to have so many friends who are lawyers and judges.
- Overwhelmingly, most Georgia lawyers and judges are hard-working, honest and conscientious, and they value their profession highly.
- Lawyers are never going to be popular with the general public, but we are generally held in high esteem by our clients. Judges are highly regarded by the great majority of citizens.
- I am proud to be in this position and to address you as "Fellow members of the State Bar of Georgia."

Let's take a moment to remind ourselves why the State Bar of Georgia exists: that is, to foster among our members the principles of duty and service to the public, to improve the administration of justice and to advance the science of law.

And in case you are wondering who is responsible for carrying out this mission, please join me in taking the proverbial "look in the mirror." After all, if Georgia lawyers do not step up to the plate and remind citizens why judicial independence matters, who will?

It is not just in lawyers' best interest for the State Bar to promote public service, protect the judiciary and strengthen our profession. It is in the best interest of our state and nation. And it is absolutely essential to the continued success of a

justice system that is the envy of the world.

The study of law, according to the British statesman Edmund Burke, "renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources . . . No other profession is more closely connected with actual life as law."

As a unified bar, we are blessed with more than 38,000 men and women who have been rendered acute, inquisitive, dexterous, prompt in attack, ready in defense and—collectively, at least—full of resources. There is strength in these numbers, but there is far more strength when those numbers are actively participating. The opportunities for service are plentiful.

In this article, I would like to share with you five major areas of service that I believe will go a long way toward accomplishing our mission in the coming year.

Lawyer Advertising

First, we will rededicate and intensify our efforts to protect the public and the justice system by enforcing disciplinary rules against false and misleading lawyer advertising. While we cannot, and would not, violate the First Amendment when it comes to the ads that many of us find distasteful, we can and certainly will act on those that are factually wrong or otherwise misinform the public.

This effort will include revisions to the advertising rules, the establishment of local, three-member committees in each judicial district to report false or misleading ads, a new Bar staff investigator dedicated solely to lawyer advertising cases and a heightened emphasis on enforcement by the State Disciplinary Boards.

Reining in false and misleading lawyer advertising will also help protect and restore public confidence in the justice system. I pledge to work hard on this rededicated effort and believe you will see positive results in the coming year.

Executive Committee Meetings

Second, your State Bar leadership will be more accessible than ever this year. We plan to hold our Executive Committee meetings where you are, so that no matter what corner of our great state you live in, at least one of these meetings will be only a short drive away.

I encourage you to attend these meetings to keep abreast of the many issues the Executive Committee is addressing throughout the year and communicate any concerns you have or suggestions for dealing with the issues that are important to your community, region or area of practice.

At a minimum, every local bar association and Board of Governors member from that region of the state should be represented. But I call on you to take it a step further: invite and bring your state representatives and state senators with you to these meetings.

This is only part of an intensified effort to reach out to our lawmakers before the 2008 session of the General Assembly, which brings me to the next area of emphasis.

Judicial Pay Raises

We plan to work with our state Legislature to hopefully secure adoption of the recommendations made by the State Bar's Commission on Judicial Service.

This commission, chaired by former House Majority Leader Larry Walker, studied a number of issues related to judicial service in Georgia, not the least of which is that of the salary structure for judges who are paid by state funds.

Legislation for a modest pay increase passed the House, but in the budget chaos of the final week of the 2007 session, it did not get out of the Senate Appropriations Committee. It remains there and will be brought up for consideration during the 2008 session.

Our commitment is to continue to attract and retain our state's best and brightest to serve on the bench

for the benefit of all Georgians. To do that, judicial compensation must be competitive with opportunities in the private sector.

This is just one issue the State Bar is working on, however. And I am sure there will be others, as always, that will require us to “play defense.” That’s why it is so important that we constantly work to cultivate positive relationships with our legislators.

It is essential that each of you contact or, better yet, meet with your representatives and senators before next year’s legislative session. Offer to help them with understanding and dealing with complicated issues when they need to call on you, and make sure they are aware of your position on bills they are considering that affect the justice system one way or the other. The important thing—no, the absolutely essential thing—is establishing and maintaining those relationships.

Pro Bono

Fourth, I want you to join me in making ourselves available to do more pro bono work, and making it known that lawyers do give back to the community in many ways, not the least of which is donating our time and legal services to those in need.

For example, local lawyers could schedule regular Saturday morning gatherings at your county’s courthouse, publicize those events and take turns being available to answer questions and assist those who can’t afford legal services when they need help. I’ll be contacting you soon to ask for your help in expanding our pro bono work.

Pro bono work and supporting our communities through public service are the kinds of activities that will help strengthen people’s faith in the legal profession and, more importantly, restore whatever confidence they had in the justice system that might have eroded over time.

Thomas Jefferson’s words—“The study of law qualifies a man

to be useful to himself, his neighbors and to the public”—remind us that lawyers’ responsibilities to our communities exist inside and outside the courtroom.

Foundations of Freedom

Finally, this is the third full year of our renewed emphasis on the Foundations of Freedom program and the Bar’s efforts to keep the public informed and educated on the importance of maintaining the Founding Fathers’ vision of a strong, independent and impartial judicial branch of government.

In his State of the Union address in January of this year, President Bush declared, “A future of hope and opportunity requires a fair, impartial system of justice.” Yet every day, it seems, judges and lawyers come under one type of attack or another—not always of a violent nature, although they are the most publicized . . .

When an elected official lambastes “activist judges” for partisan political gain, then that is an attack on justice . . .

When special interest groups pour millions of dollars into judicial campaigns in a blatant attempt to tilt the balance in their favor, then that is an attack on justice . . .

When the American people repeatedly hear sound bites in the media about frivolous lawsuits . . . runaway juries . . . criminals put on the streets—and, yes, judicial activism—with little or no response, then that is an attack on justice . . .

There is no doubt these attacks have sharply escalated throughout our nation the past several years. Unless this trend is reversed, the strong and independent judiciary that our Founding Fathers envisioned more than 200 years ago will disappear before our eyes.

As former U.S. Supreme Court Justice Benjamin Cardozo wrote in 1921, “One of the most fundamental social interests is that law shall be uniform and impartial. There

must be nothing in its action that savors of prejudice or favor or even arbitrary whim or fitfulness.”

More than 80 years later, Justice Anthony Kennedy concurred, “The law makes a promise—neutrality. If the promise gets broken, the law as we know it ceases to exist.”

The question is, whose job is it to respond to these attacks and protect our courts from any and all threats to neutrality in our courts and our judges’ ability to decide cases fairly and impartially, based solely on the rule of law and not outside influences or pressure from politics, the media or even public opinion?

Well, I can only speak for Georgia, but your State Bar has taken up this challenge in a big way since the renewed commitment to our Foundations of Freedom program three years ago. We have stepped up our efforts to meet our responsibility to remind our fellow citizens how important a fair and impartial court system is.

The State Bar has enhanced and increased these types of public education efforts during the past year under Jay Cook, with a major broadcast advertising component planned for this year.

Every member of the State Bar has much to offer. We need not only your expertise but also the perspective you bring from your area of the state. This is a sincere request for you to become involved.

I want you to feel free to contact me with any advice and counsel as to how the State Bar can do a better job of serving the public and the justice system, upholding the constitutional promise of justice for all. Again, there are many unique perspectives represented in this organization from which the rest of us can benefit as we undertake these efforts.

Likewise, you are encouraged to use the State Bar as a resource in any way that will benefit you, your clients and your community.

For the past couple of years, we have had much success in placing

articles, editorials and letters in newspapers around the state — large and small. We have placed messages on public radio stations and made civic club presentations.

We are expanding the initiative this year with a significant statewide campaign of television commercials. Watch for them on a local station or cable channel near you.

In opinion polls, the public responds favorably to time-honored concepts unique to American government — separation of powers, trial by jury, equal in the eyes of the law, innocent until proven guilty, checks and balances, and holding the powerful accountable. It is alarming however to learn how few people really know what those terms mean.


I would ask that you assist us in this public education effort in your own communities. Whether it is with a presentation to a civic club or school group, an article in the local newspaper or even a conversation on the sidewalk, don't pass up an opportunity to inform your neighbors and friends about our justice system and why we need to protect it. We are working on prepared remarks including PowerPoint presentations, available for you to deliver to civic clubs.

Also, I'd like to continue one of Jay's successful public education programs and ask you to keep me informed about what is going on in your communities. When a lawyer receives some kind of award, or an appointment to a judgeship or a position of leadership in the community, this is an opportunity for me, as president of the State Bar, to write a letter to your local newspaper and offer congratulations to that individual, or the local bar association, or whomever is being recognized.

Even upon the death of a well-known and respected Bar member, I would like to write a letter of condolence and appreciation for their service. Not only is this an appropriate means of recognition, it gives the State Bar another opportunity to publicize the important role of law and judicial independence. Please keep me posted.

I am calling upon each member of the State Bar of Georgia to serve in whatever capacity you can to ensure the law is upheld, respected and available to those who require it. I truly believe, as Oliver Wendell Holmes attested, that "man is born a predestined idealist, for he is born to act. To act is to affirm the worth of an end, and to persist in affirming the worth of an end is to make an ideal."

I challenge you to become the rock where liberty and justice can stand upon to gaze into the possibility of a better tomorrow.

Thank you again for giving me this opportunity. It is the highlight of my career, and I will work hard to make you proud. I want you to know that I am at your service, and I hope that I can count on your help and support as well. 

Gerald M. Edenfield is the president of the State Bar of Georgia and can be reached at gerald@ecbcpc.com.

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by Cliff Brashier

Your Guide to www.gabar.org

Did you know that the State Bar's website gets more than 140,000 visits each month? For those of you into the high

tech numbers, each visitor views about six pages per visit, and spends an average of three to five minutes on each page. We also have "traffic" from six continents! The top three features visitors are utilizing on our website are the member directory search, research using Casemaker and checking CLE credits.

"Casemaker is currently expanding its federal content to include all U.S. Supreme Court cases and Circuit Court cases going back to 1950. This ever-expanding library makes Casemaker one of the most valuable member benefits the Bar offers."

Member Directory Search

When you receive your printed *Directory and Handbook* in the mail each November, inevitably, it's already outdated. That's just the unfortunate fact about printed material. We try our best to work around that by a nifty feature on our website—the member directory search. From the home page, simply click on "Directories" and then on "Member Directory Search." You are able to search using first name, last name, section, company, state or zip code. The best part about this is that the search results are the most up-to-date information possible, as membership records are updated nightly. Not only do you receive members' names and addresses, but you also receive their e-mail address, school affiliation and year they were admitted to the Bar.

Our website also makes it easy to keep the Bar informed of your most recent contact information,

which is required by Rule 1-207. You can update your information with just a few clicks of a mouse with our membership department at www.gabar.org/member_essentials/address_change/.

Casemaker

The State Bar entered the online legal research arena on Jan. 3, 2005, with the debut of Georgia Casemaker. Casemaker is a unique online legal research tool with a powerful search engine providing access to a combination of state and federal materials. Best of all it is free for all members. This online legal research database is available to all members of the Bar 24 hours a day, seven days a week.

Assistance in Casemaker is just a phone call away. Our Member Benefits Coordinator Jodi McKenzie also instructs free classes at the Bar Center twice a month, and there is usually at least one class offered outside of Atlanta monthly. The Bar is constantly working with Casemaker to make it the best it can be for our members. Casemaker's comprehensive library includes links to Georgia caselaw, Georgia statutes, state and federal court rules, administrative codes, Attorney General opinions, and much more.

Recently, Casemaker added libraries for every state in the country, which include state caselaw, current state statutes and the state's constitution. Casemaker is currently expanding its federal content to include all U.S. Supreme Court cases and Circuit Court cases going back to 1950. This ever-expanding library makes Casemaker one of the most valuable member benefits the Bar offers.

Check CLE

Don't know how many CLE credits you have? Again, that information is just a click away. From our home page, click on "Check CLE" and enter your Bar number. A report is posted that will let you know if you are lacking hours for

the year or if you have carried hours over from the previous year.


Other Helpful Pages

Not only is the website good for the things mentioned above, it's also helpful for much more. All of the State Bar's bylaws and rules are located on the website under "Handbook." You can also find a list of Advisory Opinions and helpful indexes under "Ethics."

Looking for an article that was printed in the *Georgia Bar Journal*? A complete PDF of each *Journal* (a 10-year archive) is located under the "Communications" button. Not only are the *Journals* posted on the website, you can also view issues of section newsletters, the Young Lawyers Division newsletter *The YLD Review*, and eSource, an online newsletter that our Law Practice Management Program publishes.

Parking deck hours including night and weekend hours for free event parking, a directory of vendors for lawyers, and tons of resource information are all there for your convenience. Just click "Member Essentials" or other headings, and I think you will find several areas that you will return to frequently.

To provide a more secure environment on the website for our members, we are working on a new feature that will allow you to choose your own custom username and password to access Casemaker, your member profile and CLE information. Look for this new update in the coming months.

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

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

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by Elena Kaplan

Walk on the YLD Side!

Eight years ago, a friend of mine from college, Kendall Butterworth, called to ask me to help restart the YLD's Community Service Projects

Committee. At the time, Kendall was the president-elect of the YLD. As a second year associate, I was a little unsure whether I really had the time, but I liked the idea

of meeting other young lawyers and doing some good deeds in the process. So, I agreed.

It was definitely one of the better decisions I've made; I ended up having a great time both working with the committee on various projects and during the past eight years getting to know other young lawyers through the YLD. Looking back, I am really thankful to Kendall for making that call and getting me involved in this wonderful organization. If you are not yet involved in a bar association, please consider this article as my call to you. (And this is a call to ALL of you, not just members of the YLD.)

My absolute favorite project from that first year with the Community Service Projects Committee, a project with which I have now volunteered for eight years in a row, is the Secret Santa event. In Fulton County, the

Division of Family and Children Services has thousands of kids in its care, and each year the staff organizes a massive gift drive to make sure that every one of those kids gets at least three presents from Santa. YLD members volunteer on a mid-December Saturday to help make sure that the presents the kids asked for are the presents the kids receive. It's a fabulous experience—like being one of Santa's elves, checking the list twice and ensuring that these children in foster care can at least have faith that Santa will deliver what they want.

"The YLD works hard to have a broad range of committees to address the diverse interests of younger lawyers throughout Georgia, and we are always looking for new ideas for committees!"

The YLD and its committees provide opportunities like this to serve the public and the profession, as well as to network with other attorneys and have a good time throughout the year. The YLD works hard to have a broad range of committees to address the diverse interests of younger lawyers throughout Georgia, and we are always looking for new ideas for committees! If you have an idea for a committee, please let us know. A sampling of the activities of the YLD follows, and a complete list of the committees and their descriptions, along with a sign-up sheet, can be found at www.gabar.org/young_lawyers_division/yld_committees.

Helping the Kids

The High School Mock Trial (HSMT) Committee organizes regional mock trial competitions and a statewide mock trial tournament for high school students. In addition, this committee provides support to

high school mock trial teams throughout the state. In 2009, the committee will host the national HSMT competition in Atlanta.

The Aspiring Youth Committee organizes a six week after-school tutoring and mentoring program twice a year for middle school children. The program is an incredible growth experience for both the volunteering attorneys and the children benefiting from the one-on-one attention.

If you are interested in working with kids, consider volunteering with the High School Mock Trial Committee, the Aspiring Youth Committee, the Community Service Projects Committee, the Law-Related Education Committee, the Advocates for Students with Disabilities Committee or the Celebration of Excellence Subcommittee of the Juvenile Law Committee.

Networking, CLE and Professional Development

The YLD has a variety of committees that provide networking and CLE opportunities for young lawyers. There are currently committees for Business Law, Criminal Law, Elder Law, Ethics & Professionalism, Family Law, Intellectual Property Law, Juvenile Law, Labor & Employment Law, Litigation, Minorities in the Profession, Real Estate, and Women in the Profession.

Other YLDs

The State Bar YLD also encourages involvement with both local and national YLDs. There are many local YLDs in Georgia, including Savannah, Atlanta, Cobb County, Valdosta (just forming), DeKalb County, Augusta and Macon. Let us know if we can put you in touch with your local YLD. Or, if there isn't a local YLD in your area and you want to start one, we can help you with that too. On the national level, we are an affiliate of the American Bar Association (ABA) YLD. If you are interested in some amazing

opportunities for service, networking, and travel on a national level, serving as a Georgia representative to the ABA/YLD is just the ticket.

Moot Court and Mock Trial Competitions

In addition to the High School Mock Trial competition mentioned above, YLD committees also organize the Intrastate Moot Court Competition for Georgia law school students, the Region V competition of the National Moot Court Competition for law school students in the Southeast, and the William W. Daniel National Invitational Mock Trial, a criminal mock jury trial competition for law school students from all over the country.

If you enjoyed participating in moot court or mock trial while in law school, consider volunteering with one of these committees and help provide that same great experience to the next generation of lawyers.

Annual Events

The YLD Signature Fundraiser Committee plans an event to raise money for charity. This committee was started last year by Immediate Past President Jon Pope to raise money to support Hurricane Katrina relief. The inaugural event, a Mardi Gras Casino night, raised \$10,000. The money was contributed to Tipitina's Foundation, a charity that provides instruments to music programs in New Orleans public schools. Because of the great success of the event last year and the fun had by all who attended, the fundraiser will be held again this year to support law-related organizations in Georgia.

The Appellate Admissions Committee plans two ceremonies each year to swear-in new admittees to the Supreme Court of Georgia, the Georgia Court of Appeals, and the U.S. District Courts. Several hundred lawyers are admitted in each ceremony.


Every January, the Legislative Affairs Committee hosts a legisla-

tive luncheon (formerly a breakfast), and invites various legislators to speak on the goings-on under the Gold Dome. In addition to the speakers, the lunch is attended by numerous elected officials, creating a wonderful opportunity for younger lawyers to learn about what is going on in our state's government.

Meetings

The YLD has a number of week-end meetings each year for YLD members. These meetings are an excellent opportunity to meet other lawyers from all over the state, as well as to earn some of those necessary CLE hours! A list of the upcoming meetings is below.

How to Get Involved

Are you interested in getting involved yet? To sign up for a committee or the YLD meeting registration form mailing list, go to www.gabar.org/young_lawyers_division/yld_committees/ for a sign-up sheet. You can also contact the YLD by contacting me or Deidra Sanderson, YLD director, at deidra@gabar.org or 404-527-8778. 

Elena Kaplan is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at ekaplan@phrd.com or 404-880-4741.

2007-08 YLD Meetings

Oct. 12-14, 2007

Union Station Hotel,
Nashville, Tenn.

(UGA vs. Vanderbilt football game)

Jan. 9-12, 2008

Omni Hotel at CNN Center
Atlanta, Ga.

April 11-13, 2008

The Grand Sandestin
Sandestin, Fla.

June 5-8, 2008

Amelia Island Plantation
Amelia Island, Fla.

Are We Witnessing the Erosion of Georgia's Separate Property Distinction?

by Rachel A. Elovitz

As traditional notions of marriage and family continue to change, so do Georgia's laws regarding the regulation and dissolution of the marital unit. This article deals with the latter, specifically the metamorphosis of Georgia's laws regarding the distribution of assets.

Formerly in Georgia, marriage merged the property rights of the parties and placed all control in the husband.¹ By 1866, however, Georgia law provided:

All the property of the wife at the time of her marriage, whether real, personal or choses in action, shall be and remain the separate property of the wife, and . . . all property given to, inherited or acquired by the wife during coverture shall vest in and belong to the wife, and she shall not be liable for the payment of any debt, default, or contract of the husband.²

One hundred and thirteen years later, as a result of the U.S. Supreme Court's decision in *Orr v. Orr*,³ the Georgia Legislature amended Section 53-502 of the Georgia Code to acknowledge *each* spouse's right to retain the property that he or she brought to the mar-

riage, as follows: "The separate property of each spouse shall remain the separate property of that spouse except as provided in Code Title 30 and except as otherwise provided by law."⁴ Through the years, however, this seemingly concise statement has been eroded by the Supreme Court of Georgia.

Stokes: A Merger of Consistency and Innovation

In 1980, the year following the amendment to Georgia's law, the Supreme Court decided *Stokes v. Stokes*.⁵ There, the Court confirmed the *Orr* decision and the amendment of Section 53-502 of the Georgia Code.⁶ In *Stokes*, the husband sued for divorce from his wife of 20 years and claimed an equitable interest in real and personal property, including the marital residence. At trial, the evidence was that the wife's father had deeded the land to the husband, that "a house was built," and that the husband then deeded the land and house to the wife.⁷

The trial court overruled an objection by the wife to the trial court's charge on equitable division of property. The jury awarded a three-fourth interest in the property to the wife and a one-fourth interest to the husband. The Supreme Court granted review of the decision, in pertinent part to determine whether the trial court erred in charging the jury on division of the marital property.



The charge given to the jury was as follows:

Now, the plaintiff by way of an amendment alleged that the house and lot at 450 Pinetree Drive, Lawrenceville, Georgia, was acquired by the parties in this case and placed in the name of Joyce Jones, defendant – Joyce Jones Stokes. The plaintiff contends that the purchase money for the house and the property and all mortgage payments were furnished by the joint efforts of the parties. And he contends that this property should be equally divided between the parties in this case. . . .

. . . .

. . . [T]he . . . question is whether or not you think that there should be a division of the property involved between these parties. . . . So I have provided a further portion of your verdict, "We further find that the

plaintiff . . . 'is' or 'is not' entitled to division of the house and lot" If you find that a division of the property is proper then you would complete the following, "We divide said property as follows."⁸

In its analysis, the Supreme Court noted that it had previously "approved the equitable division of *personal* property,"⁹ and then pointed to a separate line of cases in which it had upheld the division of *real* property incident to divorce.¹⁰ As a result, the Court concluded that the trial court did not err in submitting the issue of property division to the jury and that the husband was entitled to an equitable interest in the marital home.¹¹

Stokes is regarded as a milestone in domestic relations law, because, as noted in Justice Harold N. Hill Jr.'s concurring opinion, it "verifies" that which the Supreme Court had for years recognized, "the doctrine of equitable division."¹² *Stokes* was also revolutionary in

that it established guidelines for the division of assets (again in Justice Hill's concurring opinion), as follows:

In a suit for permanent alimony incident to divorce or legal separation, the court or jury shall:

(1) Assign each spouse's real and personal property and assets at the time of the marriage, or inherited during the marriage, to that spouse.

(2) Equitably apportion between the parties the real and personal property and assets acquired during the marriage whether the title thereto is in the name of one spouse or both. (If necessary to an equitable apportionment, real property may be partitioned.) In making this apportionment, the court or jury shall consider the duration of the marriage, and any prior marriage of either party; the age, health, occupation, vocational skills, and employability of

each party, as well as the contribution or service of each spouse to the family unit; the amount and sources of income, estate (see (1) above), debts, liabilities and needs of each of the parties, as well as debts against property; and whether the apportionment is in lieu of or in addition to permanent alimony (see (3) below) and the opportunity of each for future acquisition of assets and income by employment or otherwise.

(3) Provide permanent alimony, if it sees fit to do so, to one party in accordance with the needs of that party and the ability of the other party to pay, either from future earnings or the corpus of the estate whether acquired before or during the marriage (see (1) and (2) above), according to the condition of both parties, their separate estates, earning capacities, needs and fixed liabilities. (See Code §§ 30-201, 30-209 as amended.)

Let me explain that paragraph (1), above, is an adaptation of Code § 53-502, as enacted and as amended, and relates to the “separate property” of the parties; paragraph (2) relates to the equitable division of the property identified as the “marriage property” and implements Code §§ 30-105; 30-118; and paragraph (3) relates to permanent alimony and comes from the Code sections cited. In my view, the jury should first identify the “separate property” (paragraph 1) and allocate it to the proper party (one share to the husband, if any, and one share to the wife, if any). Next, the jury should equitably distribute the remaining property, the “marriage property,” on the basis of the equitable principles stated in paragraph (2), to the appropriate recipient (one share to each spouse added to the “separate property” shares previously set apart). Finally (paragraph 3), as has been the

case in the past, the jury should determine, according to the statutory formula (the needs of one and the ability of the other), if one party is entitled to an award of permanent alimony from the future earnings of the other spouse, or from the estate (the “separate property” or “marriage property” previously set apart) of the other spouse.

As I see it, the procedure employed in some superior courts has been to focus the jury’s attention first and foremost on permanent alimony, and to allow the jury to equitably apportion the property of the parties (separate as well as marriage) as part of and incident to the permanent alimony award. In my view, separating the components of the permanent alimony award into a three step, sequential procedure will be an improvement over the practice of treating everything the wife or husband receives as alimony.¹³

Stokes Progeny: The Gradual Erosion of Georgia’s Separate Property Distinction

In the last 27 years, the Supreme Court repeatedly has recognized, “A property interest *brought to the marriage* by one of the marriage partners is a non-marital asset and is not subject to equitable division since it was in no sense generated by the marriage.”¹⁴ The words “only the real and personal property and assets acquired by the parties *during* marriage is subject to equitable property division” have reverberated off the concluding pages of countless Court decisions.¹⁵

The Supreme Court also has repeated the rule that “property *acquired during the marriage by either party by gift, inheritance, bequest or devise* remains the separate property of the party that acquired it, and is not subject to equitable division.”¹⁶

Yet, repetition of that rule may be nothing more than lip service, as it has been chipped away by its sister tenet—one that allows a trial court to take a spouse’s inheritance into consideration when deciding questions of alimony and in determining the “equities” of the case.

In *Hipps v. Hipps*,¹⁷ decided in 2004, the Supreme Court awarded husband’s premarital retirement and survivor benefits to wife. The husband filed an application for discretionary appeal, claiming that the trial court was not authorized to grant the wife his retirement or survivor benefits accrued before the marriage. The Court held that the husband’s premarital contributions to his military retirement account were not subject to equitable division, but that

the trial court did not make an in rem inter vivos division of either the proceeds in the account or the monthly amount currently payable to Husband. Instead, it awarded Wife monthly alimony of \$1000 and, in addition, a survivor’s benefit, which takes the form of an annuity and is contingent upon her outliving Husband.¹⁸

The Supreme Court went on to explain that the purpose of the survivor benefit plan is

“to provide financial security to a designated beneficiary of a military member, payable only upon the member’s death in the form of an annuity. Upon the death of the member, all pension rights are extinguished, and the only means of support available to survivors is in the form of the survivor benefit plan.” . . . Thus, “a court order requiring a party to designate a former spouse as a plan beneficiary does not constitute a transfer of property.”¹⁹

The Court also held, “[A]limony may be awarded either from the [H]usband’s earnings or from the corpus of his estate, as by granting

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When an opposing party claims that your client's separate property was a gift to the marriage, you can perhaps rebut that claim by demonstrating the absence of an essential element or elements of a "gift," the prerequisites of which are outlined in O.C.G.A. § 44-5-80.

to the [W]ife the title or use of property in the possession of the [H]usband."²⁰

The next year, in *Smelser v. Smelser*,²¹ the husband sought discretionary review of the trial court's decision to award an interest in a non-marital residence as alimony to wife, even though the property was the husband's separate asset.²² The Supreme Court affirmed, quoting *Hipps*: "Alimony may be awarded either from the husband's earnings or from the corpus of his estate, as by granting to the wife the title or use of property in the possession of the husband."²³

It seems inconsistent with the notion of *fairness*—a concept intrinsic to courts of *equity*—that an otherwise non-divisible, separate property interest can be awarded to a spouse as alimony. This also prompts the question whether it is right or logical that a spouse's *separate* property interest can be considered in determining the equities of a case for the purpose of allocating *marital* assets. Yet these are questions, as seen in the above holdings, that the Supreme Court has continued to answer in the affirmative.

Lerch: Another Set of Potential Pitfalls

For almost two decades (since 1989), the Source of Funds Rule has guided domestic litigators in deciphering the separate and marital property components of assets.²⁴ The rule was intended to provide a mechanism through which the spouse who contributes separate funds and the marital unit that contributes marital funds to the same item of property each could receive a "proportionate and fair return on

their investment."²⁵ The line of demarcation has been blurred, however, with the ever-expanding ways in which the Supreme Court has transmuted items of separate property into marital assets. For example, the Court has held that

as a matter of law, if the separate non-marital property of one spouse appreciates in value during the marriage solely as the result of market forces, that appreciation does not become a marital asset which is subject to equitable division; but, if the separate non-marital property of one spouse appreciates in value during the marriage as the result of efforts made by either or both spouses, that appreciation *does* become a marital asset which is subject to equitable division.²⁶

The Supreme Court also has held that, when the marital unit reduces the outstanding indebtedness on real property, the contribution translates into a marital interest in the property.²⁷ Additionally, an interspousal gift, if initially acquired during the course of the marriage, will remain marital property for the purpose of equitable division, "notwithstanding any subsequent interchange between the two spouses."²⁸

Most recently, in *Lerch v. Lerch*, the Supreme Court held that if a premarital asset is placed in the joint names of the marital couple, then it becomes a gift to the marriage and loses its separate property distinction.²⁹ In *Lerch*, the wife signed a prenuptial agreement promising not to make any claims against the husband's property in the event of divorce. During the

marriage, the husband transferred ownership of his premarital home to himself and his wife as tenants in common with right of survivorship. In so doing, the Supreme Court held, he "manifested an intent to transform his own separate property into marital property."³⁰ He, in effect, lost what would have been his right under the Source of Funds Rule to a proportionate return on his premarital investment.

Lerch sparked much debate among practitioners regarding its seeming incompatibility with the express purpose of the doctrine of equitable division, that "[o]nly property acquired as a direct result of the labor and investments of the parties during the marriage is subject to equitable division."³¹

Lerch could spawn a number of new cases, further eroding the separate property distinction. If a spouse inherits funds from a parent and elects to use them as a down payment toward a home, and pending the real estate closing, deposits the inheritance into a joint checking account for a week, the Supreme Court conceivably could decide that the spouse made a gift to the marriage. In the June 2007 decision of *Bloomfield v. Bloomfield*,³² the Court came very close to doing just that. The husband claimed, in relevant part, that the trial court erred when it found that a gift of \$10,000 to his wife from her father constituted wife's separate property. The husband argued that the funds were transmuted into marital property when placed into the parties' joint account. The trial court found, however, that at the time that the wife received the gift, the husband would not allow her to maintain an individual account, so that she had

no other account in which to place the funds. Given this unique circumstance, the Supreme Court upheld the trial court's decision.³³

Not every case is going to present those circumstances. Indeed, what if the wife in *Bloomfield* had been given the "opportunity" to open an account in her own name and elected not to do so? Would the result have been different? What if wife's father (at wife's request) had transferred the funds directly from his account to the parties' joint account, and a couple of months later, wife used them to purchase stock in her sole name? What if the funds had been part of wife's inheritance? What if they were the product of a settlement from wife's personal injury lawsuit?

In *Campbell v. Campbell*,³⁴ the Supreme Court held that to the extent that a personal injury settlement represents compensation for pain and suffering and loss of capacity, it is "peculiarly personal to the party who receives it."³⁵ The Court thus excluded it from the marital estate, and noted that "[f]or the other party to benefit from the misfortune of the injured party would be unfair."³⁶ The Court further stated, "The property which we have found to be outside the marital estate is property which is very personal to the party to whom it belongs and property which was in no sense generated by the marriage."³⁷ Similarly, a spouse's inheritance is peculiarly personal to that spouse. It represents a relationship external to the marriage, typically one between parent and child. To allow a husband or wife to profit from the death of an estranged spouse's parent could certainly be considered unfair. After *Lerch*, however, we may see decisions that find that personal injury settlements and inherited funds have been transmuted into marital assets by their deposit, even if brief, into joint accounts or by other acts which (even if only in hindsight) appear to be acts designed to waive the separate nature of the property.

Practical Tips

When an opposing party claims that your client's separate property was a gift to the marriage, you can perhaps rebut that claim by demonstrating the absence of an essential element or elements of a "gift," the prerequisites of which are outlined in O.C.G.A. § 44-5-80. There can be no gift unless the donor intended to give the gift, the donee accepted it, and the gift was delivered.³⁸ Generally, the burden is on the person claiming the gift to prove all essential elements.³⁹

In Georgia, however, a gift is *presumed* if the payor and transferee are husband and wife.⁴⁰ As a result, the payor/donor must rebut the presumption by showing clear and convincing evidence that there was no gift.⁴¹ This hurdle is relatively high, even if it can be shown through circumstantial evidence.

Of course, if the trial court finds that separate property has been contributed to the marriage or otherwise transmuted because of its commingling with marital funds, it is not the end of the case for your client. It



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would still be within the trial court's discretion to award him (or her) the asset in its entirety.⁴² "[A]n equitable division of property does not necessarily mean an *equal* division. . . . [A]n award is not erroneous simply because one party receives a seemingly greater share of the marital property."⁴³ It will be up to counsel to prove to the court that under the unique circumstances of the case, equity demands an award of the property to your client.

Conclusion

In the 1950s, married couples made up 80 percent of American households, a number that fell to 51 percent by the onset of the 21st century.⁴⁴ In 1960, one American child in 20 was born out of wedlock, but by the end of the 20th century, one child out of every three born was illegitimate.⁴⁵ The concepts of marriage and family are ever changing, as are the laws that govern their beginnings and endings.

Over the last few decades, Georgia's laws regarding the division of assets have become increasingly convoluted. Exception after exception has been carved from the traditional rules upon which parties have come to rely. Assets once—without question—considered separate in nature are now at risk of being treated as marital property through a consideration of "equities" or transmuted into marital property with an act as simple as making a deposit or signing a deed. 



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2007 fall semester. Elovitz is a sole practitioner whose work focuses on family law and extends to the greater Atlanta area. She earned a B.A. degree from the University of Texas in 1988 and her J.D., *magna cum laude*, from John Marshall Law School in 1995. She is a guardian ad litem for the Atlanta

Volunteer Lawyers' Foundation, an original member of the Fulton County Family Division's Rules Committee. She can be reached at rachel.elovitz@comcast.net, 404-668-9001.

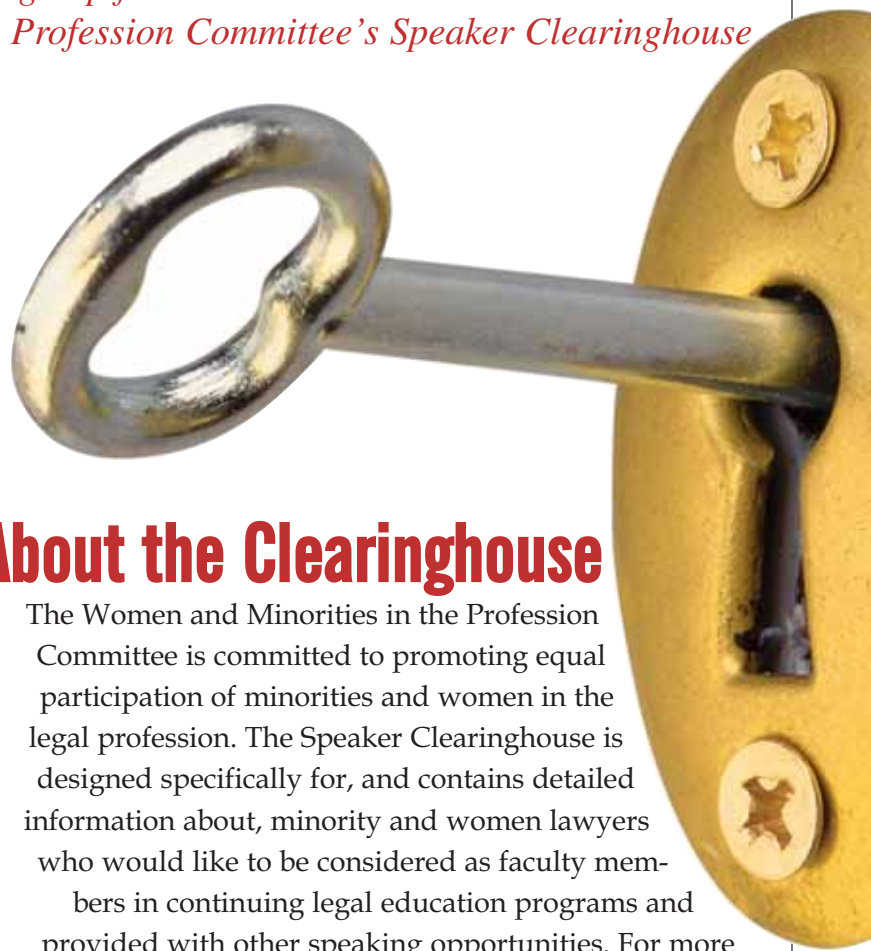
Endnotes

1. *Stokes v. Stokes*, 246 Ga. 765, 768, 273 S.E.2d 169, 171 (1980).
2. *Id.* 768, 273 S.E.2d at 171.
3. 440 U.S. 268 (1979).
4. O.C.G.A. § 53-502 (1979) (citing 1979 Ga. Laws at 466, 489) (current version at O.C.G.A. § 19-3-9).
5. 246 Ga. 765, 273 S.E.2d 169 (1980).
6. *Id.* at 768, 273 S.E.2d at 171.
7. *Id.* at 766, 273 S.E.2d at 170.
8. *Id.* at 767, 273 S.E.2d at 170-71.
9. *Stokes*, 246 Ga. at 768, 273 S.E.2d at 172. The Supreme Court of Georgia cited a line of cases, among them *Bragg v. Bragg*, 224 Ga. 294, 161 S.E.2d 313 (1968), in which the jury refused to award alimony to the wife and instead awarded her a vehicle, some equity in the house, and a portion of the household furnishings. The husband moved to strike the verdict, claiming that the award to wife of personal property should be set aside as irreconcilable with the denial of an award of alimony. The Supreme Court of Georgia in *Bragg*, however, acknowledged an intention on the part of the jury to award wife with an equitable interest in marital property, not alimony. *Stokes*, 246 Ga. at 769, 273 S.E.2d at 172.
10. *Id.* at 770-71, 273 S.E.2d at 172-73 (citing *Yarbray v. Young*, 236 Ga. 784, 786, 225 S.E.2d 315, 316 (1976), and other cases). In *Yarbray*, the jury denied wife's request for alimony, but awarded her exclusive use of the house until it sold, at which time she was to receive half of the proceeds unless used for the children's education. When the wife remarried in 1975, she moved to force the sale. The trial court responded by vacating the provision in the judgment regarding the sale of the house, finding it inconsistent with the denial of alimony. On appeal, the Supreme Court of Georgia reversed, holding that the verdict was an award of property, not alimony.
11. *Id.* at 771, 273 S.E.2d at 173. The *Stokes* decision also referenced DAN E. MCCONAUGHEY, DIVORCE, ALIMONY, AND CHILD CUSTODY § 12-2 (1975), a publication often considered Georgia's bible on domestic relations. In that publication, the author opines that "[i]n a divorce action[,] the court has ancillary jurisdiction to determine the equitable interest of either spouse in the real or personal property owned, either in whole or in part, by the other spouse." *Id.*
12. *Stokes*, 246 Ga. at 771, 273 S.E.2d at 174 (Hill, J., concurring).
13. *Id.* at 772-73, 273 S.E.2d at 174.
14. *Payson v. Payson*, 274 Ga. 231, 232, 552 S.E.2d 839, 841 (2001) (emphasis added).
15. *Yates v. Yates*, 259 Ga. 131, 131, 377 S.E.2d 677, 678 (1989) (quoting *Moore v. Moore*, 249 Ga. 27, 28, 287 S.E.2d 185, 186 (1982)) (emphasis added).
16. *Bailey v. Bailey*, 250 Ga. 15, 15, 295 S.E.2d 304, 304 (1982) (emphasis added).
17. 278 Ga. 49, 597 S.E.2d 359 (2004).
18. *Id.* at 49, 597 S.E.2d at 360-61 (citations omitted).
19. *Id.* at 50, 597 S.E.2d at 361 (quoting *Smith v. Smith*, 438 S.E.2d 582, 584 (W. Va. 1993), and *Matthews v. Matthews*, 647 A.2d 812, 817 (Md. 1994)).
20. *Id.* at 50, 597 S.E.2d at 361 (quoting *Jones v. Jones*, 220 Ga. 753, 755, 141 S.E.2d 457, 460 (1965)); see also O.C.G.A. § 19-6-5(a) (permanent alimony may be granted "to either party, either from the corpus of the estate or otherwise").
21. 280 Ga. 92, 623 S.E.2d 480 (2005).
22. *Id.* at 92, 623 S.E.2d at 481.
23. *Id.* at 92, 623 S.E.2d at 481 (quoting *Hipps*, 278 Ga. at 50, 597 S.E.2d at 361); see also O.C.G.A. § 19-6-5(a) ("The finder of fact may grant permanent alimony to either party, either from the corpus of the estate or otherwise."). This statute also sets forth the elements to be considered in granting permanent alimony.
24. *Thomas v. Thomas*, 259 Ga. 73, 76, 377 S.E.2d 666, 669 (1989).

25. See, e.g., *Maddox v. Maddox*, 278 Ga. 606, 607, 604 S.E.2d 784, 786 (2004); *Hubby v. Hubby*, 274 Ga. 525, 525, 556 S.E.2d 127, 128 (2001); *Horsley v. Horsley*, 268 Ga. 460, 460, 490 S.E.2d 392, 393 (1997).
26. *Bass v. Bass*, 264 Ga. 506, 507, 448 S.E.2d 366, 367 (1994).
27. *Crowder v. Crowder*, 281 Ga. 656, 658, 642 S.E.2d 97, 99 (2007).
28. *McArthur v. McArthur*, 256 Ga. 762, 763, 353 S.E.2d 486, 487-88 (1987) (quoting *Hemily v. Hemily*, 403 A.2d 1139, 1143 (D.C. 1979)).
29. 278 Ga. 885, 885, 608 S.E.2d 223, 224 (2005).
30. *Id.* at 886, 608 S.E.2d at 224.
31. *Payson v. Payson*, 274 Ga. 231, 232, 552 S.E.2d 839, 841 (2001) (emphasis added).
32. No. S07F0096, 2007 WL 1582225, at *2 (Ga. June 4, 2007).
33. *Id.* ("Given this specific finding of fact, we cannot say that the trial court abused its discretion.").
34. 255 Ga. 461, 339 S.E.2d 591 (1986).
35. *Id.* at 462, 339 S.E.2d at 593.
36. *Id.* at 462, 339 S.E.2d at 593.
37. *Id.* at 462, 339 S.E.2d at 593.
38. *Baker v. Baker*, 280 Ga. 299, 300, 627 S.E.2d 26, 27-28 (2006).
39. *Brock v. Brock*, 279 Ga. 119, 120, 610 S.E.2d 29, 31 (2005).
40. See O.C.G.A. § 53-12-92.
41. See *Brock*, 279 Ga. at 120-21, 610 S.E.2d at 31.
42. *Stanley v. Stanley*, 281 Ga. 672, 672-73, 642 S.E.2d 94, 95 (2007).
43. *Waters v. Waters*, 280 Ga. 477, 478, 629 S.E.2d 233, 235 (2006) (quoting *Wright v. Wright*, 277 Ga. 133, 134, 587 S.E.2d 600, 601 (2003)) (emphasis added); see *Clements v. Clements*, 255 Ga. 714, 714, 342 S.E.2d 463, 463-64 (1986) (per curiam).
44. STEPHANIE COONTZ, MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY OR HOW LOVE CONQUERED MARRIAGE, 243, 250, 264-64, 275-76 (2005), reprinted in DOUGLAS E. ABRAMS ET AL., CONTEMPORARY FAMILY LAW at 3 (2006).
45. *Id.*

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The Next Generation of Child Advocacy

Protecting the Best Interest of Children by Promoting a Child's Right to Counsel in Abuse and Neglect Proceedings

by Hon. Steven C. Teske and Melissa Dorris Carter

The field of children's law is based on a relatively young body of law that has emerged over the past 130 years. As the field continues to mature, policies and practices are continually scrutinized to ensure that the hundreds of thousands of children brought before juvenile courts across the country are adequately protected and the mission of the juvenile court is properly executed. The facet of children's law that is currently receiving the greatest attention is the examination of the child's status as a party to abuse and neglect (deprivation) proceedings and rights derived from that status, particularly including the right to be represented by legal counsel.

The further development of the representation paradigm for children who are involved in deprivation proceedings has been constrained by inconsistencies in federal and state law requiring "representation" of

children through the appointment of an attorney or lay guardian ad litem (GAL). Two competing approaches have emerged: the "best interest" GAL model and the traditional attorney-client model. Generally speaking, the role of a child's attorney is to represent the child as a client, providing legal services for a child and abiding by the same ethical and professional duties owed to an adult client. By comparison, a GAL, who may be an attorney or a lay advocate, is an officer of the court whose role is to assist the court in discerning and protecting the child's best interest.

The thesis of this article is that Georgia law is settled. Children are indeed parties to the deprivation proceedings concerning them and as such, are entitled to representation by legal counsel. Contemporary case law decisions, state statutes, and constitutional principles support this conclusion. Further, as parties, children are also entitled to participate meaningfully in court proceedings. The challenge posed to juvenile court stakeholders is to craft a practice solution that is stringent enough to uphold these rights for every child in every case and flexible enough to adjust for the differences of individual children.

In its August 2004 edition, the *Georgia Bar Journal* published an article titled "A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings," co-authored by Melissa Dorris Carter, one of the authors of the present article.¹ That piece analyzed the federal and state statutory and constitutional bases supporting a child's right to legal repre-

sensation in civil abuse and neglect proceedings. Although Georgia's statutory scheme is ambiguous in this area, the conversation begun nearly three years ago has continued among a number of juvenile judges throughout the state, and the position advanced in the 2004 article has gained strength and momentum. Although progress has been made toward reaching a consensus on the issue since the *Journal* last looked at this aspect of the law, the practice across the state has not changed dramatically. Every day, juvenile court judges are making decisions about children and their families with no guarantee that the child's wishes will be conveyed in court. This article will discuss the recent decision of *Kenny A. v. Perdue*² and its effect on children's right to counsel in abuse and neglect proceedings, and will propose a strategy that accommodates the legal and best interest concerns of children while

simultaneously minimizing costs to local governments.

The Effect of *Kenny A. v. Perdue*

At the time that the *Journal* published the last article, the state of Georgia and DeKalb and Fulton counties were vigorously defending a class action lawsuit filed by Children's Rights, a self-described national watchdog organization headquartered in New York that seeks child welfare system reform through litigation and policy initiatives.³ Children's Rights filed suit in the U.S. District Court for the Northern District of Georgia on June 6, 2002, on behalf of nine named plaintiffs seeking injunctive and declaratory relief against the agencies and officials responsible for operating the state's foster care system, including the Georgia Department of Human Resources, the Division of Family and

Children Services (DFCS), and Fulton and DeKalb counties.⁴ The plaintiffs alleged that the foster care systems operating in Fulton and DeKalb counties had a number of serious problems, including children languishing in foster care, children experiencing multiple placement moves while in state custody, and inadequate health and educational services for children in foster care. Additionally, the plaintiffs asserted a claim against Fulton and DeKalb counties for the alleged failure to provide adequate representation for children in deprivation and termination of parental rights (TPR) cases.⁵

The plaintiffs' claim against the county defendants alleged that effective legal representation was structurally impossible to provide due to the excessively high case-loads maintained by the child advocate attorneys in Fulton and DeKalb counties.⁶ Plaintiffs' counsel argued that the failure to pro-



vide effective and adequate legal representation to children before the court in cases alleging deprivation violated the plaintiffs' due process rights under the Georgia Constitution and certain statutory provisions relating to TPR proceedings.⁷ The county defendants filed a motion for summary judgment on the issue, arguing that because the Georgia Code specifically requires provision of legal counsel only in TPR proceedings, children in foster care do not have a right to effective legal representation in general deprivation proceedings.⁸ Ruling on the motion, Judge Marvin Shoob concluded that "foster children have both a statutory and a constitutional right to counsel in all deprivation proceedings, including but not limited to TPR proceedings."⁹ The court found authority in O.C.G.A. §15-11-6(b), which states that "a party is entitled to representation by legal counsel at all stages of any proceedings alleging . . . deprivation."¹⁰

The authors of the August 2004 *Journal* article did not resolve the issue of the child's status as a party, instead finding a right to counsel through the second clause of O.C.G.A. §15-11-6(b) based on the inherent conflict of interest between a child and his or her parents in the context of the deprivation proceeding. The court in *Kenny A.*, however, clearly concluded that a child is a party to the proceeding, citing *McBurrough v. Department of Human Resources*.¹¹ The apparent ambiguities on this issue dissolve when analyzed within a broader context that includes delinquency proceedings. The court's authority to appoint a GAL applies to delinquency proceedings and is appropriate in circumstances involving conflicts between the child and the parent. An example would be when a non-indigent parent refuses, for any number of reasons, to retain counsel, which could be to the child's detriment. Regardless of these apparent ambiguities, the law is settled by *Kenny A.* Although some jurists have opined that the case has

no precedential value because it resulted in a settlement agreement and therefore is applicable only to the defendants in the case, these jurists, and especially local governments, should reconsider this position. No barriers exist to the plaintiffs' taking aim at other counties and filing similar suits. Should this occur, these potential defendants will be at a disadvantage with the legal conclusions reached in *Kenny A.* After all, the agreement reached in *Kenny A.* was the result of the court's conclusion that a child is a party and entitled to counsel.

A Child as a Party to a Deprivation Proceeding

The Supreme Court of Georgia has stated, "[A]ll persons who are directly or consequentially interested in the event of the suit should be made parties."¹² A child who is before the juvenile court due to allegations of parental abuse or neglect has an undeniable interest in his or her life, care and well-being. Moreover, the child has a liberty interest in not being removed from the care and custody of his parents without a proper showing of competent evidence that meets appropriate standards of proof that such separation is justified. Finally, the child is bound by the court's judgment as any other party is so bound. For these reasons, the child is "directly or consequentially interested" in the case and therefore, a child is indeed a party to the deprivation proceedings. Although the child's position might overlap with the position of his or her parent(s) or the state agency, the child is a unique party to the case, with a discrete and independent viewpoint.

As a party, the child is entitled to the same rights as any other party, including the right to be represented by counsel, the right to present evidence and cross-examine witnesses, the right to consent to a judgment and to appeal a judgment, and the right to be present in court or at least made available to

counsel during the proceedings. This academic argument is persuasive until attempts are made to translate it into actual practice.

The fundamental principle upon which the child welfare and juvenile court systems operate is protection of the child. American society assumes that every child needs a certain degree of protection due to perceived limitations of the child's age and developmental abilities. When children suffer from abuse and neglect, the inclination to protect them from further harm is heightened. Thus, historically, representation of children has taken the form of a substituted judgment model, and the children themselves are not invited or expected to attend the court proceedings involving their families.

Representing a Child as the Subject of the Proceeding: The Best Interest Generation

Most commonly, a GAL represents children. Federal law has required appointment of a GAL since passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974.¹³ CAPTA does not define "guardian ad litem," but the 1996 reauthorization of the Act modified the requirement that to qualify, a GAL "may be an attorney or a court appointed special advocate (or both)."¹⁴ Regardless of whether the GAL is an attorney or a court-appointed special advocate (CASA),¹⁵ the GAL represents the child's best interest. By definition, the GAL stands in the place of the child and in that role, substitutes his or her judgment for the child's. The GAL/CASA is an officer of the court, who is appointed by the court to provide an independent voice for the child. Importantly, the GAL/CASA is not bound by confidentiality and can be called as a witness and cross-examined by the parties. This best interest model, under which the GAL advocates for what the GAL believes is best for the child, should be contrasted

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with a traditional client-directed representation model, under which an attorney zealously advocates for the expressed wishes of the client and is bound by duties of loyalty and confidentiality and other rules of professional conduct. If the GAL is representing the child's best interest, then who is representing the child's *legal* interests?

Representing a Child as a Client: The Next Generation

As expressed in *Kenny A.*, the child's due process interests include an interest in safety, health and well-being; an interest in maintaining the integrity of the family unit and having a parent-child relationship; an interest in being protected from abusive and neglectful parents; an interest in being protected from an erroneous decision to terminate parental rights; and an interest in proper treatment by the state while in its custody.¹⁶ In addition, the liberty interests of a child in state custody are at risk as a result of the child's being subject to placement in residential and institutional facilities that significantly restrict physical liberty.

The issue of loss of liberty is of particular concern because of the irony that results when comparing the treatment of children in delinquency and deprivation proceedings. Query why children who are accused of doing harm to others are entitled to counsel because they may lose their liberty by placement in state custody, while children who are victims of abuse and neglect and likewise are subject to placement in state custody are customarily not afforded the right to counsel. All of these interests, and conceivably more, are at risk when a deprivation case is brought against a family, and legal counsel is necessary to protect the child's interests from infringement. Juvenile court judges, GALs, and CASAs do not adequately militate against the risk of error. Indeed, in its order denying the

defendants' motion for summary judgment, the court in *Kenny A.* noted that the Legislature did not intend the appointment of a GAL as a substitute for the appointment of counsel.¹⁷

Moreover, the best interest model is nonsensical. What is in the child's "best interest" is the standard that controls every party's argument, regardless of their divergent agendas or different positions. The judge does not need to be reminded of the best interest standard in a deprivation proceeding. Rather, the role of the judge is to hear evidence and testimony from all parties, including the child, and make a determination based on that information as to what outcome will best serve the child's interests. Indeed, it is the judge, and not the GAL/CASA, who ultimately decides what is in the child's best interest.

The authors of the August 2004 article on a child's right to legal representation drew comparisons between a child's right to counsel in a delinquency proceeding and a child's right to counsel in deprivation proceedings. To continue with that line of reasoning, it is notable that the public policy of the state of Georgia, as reflected by legislative enactments, is that at age 13, children who have committed certain offenses can be incarcerated for life. These children are expected to direct their own defense when legal proceedings are instituted against them. If a 13-year-old child is presumed capable of meaningful participation in his legal defense under those circumstances, the same 13-year-old child is equally as capable of assisting counsel in a deprivation proceeding and being seated at counsel table.

Suppose Sue is neglected by her mother. Sue's grandmother may pursue a private custody action in superior court. Georgia law mandates that a superior court consider the wishes of an 11-year-old in a custody matter, and a child age 14 or older has a right to select the parent with whom he or she

desires to live. The child's selection is presumptive unless the court determines that such a custodial arrangement is not in the best interest of the child.¹⁸ Thus, there is clear, established precedent in Georgia law to solicit the voice of the child and factor it into the court's ultimate decision. On the other hand, if DFCS removed Sue, the "best interest" model of representation would significantly reduce the likelihood of Sue's wishes being heard in juvenile court because a recommendation as to the custodial arrangement that would serve Sue's "best interest" would supersede Sue's selection. How can a different level of participation be justified in a case involving the same child, the same contestants, and the same facts? No compelling reason exists why children should be treated differently in a deprivation proceeding.

The Georgia Rules of Professional Conduct contemplate a client-directed model of representation for children in deprivation proceedings. The ethics rules apply to all practicing attorneys, and no exception is made for attorneys who represent children. In fact, Rule 1.14, "Client Under a Disability," directs an attorney to "maintain a normal client-lawyer relationship" with a client whose ability to make adequately considered judgments in connection with the representation is impaired due to the age of the client.¹⁹ The "normal client-lawyer relationship" includes duties of undivided loyalty, competence, communication and confidentiality, among others.²⁰ The phrase also imparts the expectation that the child-client is a party to the proceeding and is therefore expected to attend all significant court appearances.

The commentary to Rule 1.14 recognizes, as argued above, that "children as young as five or six years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."²¹ The Model Rules

of Professional Conduct, upon which the Georgia Rules are based, have recently been amended, and now designate a minor client as one with “diminished capacity” rather than a disability.²² Likewise, the two leading authorities on juvenile law, the American Bar Association (ABA) and the National Association of Counsel for Children (NACC), recommend the model of the “child’s attorney” in their “Standards for Lawyers Who Represent Children in Abuse and Neglect Cases.”²³ This model, as the ABA and NACC describe it, calls for an attorney to provide legal representation to a child, owing all of the duties characteristic of a traditional attorney-client relationship, while recognizing that under certain circumstances this model will not best serve the child-client. When the child-client is preverbal, very young, or otherwise incapable of meaningful communication, the attorney is directed to engage in substituted judgment and advocate for what the

attorney believes is in the child’s best interest.

The Role of CASA in a Client-Directed Child Representation Model

Advancement of a client-directed model of legal representation for children in deprivation cases under either of the above recommendations does not foreclose the need for a GAL or CASA. As a lay-GAL, the CASA cannot perform any legal function on behalf of the child. “The ultimate goal of a CASA volunteer is to help make sure the child has a safe, permanent home.”²⁴ This goal is common ground for the CASA volunteer and the child’s attorney, and with this shared objective, the CASA volunteer and the child’s attorney are an effective and powerful team. Indeed, the federal district court in *Kenny A.* concluded that, read together, O.C.G.A. § 15-11-6(b) and O.C.G.A. § 15-11-9(b) “expressly require the appointment of both an

attorney and a guardian ad litem in cases where the child is not represented by his or her parent, guardian or custodian.”²⁵

A CASA should be promoted in all courts to serve as an aid to the court to facilitate reasonable efforts, monitor state and parental compliance with court orders and case plans, and conduct social studies to expedite the placement of children in the most family-like setting. Furthermore, the appointment of a CASA or GAL is necessary when the child’s attorney determines that the child’s expressed wishes would be seriously injurious to the child. In that scenario, the child’s attorney should continue representing the child’s expressed wishes but request appointment of a separate GAL to represent the child’s best interest.²⁶

Conclusion and Recommendations

Since the August 2004 *Journal* article on this topic, a growing number of juvenile courts and

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child welfare communities have embraced the legal arguments supporting a child's right to legal counsel and the recognition that a child is a party to the proceeding. The practical and philosophical barriers to implementing this framework are more difficult to overcome. Legal arguments aside, human nature gives even veteran juvenile court professionals pause at the suggestion that a child who has already suffered abuse or neglect should be present in court to listen to his or her parents testify to the nature and degree of those abusive acts. How can the court be sure that it is not causing additional harm and trauma by subjecting the child to a retelling of such a painful experience? Or is such participation therapeutic at some level? How can bright-line rules be drawn when each child will react uniquely?


At a minimum, children deserve—and have an established right to—a competent attorney to represent their legal interests and expressed wishes in abuse and neglect proceedings. Moreover, as parties to the action, children technically have a right to be present at all proceedings. A bright-line mandate requiring all children to be present in court, however, ignores reality. Some children will not want to participate in court, and indeed, others could experience further trauma as a result. Some children cannot meaningfully participate in the proceedings or in their representation, and for others, the balance of interests dictates against disrupting a school day to deliver them for court and the hours of waiting for their case to be called. Recognizing that children have a right to meaningful participation in the case, which generally includes a right to be present at significant court hearings, a decision to exclude a child from a hearing should be made based on a particularized determination that (1) the child does not want to attend, is too young to sit through the hearing, or would be

traumatized by attendance; or (2) other extraordinary circumstances dictate against having the child present.²⁷

Children have a statutory and constitutional due process right to adequate legal counsel to represent their wishes and legal interests throughout the life of a deprivation case. Thus, all children should receive the benefit of the appointment of legal counsel at every stage in the proceeding. Moreover, that attorney should abide by a client-directed model of representation under most circumstances and should engage in substituted judgment and “best interest” advocacy only when the child-client cannot meaningfully communicate with the attorney. In circumstances in which the attorney cannot reconcile the child's expressed wishes with what is in his or her best interest through the attorney's counseling role, the attorney should request the appointment of a separate GAL or CASA to represent the child's best interest while continuing in the role of the child's attorney zealously advocating for the child's legal interests.

In the alternative, as a compromise, the legal presumption should be established that legal counsel shall be appointed for youth who are 13 years of age or older, consistent with the treatment of children in other types of cases. Again, that attorney should represent the legal interests and expressed wishes of the client. The court, on its own motion or upon the request of the child's attorney, should appoint a CASA to represent the child's best interest as a complement to the attorney's advocacy of the child's legal interests. In this way, the juvenile court judge will be presented with a comprehensive picture of the child's needs and wishes to inform the decisions made in the case. Adopting this approach will require a paradigm shift among some judges who have assumed that the effectuation of *Kenny A.* would require an additional attorney and therefore addi-

tional costs to the counties. This assumption is wrong because GALs are not required to be attorneys. Attorneys serving as GALs have become a custom and practice in juvenile courts across the state. The model proposed by the authors simply requires the juvenile courts to take the GAL hats off the attorneys and place them on volunteers such as a CASA. Let attorneys do what they are trained to do: advocate for the legal interests of their clients.

Juvenile court judges and practitioners will continue to wrestle with the translation of the academic arguments supporting a child's status as a party to his or her own deprivation proceeding and the derivative rights to adequate legal representation and to meaningful participation in the case into actual practice in their courtrooms. The authors challenge all juvenile court stakeholders to embrace these concepts despite the challenges presented by the complex family dynamics, individual idiosyncrasies, sophisticated and nuanced legal and social work decision-making, and limited resources that characterize deprivation cases. The talented juvenile court judges and practitioners in this state are up to the test and the result will be better outcomes for children. 



Hon. Steven C. Teske was appointed to the juvenile bench in Clayton County in 1999. Prior to taking the bench, he was a

partner in the law firm of Boswell & Teske LLP and represented Clayton County Department of Family and Children Services prosecuting abuse and neglect cases in juvenile court. He is president-elect of the Georgia Council of Juvenile Court Judges and was appointed by Gov. Sonny Perdue to the Children and Youth Coordinating Council and the Department of Juvenile Justice Advisory Board.



Melissa Carter is the training director for the Supreme Court of Georgia's Committee on Justice for Children. In this position she

assists in the management of Georgia's Court Improvement Project, a federally-funded program focused on improving the processing of civil child abuse and neglect cases in the state's juvenile courts. Since graduating from the University of Illinois College of Law in 2002, Melissa has dedicated her career to a specialization in child advocacy, both through public policy advocacy and private legal practice.

Endnotes

1. Beth Locker & Melissa Dorris, *A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings*, 10 GA. B.J., Aug. 2004, at 12.
2. 356 F. Supp. 2d 1353 (N.D. Ga. 2005).
3. See http://www.childrensrights.org/site/PageServer?pagename=home_page.
4. First Amended Complaint, *Kenny A. v. Perdue*, No. 1:02-cv-1686 (N.D. Ga. 2003).
5. See *id.*
6. See *Kenny A.*, 356 F. Supp. 2d at 1355.
7. *Id.* at 1357.
8. *Id.*
9. *Id.*
10. O.C.G.A. § 15-11-6(b) (2006).
11. 150 Ga. App. 130, 257 S.E.2d 35 (1979).
12. *Gormley v. Wilson*, 176 Ga. 711, 168 S.E. 568, 569 (1933). See also *Barry v. Slappey*, 229 Ga. 109, 110, 189 S.E.2d 394, 395 (1972).
13. Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA), Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101-06 (2000)).
14. 42 U.S.C. § 5106(b)(2)(A)(xiii) (2003).
15. A CASA is a specially-trained community volunteer who is appointed by a judge to advocate for the best interest of an abused or neglected child who is involved in a juvenile court deprivation proceeding. Georgia CASA website,

<http://www.gacasa.org>.

16. See *Matthews v. Eldridge*, 424 U.S. 319, 332-335 (1976).
17. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005).
18. See O.C.G.A. § 19-9-3(a)(4), (6) (2007). Note that prior to amendments enacted in the 2007 legislative session, the right of selection by a child 14 or older was controlling on the court's decision. O.C.G.A. § 19-9-1(a)(3)(A) (2006).
19. GA. RULES OF PROF'L CONDUCT R.1.14(a).
20. See *id.* R. 1.1, 1.4, 1.6, 1.7.
21. *Id.* R. 1.14 cmt. 1.
22. MODEL RULES OF PROF'L CONDUCT R. 1.14, available at ABA Center for Professional Responsibility, http://www.abanet.org/cpr/mrpc/rule_1_14.html.
23. ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by House of Delegates Feb. 5, 1996). See also ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (adopted by NACC Oct. 13, 1996).
24. Georgia CASA website, <http://www.gacasa.org>.
25. *Kenny A. v. Perdue*, 356 F. Supp. 2d 1353, 1359 (N.D. Ga. 2005) (emphasis added). O.C.G.A. § 15-11-6(b) provides in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings alleging . . . deprivation . . . Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them."

O.C.G.A. § 15-11-9(b) provides:

The court at any stage of a proceeding under this article, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or if the interests of the parent, guardian, or custodian conflict with the child's interests or in any other case in which the

interests of the child require a guardian.

26. See e.g., ABA/NACC Standards for Lawyers Who Represent Children in Abuse and Neglect Cases, R. B-2 (1996). Comments to Rule B-2 note that the primary conflict between the two roles arises when the child's articulated position differs from what the lawyer deems to be in the child's best interest. At no time must an attorney abide by a child's directives that are illegal, frivolous, or potentially harmful. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. The lawyer's advice and guidance can often persuade the child to abandon or change an imprudent position or identify alternative choices. Where the two positions cannot be reconciled, the lawyer must remain in the lawyer-client role due to the confidential relationship and privileged communications involved.
27. See *id.* R. D-5 cmt. (1996).

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A Brief Overview of the Proposed New Georgia Rules of Evidence

by Paul S. Milich
introduction by Robert D. Ingram

Following this introduction is an overview prepared by Professor Paul S. Milich of the significant changes from the current Georgia Rules of Evidence to the New Georgia Rules of Evidence, which would occur under the proposed Rules of Evidence being put forward by the Evidence Study Committee.

The Evidence Study Committee was formed in August 1986 by Bar President Bob Brinson, and functioned actively from 1986-91. The committee, chaired by Frank C. Jones, wrote a set of rules that passed the Board of Governors on two separate occasions in 1988 and 1990. A bill was introduced in the General Assembly in January 1989 and again in January 1991. On each occasion, the bill was approved by the Senate, once unanimously, and on the other occasion with only a few dissenting votes. On both occasions, the House Judiciary Committee held up the bill, and it was not considered on the floor.

According to Jones, "Our failure to get favorable action in the House was due primarily to opposition from the then Speaker. We met with him, and several members of the House Judiciary Committee, in an effort to obtain support but were unsuccessful."

As a result of not obtaining support from the House Judiciary Committee, efforts were stalled until recently. In 2003 under President Bill Barwick, the Evidence Study Committee was reactivated with Ray Persons as chair. Most recently, at Immediate Past Bar President Jay Cook's urging, the committee refocused their energies on informing and obtaining input from lawyers across the state about the proposed changes to the Rules of Evidence. Presentations were made to the Atlanta Bar, the North Fulton Bar, the Gwinnett Bar and the Sandy Springs Bar associations. An update was also given to nearly 300 attorneys who watched a broadcast on the CLE program on evidence. In January of this year, a program was presented to 80 lawyers and judges on the proposed rules. Updates have also been given to judges of superior courts, state courts and juvenile courts at ICJE meetings.

"All responses were very positive and encouraging," Persons said. "In fact, in all our many presentations and seminars, we have heard nothing but support for moving forward."

The Evidence Study Committee encourages all Bar members to carefully study this important and comprehensive proposed change in Georgia's evidence law. Your representatives on the Board of Governors will be voting on this no earlier than the fall meeting and welcome your advice. For a list of Board members by circuit, please visit www.gabar.org/directories/board_of_governors/.

In 1858, the Georgia Legislature appointed three commissioners, Richard Clark, Thomas R. Cobb, and David Irwin, to prepare a code which should “as near as practicable, embrace in a condensed form, the laws of Georgia” including the common law and principles of equity then recognized by the courts of this state. To Judge Irwin fell the task of preparing the Code of Practice which included civil procedure, equity practice, and the rules of evidence. The work was completed in 1860 and adopted by the Legislature with only a few minor changes in December of that year. Due to the war, publication was delayed until 1863 and thus the code has been referred to ever since as the Code of 1863.

Most of Georgia’s current rules of evidence are derived from the Code of 1863. But litigation has changed substantially over the last 140 years. With the liberalization of pre-trial discovery, growth in the use of experts, and the increase in the education and experience of the average juror, the pressure has been to open up the trial—to let in more evidence, more efficiently.

Georgia courts have not been immune to this pressure and have struggled with the older statutes to broaden the admissibility of probative evidence. Indeed, in some cases, Georgia courts nearly have abandoned the statutes and, from necessity, developed rules in a common law like manner. These incremental efforts have helped keep Georgia law somewhat current. But the overall result is not that satisfying. From the standpoint of the trial judge and lawyer, “the rule” is not necessarily found in the statutes, since 140 years of judicial gloss may have changed that. And the cases that have applied that gloss are not always consistent. In short, despite our courts’ frequent efforts at rejuvenation, Georgia’s Evidence Code is showing its age.

The effort to draft the Federal Rules of Evidence began in 1961 when Professor Thomas Green of

the University of Georgia prepared an Advisability and Feasibility Study for a committee appointed by Chief Justice Earl Warren. In 1965, Green joined 14 other lawyers, judges and legal scholars on the Advisory Committee to formulate uniform rules of evidence for the federal courts. In 1969, the committee issued a preliminary draft of the rules and invited comments from every segment of the practicing bar. The U.S. Supreme Court approved the rules in late 1972.

are relatively straightforward, specific and well-organized. Accessibility is important. Rules of evidence are only as good as the lawyers and judges who must recall and apply them quickly and accurately in the heat of trial.

The proposed new Georgia rules are based predominantly, but not completely, on the Federal Rules. Some older Georgia statutes have been retained to fill gaps in the Federal Rules and to reflect specific Georgia policies. A few changes have been made to the language of



Congress insisted that the rules be statutory rather than judicial and both the House and Senate conducted detailed studies of the rules. The Federal Rules of Evidence were enacted in 1975.

Since 1975, the Federal Rules have been adopted in 42 states, including all the states contiguous to Georgia. This extraordinary response is testament to the fact that the Advisory Committee’s 10 years of study and exposure of the rules to comments by all sectors of the legal community produced a remarkably balanced set of rules.

The Federal Rules have been praised for their accessibility. They

the Federal Rules to customize the rules for Georgia and to clarify some issues that have arisen under the Federal Rules.

Adoption of new rules of evidence would bring two changes to Georgia practice. The first, the substantive changes in the law of evidence, is briefly summarized below. The second change relates to accessibility and clarity. Compared with existing Georgia law, the new rules provide a clearer, simpler, more comprehensive approach to evidentiary issues. This increased accessibility and clarity will lead to greater consistency in the application of the rules

in different courts and in a more economical trial process.

Some might say that if the Georgia rules of evidence aren't broke, don't fix them. But a more apt analogy is to an old car that still runs but is tough to drive and prone to sputtering at times. The Federal Rules are a proven model based on much the same design as the old one but incorporating changes based on experience. With millions of miles already logged on this model in federal courts and the courts of 42 states, there are no surprises; you know what you are getting. But best of all, it's easier to drive.

A Brief Summary of Some of the Major Differences Between Existing Georgia Law and the Proposed New Rules of Evidence

A complete copy of the proposed new rules and commentary is located on the State Bar of Georgia's website at www.gabar.org.

Res Gestae

The proposed rules retire the term "*res gestae*." While the obscurity of this concept may have been useful when the theory of hearsay exceptions was still growing, most jurisdictions have come to replace it with specific rules covering several classes of statements that experience (primarily with the *res gestae* concept) has proved are especially trustworthy. See, proposed O.C.G.A. § 24-8-803 (1),(2),(3).

Court Decides Preliminary Questions of Admissibility

In Georgia, most questions regarding the admissibility of evidence are determined by the trial judge but there are a few areas in which Georgia law holds that the admissibility question is ultimately one for the jury. The proposed rules reflect the modern trend of leaving all admissibility questions

to the trial judge. The jury, of course, continues to be the final arbiter of the weight to be accorded admitted evidence. See, proposed O.C.G.A. § 24-1-104.

Admissions by Agents

Georgia's agency admission rule has a confusing history, due in large part to the overlap of two, inconsistent statutes—one in the Evidence Code and one in the Title on Agency—that both speak to the admissibility of an agent's statements against his principal. But even the most liberal readings of these statutes limit admissibility to statements of the agent which are authorized by the principal. Since few employees are authorized to make statements damaging to their employers, the Georgia rule is quite restrictive in effect. The proposed rules only require that the statement have been made during the agency relationship and that the subject matter of the statement fall within the scope of the agent's duties. See, proposed O.C.G.A. § 24-8-801(d)(2)(C) and (D).

Business Record Exception

Current Georgia law and the proposed rules differ in two respects. (1) The current Georgia rule does not allow opinions in the record. The proposed rules do. Thus, for example, an appraiser's report as to the value of certain property could be admissible under the new rule but not under Georgia law. Expert opinions in the record still would have to qualify under the rules governing expert testimony. Moreover, the court can exclude business records when "the source of information or the method or circumstances of preparation indicate a lack of trustworthiness."

(2) Georgia requires that a witness at trial lay any foundation necessary to the admission of a business record. The proposed rules allow the use of an affidavit to lay this foundation if the proponent gives opposing parties notice and an opportunity

to examine the records before trial. See, proposed O.C.G.A. §§ 24-8-803(6); 24-9-902(11).

Public Records Exception

Georgia has dozens of statutes regarding the admissibility of specific public records scattered all over the Official Code of Georgia. Together, their coverage is similar to proposed O.C.G.A. § 24-8-803(8)(A), admitting the routine records of any public agency.

Georgia uses its general business record exception for admitting public records not specifically covered by statute. Again, this does not permit statements of opinion in the record. Proposed O.C.G.A. § 24-8-803(8)(B) and (C) admit matters observed and reported pursuant to duty and factual findings resulting from duly authorized investigations, though these provisions are unavailable to the prosecution in criminal cases.

Party's Own Statements

In Georgia, a party generally cannot offer his own out-of-court statements if they are "self-serving." Under the proposed rules, they are admissible even if self-serving, if they have a relevant, nonhearsay use or come within a hearsay exception. The rule that a party may not testify to his own self-serving statements has its origin in the old rule that a party was incompetent to testify on his own behalf because a party could not be trusted to tell the truth. Georgia repealed party incompetency about 120 years ago, as did everyone else, on the theory that it is better to have whatever evidence a party could give and let the jury take the self-serving nature of the evidence into account in weighing the evidence.

Hearsay

Under current Georgia law, hearsay is "illegal" evidence and

even if a party never objected to hearsay testimony at trial, the party may later attack the verdict as resting on illegal hearsay. Georgia is the only state in the country that retains this 19th century view of hearsay. The new rules would allow a fact finder to base a decision on hearsay if no one objected to the hearsay at trial. *See*, proposed O.C.G.A. § 24-8-802.

Learned Treatises

In Georgia, an expert may refer to treatises and other learned publications on direct but the expert may not disclose the pertinent contents of the publication. The contents may be inquired into on cross. The proposed rule allows relevant portions of a treatise to be read to the jury on direct of the expert who relied on the publication if it is shown that the work is considered a reliable authority in the particular field. *See*, proposed O.C.G.A. § 24-8-803(18).

Expert Opinion Testimony

Georgia's new rules regarding expert testimony in civil cases, passed in 2005, are based on the Federal Rules. Yet in criminal cases, we still use the old rules. The proposed rules would retain the current rules on expert testimony in civil cases and extend their application to criminal cases.

Statements of Co-Conspirators

Georgia does not require that a co-conspirator's statement have been in furtherance of the conspiracy in order to be admissible under this exception. Georgia's law is very unusual in this respect. The proposed rule is based on the requirement at common law and carried forward in the Federal Rules that any statements admissible as a co-conspirator admission must have been in furtherance of the conspiracy. *See*, proposed O.C.G.A. § 24-8-801(d)(2)(E).

Statements Against Interest

In Georgia criminal cases, statements against penal interest are inadmissible. Under the proposed rules, a statement against penal interest would be admissible if the declarant is unavailable and there exists corroborating circumstances that clearly indicate the trustworthiness of the statement. *See*, proposed O.C.G.A. § 24-8-804(b)(3).

Use of Plea Bargain Discussions

The proposed rules bar admission of statements made by the accused during plea bargain discussions with the prosecution. Existing Georgia law on this issue is not entirely clear. Georgia courts may exclude a confession as involuntary if it was induced "by the slightest hope of benefit" but not if the benefit was "collateral." Georgia courts do not apply current O.C.G.A. § 24-3-37 (excluding statements made "with a view to a compromise") to criminal cases. The proposed rules clarify that only plea discussions with the prosecutor are protected. The main purpose of the new rule's protection of plea discussions is to encourage responsible plea bargaining. This is consistent with current Georgia practice. (*See*, e.g., Unif. Sup. Ct. Rule 33.6—"Consideration of Plea in Final Disposition"). *See*, proposed O.C.G.A. § 24-4-410.

Offers to Compromise—Settlement Negotiations

Georgia law and the proposed rules are substantially similar though the proposed rules are simpler in two respects. (1) Georgia courts have made some arduous distinctions between "offers to settle" and "offers to compromise." The proposed rules simply require that liability or damages be in dispute. (2) Georgia

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has struggled with “collateral admissions”—statements made in the course of presenting an offer to compromise but not themselves made with a view to a compromise. The proposed rules cover such statements if they are part of the settlement negotiations or a mediation. *See*, proposed O.C.G.A. § 24-4-408.

Character Witnesses

Current Georgia law allows reputation testimony, but not opinion testimony. The new rules allow both. As one Georgia court wrote, “[I]t is an evidentiary anomaly that in proving general moral character [Georgia] law prefers hearsay, rumor, and gossip, to personal knowledge of the witness.” *See*, proposed O.C.G.A. §§ 24-4-405, 24-6-608.

Prior Inconsistent Statements

Georgia follows the rule of Queen Caroline’s case, requiring that a witness be shown his prior written statement or have his attention drawn to the time, place and circumstances of a prior oral statement before he can be impeached upon it. The proposed rules do not require this foundation. It is only necessary under the proposed rules that the witness have an opportunity to explain or deny the prior statement. In practice, this means the prior statement must be introduced on cross-examination of the declarant.

Competency of Juror to Impeach Verdict

In Georgia, a juror is competent only to sustain, never to impeach, a verdict. An exception exists for when the jury was exposed to external information or influence. This exception applies only in criminal, not civil cases. The proposed rules extend this exception to civil cases. *See*, proposed O.C.G.A. § 24-6-606(b).

Authentication and Identification

Existing Georgia law and the proposed rules are consistent, though the proposed rules are broader in some areas, such as identification of parties to a phone conversation and self-authentication of commercial paper, notarized documents, etc. The proposed rules pull together all authentication rules into one, clear set. *See*, proposed O.C.G.A. § 24-9-901, 902.

Best Evidence Rule

Georgia’s best evidence rule consists mainly of 19th century statutes. Georgia’s rule, for example, does not apply to photos or videos but only writings. The proposed rules apply to all forms of recordation.

Georgia requires that in most cases in which a writing or recording must be produced, the proponent must produce the original or else account for why the original cannot be produced before being allowed to use a copy. The proposed rules allow the use of copies unless the opponent cites specific reasons why the court should insist on production of the original. *See*, proposed O.C.G.A. § 24-10-1001 through 1008.

Exclusion of Evidence Because of Prejudice, Confusion or Waste of Time


Although Georgia cases have recognized the trial court’s authority to balance the probative value of the evidence against its unfairly prejudicial effect, the cases are inconsistent on the standard and scope of the trial court’s authority. The proposed rules give the trial court discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion or undue delay. This standard

applies to all evidence except where specific evidence rules expressly set a different standard. *See*, proposed O.C.G.A. § 24-4-403.

Subsequent Remedial Measures

Existing Georgia law and the proposed rule share the same underlying principle—evidence of subsequent remedial measures is generally inadmissible to prove negligence. However, Georgia cases suggest that the rule does not apply in product liability cases. The proposed rule would apply in such cases. *See*, proposed O.C.G.A. § 24-4-407.

Habit Routine Practice

Georgia case law has slowly recognized the admissibility of habit evidence but it generally does not allow a third party to testify to another’s habit. The proposed rule has no such restriction. If adequate foundation is laid showing how the witness would be familiar with the subject’s habit or routine, the witness may testify to it. *See*, proposed O.C.G.A. § 24-4-406. 



Paul S. Milich is a professor at Georgia State University College of Law and teaches Evidence, Advanced Evidence,

Contracts and Legal History. Milich joined the faculty in 1983 after practicing with the Reed, McClure firm in Seattle where he was a trial lawyer. He earned his B.A., *cum laude*, from the University of California, San Diego, in 1974, did graduate work in philosophy at the University of Colorado, and earned a J.D., *cum laude*, from Georgetown University Law Center in 1980. He serves as the reporter for the State Bar of Georgia’s Evidence Study Committee.

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Negotiating With a Road Map

The Importance of Understanding How the Other Side Thinks

by Douglas J. Witten

A surprising number of parties maintain, at some point in the mediation process, that they have their minds made up and don't care what the other side thinks. Quite the contrary, making an effort to understand how the other side approaches an issue is an important step in productive negotiations. This is true whether negotiating with a 4-year-old or mediating to settle a lawsuit for thousands (or millions) of dollars.

The Best Negotiators are Often the Smallest Ones

My wife Holly and I recently undertook the daunting task of hosting our niece and nephew—7 and 4 years old, respectively—for an overnight sleepover. We love these kids as if they were our own, and they are always fun to have around. Frankly, though, the 4-year-old boy, Max, can be a handful. He's already smarter than we are, and he negotiates better than any of the lawyers or other parties I usually face in the mediation setting.¹

Our sleepover with Max and his older sister, Hannah, took place last Halloween weekend. On Sunday morning, after the kids woke us up at the ungodly hour of 6:30 a.m., Holly and I decided to take the gang for brunch. Upon prying ourselves out of bed, we realized that the earlier we got to the restaurant, the earlier the kids would be occupied, as we found ourselves encircled by two children wildly running around our house, barefoot and in varying stages of pajama-undress. Much delay would mean facing a large brunch crowd, too.

Holly and I started to get dressed and urged the kids to follow suit.

"Okay, guys, are you ready for brunch? Let's get going, okay? The sooner you get dressed, the sooner you can eat pancakes," I pleaded from outside their bedroom.

"I don't like pancakes," Hannah pointed out. "I want toast."

"You can have toast."

"Unless the pancakes have syrup on them," Hannah added.

"You can have pancakes with syrup *or* toast, whichever you want. You just have to get dressed."

"Okay, I'll get dressed," Hannah said. "But Max has to get dressed, too, and right now he's jumping on the bed in his underwear."

At that point, I knew the challenge was on. I, the mediator, prepared to face Max.

Max was, indeed, jumping on the bed in his underwear, laughing and smiling mischievously as he

bounced up and down. I could tell by the look in his eye that he was going to be a tough customer.

"Come on, now. Don't you want to go eat? You have to get dressed if you want something to eat. We're all hungry, and we need you to help us out."

I figured that Max would understand that he was part of our "team," we were counting on his cooperation, and therefore he would be motivated to work with us. I knew he was hungry, and I assumed the hunger would prod him to listen to reason and take the necessary steps (*i.e.*, get dressed) to allow our group to eat.

I was wrong.

Max resisted my begging and pleading, which continued shamelessly for a few minutes, and he showed no signs of giving in. Therefore, I left Max in Hannah's hands, went back to huddle with Holly in our bedroom, and proceeded to get dressed.

"Max's not putting his clothes on," Hannah yelled from the kids' room. "He's still in his underwear, and now he's bothering me. Please get him away! And I'm hungry."

"Max, we're all getting ready, and we're going to have to leave you if you don't get your clothes on in a hurry. You can stay here, fix yourself some coffee and make yourself some French toast. We'll show you where the eggs, milk and bread are. Fine with me, pal."

After a roll of the eyes and a hint of a smile, Holly said quietly in my ear, "I love you, but I don't think this reverse psychology bit is working. Are you sure you're a mediator?"

"I have an idea," she whispered to me before raising her voice for the kids to hear.

"Max, I'm coming in!" Holly continued from the kids' room. "*Do you want to wear your clown wig today?*"

Max's new Halloween costume included a rainbow-colored clown wig and a red plastic, stick-on nose. He was very excited about wearing his wig, and Holly knew that the



mere mention of it would get Max's attention.

"Yeah!" he screamed. "I want to wear my wig! And you don't want me to wear it, right?" he asked, almost instinctively. Max's eyes lit up wide like saucers, twinkling with anticipation and refocused energy.

"Oh, you can wear it," Holly replied, "*but only if you and Hannah are dressed before the adults are.* And I don't think you can beat us!"

"Yes we can! YES we can!" Max and Hannah screeched excitedly and in unison.

From our bedroom, Holly and I listened intently to the rustling sounds of two kids dressing as quickly as possible. Hannah shouted encouraging words to Max in an effort to move him along, and it sounded like she even helped him dress. They worked as a team, in an amazing turn of events.

Lo and behold, Hannah and Max were dressed before we adults were. Holly claims that we let them win, but I maintain that I was trying to get ready quickly and that my best wasn't good enough.

"Pure genius," I whispered to Holly on our way to the car, Hannah and Max scampering ahead of us, Max proudly donning his clown wig.

To Satisfy the Other Side's Needs is First To Understand Them

This simple anecdote about Hannah and Max makes some critical points about productive negotiating.

First, Holly and I were successful in our negotiations with Max because we were able to *understand how the other side thinks*. More precisely, Holly was able to understand how Max thinks and corrected my misguided approach to negotiating with a precocious 4 year old.

Only with an understanding that wearing his clown wig to brunch was the most valuable commodity in play were we able to motivate

Max in a way that we would not have otherwise been able. Was Max hungry? Yes, but satisfying his hunger was clearly not his primary goal. Igniting a "competition" between the kids and the adults created additional motivation for both Max and Hannah but, again, this was not the negotiation's driving force.

Only a 4 year old would find value in having the ability to wear a novelty wig out to eat, and that is precisely why offering it as part of a negotiating strategy was such a wonderful touch. Our negotiations resulted in what is typically described as a "win-win" outcome, since both sides wound up winners; those who were hungry got to eat in a timely manner, and those who like attention and acting silly got to wear a clown wig to brunch.

Another key to our negotiation's success is a deceptively simple, yet critical, point about effective negotiation strategy: whenever possible, offer a concession that has high value to the other side but low value to the offering party. The corollary to this point is that the true value of a negotiation concession is placed upon it by the receiving party, which will not necessarily be equal to the value assessed by the offeror.

In this case, offering Max the ability to wear his clown wig had low value to us, but Max highly valued that privilege.² Therefore, we were able to "give up" something that cost us nothing—since we didn't mind Max's wearing his wig to brunch—and that was a true victory in his mind. In such a case, the negotiation result is a proverbial "win-win" that satisfies both sides.³

It may be helpful to note other simple illustrations of how an understanding of the other side's thinking can produce successful negotiations.⁴ For example, two children are around the dinner table fighting over a single potato. The children's parent hears the argument and, in Solomon-esque

fashion, decides to solve the dispute by splitting the potato down the middle and giving half to each child. The end result in the parent's mind: equal division, neither side completely happy or unhappy, producing a "fair" outcome.

As the example goes, the parent, upon subsequently learning of the children's true desires, finds that the "fair" result was not the optimum result. This is so because one child wanted to eat only the potato skin and the other wanted to eat only the potato's inside. Therefore, had the parent simply peeled the potato and given the skin to the one child and the remaining potato to the other, each child would have received exactly what he or she wanted. Because the parent did not understand the children's true desires before determining the solution, all involved lost the opportunity to reach a "win-win" result.

Recently, while dining out at a Chinese restaurant with my brother and his wife, I witnessed another simple situation in which separate preferences can create opportunities for successful "negotiation." My brother's favorite dish, cashew chicken, comes with onions and bean sprouts, neither of which he likes. My sister-in-law's favorite dish, beef with Chinese vegetables, comes with water chestnuts and carrots, neither of which she likes.

Instead of each special ordering their meals without certain ingredients, my brother and his wife order the dishes as prepared and give the unwanted ingredients to the other person. For them, this works out perfectly: my brother enjoys the otherwise unwanted water chestnuts and carrots, and my sister-in-law loves the onions and bean sprouts that my brother despises. Again, this is an example of a "win-win" situation for the group as a whole, as each person gets what he or she likes and the collective group maximizes their result.⁵ A down-the-middle split of these dishes certainly wouldn't work in this instance because, in addition to

the preferences and aversions described above, my brother doesn't like the beef of his wife's dish and she doesn't like the broccoli and peppers in his. Therefore, by selectively sharing in the described manner, neither gives up anything desired and each gains something liked.

Surely, we can all think of instances in our lives in which we arrive at successfully negotiated results that derive from our individual preferences. If we are unaware of what things others involved value highly and what things they consider low-value, *how they think* and what motivates them, how can we arrive at successfully negotiated results? How would a waitress at the Chinese restaurant have efficiently divvied up two dishes, as my brother and sister-in-law were able to, without knowing each person's unique preferences? How would we have motivated our nephew to get dressed without appreciating that he places a higher value on wearing a clown's wig than avoiding a restaurant's brunch crowd?

For the same reasons that understanding how and what the other side thinks allows for successful negotiations in the above illustrations, such an understanding can likewise lead to successful results in mediation and more formal negotiation settings.

Understanding the Other Side in More Formal Negotiation Settings: A Workers' Compensation Case Study

Understanding how and what the other side is thinking can often help savvy parties negotiate settlements in personal injury cases. A wise negotiator realizes that effective negotiation strategy is based upon an appreciation of—and even empathy towards—the other side's position. Such an understanding

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does not require a party to abandon its own position but rather allows the party to be conscious of what is driving a negotiation and best determine how to craft a mutually beneficial settlement.

Suppose an insurance company is negotiating with a workers' compensation claimant and the company representative is involved in mediation with the claimant and claimant's counsel. At the group negotiation session that convenes the formal mediation process, the claimant demands a lump-sum settlement of \$125,000, and the insurance company's initial settlement offer is \$15,000. After discussing their preliminary positions and respective views of the case, the parties adjourn to separate rooms to further the mediation process.

In a caucus, or private session with the mediator, after making significant strides towards settlement and near the end of the mediation, the insurance company representative explains the precise calculation that leads the company to conclude that between \$45,000 and \$55,000 would be a reasonable settlement range: (i) the future stream of weekly income benefits the insurance company would owe the claimant over the life of his claim, reduced to present value; plus (ii) the value of the permanent partial disability rating a doctor has assigned the claimant for his back injury; plus (iii) a reasonable estimate of future medical cost, totals between \$45,000-\$55,000.

Upon returning to the claimant's private caucus, the mediator learns that the employee's view of a reasonable value of his claim is based upon entirely different calculations. In this case, the claimant explains that what he really wants from the negotiation is: (i) \$5,000 for estimated future medical bills; (ii) \$20,000 to buy a new Toyota truck; and, most importantly, (iii) \$30,000—\$5,000 of which he needs by the end of the month in order to avoid having to file for bankruptcy—to pay off a mountain

of personal debt he has incurred since sustaining his job-related injury. Therefore, the claimant indicates that he would accept \$55,000 as a reasonable value to settle his claim, provided that he could get \$5,000 of that amount on an expedited basis.

With the skillful assistance of the mediator, the parties are eventually able to settle the claim for \$50,000, including provision for the insurance company to advance the claimant \$5,000 of those funds within a week of the settlement agreement. Upon learning, through the mediator and with permission of the other side, what the claimant's true interests were, the insurance company representative was able to offer assistance regarding the injured party's underlying needs. The insurance rep's brother-in-law owns a car dealership, we come to learn, and he sells certified, low-mileage used cars and trucks. A quick personal phone call confirms that the claimant can buy a certified, used Toyota truck for around \$15,000.

In this way, by settling the claim for \$50,000 (with \$5,000 advance payment), each party gets what it needs: (i) the claimant gets enough money to cover his medical bills, truck payment, and personal debts, thereby avoiding bankruptcy, and (ii) the insurance company pays less than the maximum of what they would have been willing to pay based upon their internal calculations, and advancing \$5,000 is not particularly costly. Even the insurance company representative's brother-in-law makes money on the transaction despite giving the claimant a fair price on the certified truck.

Therefore, both sides to the mediation are able to win through the negotiation process. Note, however, that each party arrived at its numbers in completely different ways and each party was influenced by very distinct preferences and desires. They wanted and needed vastly different things, yet through the magic of negotia-

tion—and by understanding the other's thinking and needs—the parties arrived at a mediated compromise.


Understanding as a Road Map To Negotiation Success

Of course, it is quite possible for parties to reach a negotiated agreement without a mutual appreciation of concerns. The number of parties who insist that they don't care what the other side thinks continually surprises me. Sometimes, these parties are even able to bully their way towards agreements. The odds of success are much greater, however, when two parties take the time and effort to gain a better understanding of the other side's true needs, motivations and desires. It is only with such an understanding that negotiating parties can arrive at uniquely creative solutions that could not have been achieved in a one-sided, non-collaborative manner.

Making an effort to understand how the other side approaches an issue is a crucial step towards productive negotiation and mediation sessions. Most people seem to appreciate that "there are two sides to every coin," but they do not always recognize that, when dealing with human beings, the proverbial "other side" is multi-dimensional. A failure to delve deeper into the mind of the opposing side will often lead to a failed negotiation.

Thus, to negotiate without caring what the other side thinks—much less truly understanding the other side's views and motivations—is like taking a trip without a road map. Although you might reach your destination without it, having a clear picture of how to reach your endpoint greatly enhances your odds of getting there successfully. At times, one party will be able to impose its will on another and practically force the other party to "agree" to the mandated terms, typically as a result of the one party having significantly

greater bargaining power than the other. However, successful agreements will most often result when each party has negotiated to satisfy, at least to some extent, its respective needs and interests.

Sometimes, to your amazement, success might just be as simple as letting the other party wear his clown wig to brunch. 



Douglas J. Witten, experienced in corporate health law, is currently a deputy director for the ADR Division of Georgia's

State Board of Workers' Compensation. Witten has earned a B.B.A. from Emory University, a J.D. from New York University School of Law, and an LL.M. (Health Law and Policy) from the University of Houston. He is a registered, bilingual mediator who has presided in approximately 800 cases.

Endnotes

1. Holly would add that Max is as cute as a button but I, the professional mediator, refuse to let that color my judgment when it comes to negotiation.
2. Recall that, when faced with the possibility of gaining permission to don his wig, Max immediately sought confirmation that we didn't want him to wear it. Max questioned us to make sure that we were prepared to give up something valuable and, in fact, the value he allocated to gaining our permission was directly proportional to our opposition to the wig. We, of course, nimbly dodged his line of questioning, so Max naturally assumed that any reasonable person would highly value the wig-wearing privilege.
3. For simplicity's sake, I'm speaking here of a two-party negotiation, the two parties being (1) Max and (2) the rest of our group. Of course, Holly's and my interests are always perfectly aligned, and because Hannah's interests were not exactly equal to Max's or the adults, she could conceivably be considered a third party in our illustrative example. Suffice it to say, however, that between "winning" and being ready before the adults, witnessing the spectacle of Max wearing a clown wig in a restaurant, and getting to eat brunch, Hannah was a satisfied party to our negotiations, and the two-party model here does not separately address her interests.
4. See, e.g., Herb Cohen, *You Can Negotiate Anything* 198-99 (Bantam Books 1982) (1980).
5. Of course, it would have been simple enough for my brother and his wife each to order a dish without the unwanted ingredients. In that case, however, there are potential and actual downsides, such as: (1) neither would have the benefit of enjoying the other's unwanted items; (2) a dish could take longer to prepare if specially ordered; and (3) a dish's overall composition and balance could be compromised with ingredients omitted.



Stan realizes that the dating service has made a terrible mistake.

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Business, Pleasure Mix at 2007 Annual Meeting

by Jennifer R. Mason



Photos by Sarah I. Coole, Jennifer R. Mason, Johanna B. Merrill

2006-07 Bar President Jay Cook with members of a breakdancing troupe from Universal Studios at the Opening Night Street Fair.

The Sawgrass Marriott Resort and Spa in Ponte Vedra Beach, Fla., provided a beautiful setting for the State Bar of Georgia's 43rd Annual Meeting. While business was on the agenda, the luxurious spa, the sound of the waves at the Cabana Beach Club and the impeccable surface of the greens at TPC Sawgrass reminded attendees that hard work reaps its own rewards.

Opening Night Festival—Street Fair Style

While the location of the event was moved inside due to the threat of rain, the spirit of the authentic street festival prevailed at the opening of the 2007 Annual Meeting. Members along with their families and guests mingled as the sights and sounds of the festival, reminiscent of a night on the boardwalk, set the tone for the evening. The smells of cotton candy and popcorn competed with scents of more sophisticated street fare while music and laughter resonated throughout the venue. Children and adults alike waited for their turn to spar in the jousting ring and the demand for custom hologram I.D. tags never waned.

At the make-your-own-CD booth, groups of people gathered to listen to the unique interpretations of some very well known songs as friends, families and strangers came together to create their very own musical memories.

Business Begins

Following the successful opening night event, attendees got down to the heart of the meeting with CLE sessions, section and alumni events. Breakfasts, lunches and receptions provided a social atmosphere in which members could reconnect with old friends and network while enhancing their knowledge of the law. Interspersed with business were opportunities to connect in a purely social atmosphere with the YLD/LFG 5K Fun Run, tennis tournament and the ever-popular golf tournament.

Board Meeting Highlights

Following the presentation of awards at the June 15 plenary session, the Board received reports on the Investigative Panel by Dennis C. Sanders, the Review Panel by Gregory L. Fullerton, the Formal Advisory Opinion Board by Edward B. Krugman, the Supreme Court of Georgia by Chief Justice Leah Ward Sears, the Court of Appeals of Georgia by Chief Judge Anne E. Barnes, the Georgia House of Representatives by Wendell Willard (chair of the Judiciary

Committee), and Judicial Elections by Edward Lindsay (vice chair of the Judiciary Committee).

During the plenary session, President Jay Cook delivered his outgoing remarks as required by the bylaws of the State Bar. A copy of those remarks can be found on page 50 of this *Journal*.

Following a report by Kenneth L. Shigley on the Rule of Professional Conduct 1.15(I)(b) the following motion was approved by unanimous voice vote:

Motion

To refer to the Disciplinary Rules and Procedures Committee the question of whether Rule of Professional Conduct 1.15(I)(b) should be amended, and to ask the Formal Advisory Opinion Board to further study proposed Formal Advisory Opinion request No. 05-R6, to more clearly define the specific interests of creditors of clients as to which an attorney may be required to provide notice, accounting or payment from a client's funds, such as (i) judgments, (ii) statutory or judgment liens, (iii) letters of protection, and (iv) consensual security agreement.

Gerald M. Edenfield presided over the 214th Board of Governors meeting on Saturday, June 16.

Highlights of the meeting included:

- Elena Kaplan provided a report on the activities of the YLD including: a recap of the YLD's

Spring Meeting in New Orleans for which it raised \$10,000 for the Tipitina's Foundation and volunteered at a local food bank; the National High School Mock Trial Competition that was won by Jonesboro High School and which will be hosted by Georgia in 2009; and the Juvenile Law Committee's rewriting of the juvenile code that is nearing completion.

- The Board, by unanimous voice vote, approved the following presidential appointments to the State Disciplinary Board:

Investigative Panel

District 8: Donald W. Huskins, Eatonton (2010)
District 9: Christine Anne Koehler, Lawrenceville (2010)
District 10: Larry Ira Smith, Augusta (2010)
At-Large: Kenneth G. Menendez, Atlanta (2010)

Review Panel

Northern District: C. Bradford Marsh, Atlanta (2010)
Middle District: Ralph F. Simpson, Tifton (2010)
Southern District: Judd Thomas Drake, Metter (2010)

Formal Advisory Opinion Board

At-Large: Edward B. Krugman, Atlanta (2009)
University of Georgia:
Professor C. Ronald Ellington, Athens (2009)

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Consumer Law Creditors' Rights Environmental Law Fiduciary Law General Practice and Trial Individual Rights Labor & Employment Law Other Administrative Law Entertainment & Sports Law Government Attorneys Military Law/Veterans Affairs Sections General Fund			

- As required by Article V, Section 8 of the bylaws, the Board:
 - Authorized the president to secure blanket fidelity bonds for the Bar's officers and staff handling State Bar funds.
 - Directed the State Bar and related entities to open appropriate accounts with such banks in Atlanta, but excluding any banks that do not participate in the IOLTA Program, and other such depositories as may be recommended by the Finance Committee and designated by the Executive Committee of the Board of Governors of the State Bar of Georgia, said depository currently being Merrill Lynch, and that the persons whose titles are listed below are authorized to sign an agreement to be provided by such banks and customary signature cards, and that the said banks are hereby authorized to pay or otherwise honor any check drafts, or other orders issued from time to time for debit to said accounts when signed by two of the following: treasurer, secretary, president, immediate past president, president-elect, executive director, general counsel, and officer manager provided either the president, secretary, or treasurer shall sign all checks or vouchers, and that said accounts can be reconciled from time to time by said persons or their designees. The authority herein given is to remain irrevocable so as said banks are concerned until they are notified in writing, acknowledge receipt thereof.
 - Designated that Jones and Kolb be designated as the independent auditing firm to audit the financial records of the State Bar for the fiscal year 2005-06.
- Following a presentation by Treasurer Lester Tate, the board,

by unanimous voice vote, approved the 2007-08 budget.

- The Board approved a language clarification in the Reserves Policy wherein the cash reserves and Board designated reserves are further defined for background information.
- Results of the Executive Committee election were as follows: Kenneth L. Shigley, David S. Lipscomb and A. Thomas Stubbs.
- The Board elected Cliff Brashier as executive director for the 2007-08 Bar year.
- The Board approved the appointments of Lisa Chang, William C. Rumer, Mark Dehler and Leigh M. Wilco, for two-year terms, to the Georgia Legal Services Board of Trustees.
- The Board took the following action on proposed Rules, Bylaws and policy changes:
 - Disciplinary Rule 4-201(b)(5), Rule 4-103, Rule 4-203(b)(7) and Rule 9.4. Approved by unanimous voice vote (see page 103).
 - Eligibility of President-elect. The Board, by majority hand vote, approved the deletion of existing Rule 1-404. Thereafter, the Board meeting was suspended and the Plenary Session was convened, where, by majority hand vote, the proposed Bylaw was approved, as revised, predicated upon the acceptance of the proposed rule change by the Supreme Court. Following that, the Plenary Session was suspended and the Board meeting was reconvened (see page 98).
 - Rule 1-501. License Fees. Approved by unanimous voice vote (see page 99).
 - YLD Membership (see page 102). Approved by unanimous voice vote.
- The Board received a copy of the proposed new Georgia Rules of Evidence that will be an action item at a future Board meeting.

- The Board received a copy of the future meetings schedule.
- Rudolph N. Patterson presented the annual James M. Collier Award to Robert M. Brinson who was instrumental in initiating the IOLTA program and working with the banking institutions to help establish mandatory IOLTA (see page 62).
- Linda Klein and Lauren Barrett provided a report on the activities of the Lawyers Foundation of Georgia.
- Sally Lockwood provided a report on the activities of the Board of Bar Examiners.
- The Board received a copy of the minutes of the April 19, 2007, Executive Committee Meeting.
- Tom Stubbs provided a report on the Bar's 2007 legislative activities.
- The Board received a written annual report from the Unauthorized Practice of Law Program, the Fee Arbitration Program and the Supreme Court of Georgia Equal Justice Commission.
- The Board received written annual reports from the following sections: Agriculture Law, Appellate Practice Law, Antitrust Law, Aviation Law, Bankruptcy Law, Business Law, Dispute Resolution, Eminent Domain, Family Law, Fiduciary Law, General Practice and Trial, Immigration Law, Intellectual Property Law, International Law, Local Government Law, Military/Veterans, Real Property Law, School and College Law, Technology Law, and Tort and Insurance Practice.

Annual Awards

During the plenary session, specific Bar members and organizations were honored for the work that they have done over the past year. President Jay Cook began by recognizing all members present for the work they do, and stating that while not everyone can receive an award, all are deserving of one.



(Left to right) Winners of the annual tennis tournament include Caroline Brashier, John Corish, Kathryn Tanksley and Roger Murray.



John and Nancy Whaley prior to the YLD/LFG Dinner Gala.

Chief Justice Thomas O. Marshall Professionalism Awards

The Sixth Annual Chief Justice Thomas O. Marshall Professionalism Awards, sponsored by the Bench and Bar Committee of the State Bar of Georgia, honors one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients were the **Hon. George H. Kreeger**, judge, Superior Court, Marietta, Ga.; and **Paul W. Painter Jr.**, Ellis, Painter, Ratterree & Adams LLP, Savannah, Ga.

Georgia Association of Criminal Defense Lawyers Awards

The Georgia Association of Criminal Defense Lawyers presented the 2006 GACDL Indigent Defense Award to **Gerald P. Word** and the 2006 Rees Smith Lifetime Achievement Award to **Douglas N. Peters**.

Voluntary Bar Awards

The **Excellence in Bar Leadership Award**, presented annually, honors an individual for a lifetime of commitment to the legal profes-

sion and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient was the **Hon. Adele Platt Grubbs**, Cobb County Bar Association.

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

- Under 50 members: **Fountain City Bar Association**
- 101 to 250 members: **Forsyth County Bar Association**
- 251 to 500 members: **DeKalb Bar Association**
- 501 members or more: **Cobb County Bar Association**
- Honorable Mention: **Gwinnett County Bar Association**

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

The **Best Newsletter Award** is presented to voluntary bars that

provide the best informational source to their membership, according to their size:

- 101 to 250 members: **Sandy Springs Bar Association**
- 251 to 500 members: **Gwinnett County Bar Association**
- 501 members or more: **Atlanta Bar Association**

In 1961, Congress declared May 1 as Law Day USA. It is a special time for Americans to celebrate their liberties and rededicate themselves to the ideals of equality and justice under the law. Every year, voluntary bar associations plan Law Day activities in their respective communities to commemorate this occasion. The **Law Day Awards of Achievement** are also judged in size categories:

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

The **President's Cup Award** is a traveling award that is presented annually to the voluntary bar association with the best overall program. This year's recipient was the **Cobb County Bar Association**.

(Right) Georgia Court of Appeals Chief Judge Anne Elizabeth Barnes addresses the Board of Governors.

(Below) Board Member Donna Barwick, Board Member Judge Ed Carriere, Past President Bill Barwick and Executive Committee Member David Lipscomb at the Opening Night Festival.

(Below left) 2007-08 YLD President Elena Kaplan and YLD Past President Laurel Payne Landon at the Inaugural Gala.

(Below right) Board Member Chuck Driebe enjoys the festivities of the evening.



(Left) Past President Rudolph Patterson dances with his granddaughter, Katy Beth, to the sounds of Rupert's Orchestra. (Right) 2006-07 President Jay Cook dances with his wife Frankie.



(Top) Madison Croxson sings "All My Ex's Live in Texas" with her grandfather, Past President Paul Kilpatrick, in the make-your-own-CD booth at the Opening Night Festival.

(Center left) Secretary Bryan Cavan, Susan Reinhardt, Past President Rob Reinhardt and Board Member Michael Elsberry at the Opening Night Festival.

(Center right) 2006-07 President Jay Cook presents the Local Bar Award of Merit to Mike Hawkins, president of the DeKalb Bar Association, at the Plenary Session.

(Left) Kirtan and Ritu Patel and Board Member Sonjui L. Kumar at the Presidential Inaugural Gala Saturday evening.



Kristie Edenfield, 2007-08 President Gerald Edenfield, Fay Foy Franklin and Past President Jimmy Franklin at the Opening Night Festival.

Pro Bono Awards

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

The H. Sol Clark Award is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project. The 2007 award was presented to **Timothy B. Phillips**, who has demonstrated professionalism and proven commitment to, and support for, the delivery of civil legal services to the poor.

The William B. Spann Jr. Award is given each year either to a local bar association, law firm project or a community organization in Georgia that has developed a pro bono program that has satisfied previously unmet needs or extended services to underserved segments of the population. The award is named for a former president of the American Bar Association and former executive director of the State Bar of Georgia.

The 2007 William B. Spann Jr. Award was presented by the

Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to the **Dougherty County Law Library's Legal Information and Assistance Center** for its small-city/rural focus in delivering critical access to legal information, forms and lawyer-supervised advice clinics.

The Dan Bradley Award honors the commitment to the delivery of high quality legal services of a lawyer of Georgia Legal Services Program or the Atlanta Legal Aid Society. The award honors the memory of Georgia native and Mercer Law graduate Dan J. Bradley, who was president of the federal Legal Services Corporation. The 2007 Dan Bradley Award was presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to **Wendy Glasbrenner**, managing attorney for the Gainesville Regional Office of Georgia Legal Services Program.

The Georgia A Business Commitment Pro Bono Business Law Award honors the business law pro bono contributions of an individual lawyer, corporate legal department or law firm to the non-profit and community economic development sectors in Georgia. The 2007 A Business Commitment

Pro Bono Business Law Award was presented by the State Bar of Georgia A Business Commitment Committee and the State Bar of Georgia Pro Bono Project to **Paul D. Fancher** of Troutman Sanders, LLP, and **Lynn E. Fowler** of Kilpatrick Stockton, LLP.

Section Awards

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

- **Section of the Year Business Law Section**, Paul Cushing, chair
- **Awards of Achievement Family Law Section**, Shiel Edlin, chair
- Intellectual Property Law Section**, Griff Griffin, chair
- Real Property Law Section**, David Burge, chair
- Technology Law Section**, Michael Stewart, chair

Tradition of Excellence Awards

The Tradition of Excellence Awards are presented each year to selected Bar members who have reached the age of 50 in recognition for their commitment of service to the public, to Bar activities and to civic organizations. The 2007 recipients were: **L. Hugh Kemp** (defense), **Charles J. Driebe** (general practice), **Paul Kilpatrick Jr.** (plaintiff) and **Justice Carol Hunstein** (judicial).

Young Lawyers Division Awards

Recipients of the Award of Achievement for Outstanding Commitment and Service to the State Bar of Georgia's Young Lawyers Division included: **Derek Bauer**, **Shiriki Cavitt**, **Mawuli Davis**, **Sharri Edenfield**, **Sally Evans**, **Elizabeth Fite**, **Terri Gordon**, **Stephanie Kirijan**, **Scott Masterson**, **Ari Mathe'**, **Shane Mayes**, **Jill Muvdi**, **Stephinie Petties**, **Stacy Rieke**, **Lea Thompson**, **Tania Trumble**, and the **Savannah YLD**.

Recipients of the Distinguished Judicial Service Award In Recognition of Distinguished Service on the Bench, Commitment to Improving the Practice of Law, and Active Support of the Young Lawyers Division included: **Chief Judge Anne Elizabeth Barnes, Justice George H. Carley and Judge John J. Ellington**

The recipient of the Young Lawyer Ethics and Professionalism Award was **Andrew Goldner**.

The recipient of the Ross Adams Award was **Joe Dent**.


Changing of the Guard

Prior to the swearing-in ceremony, 2006-07 President Jay Cook presented the Distinguished Service Award, the highest accolade bestowed on an individual lawyer by the State Bar of Georgia, to Past President **Rudolph N. Patterson**.

Patterson was honored for his "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia." (See page 60.)

Saturday evening marked the beginning of a new chapter for the Bar as Gerald M. Edenfield was sworn in as the 45th president of the State Bar of Georgia by his brother, Hon. B. Avant Edenfield. After stepping on stage, Edenfield placed his left hand on the Bible and repeated the following:

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

Attendees moved from the business portion of the evening right into the celebration. Four themed rooms provided food, drinks and entertainment that kept the party going on into the night. The scotch and cigar and martini bars were full of people looking for drinks in a sophisticated setting, while the '50s sports bar was equipped with all sorts of games and diversions for the more competitive individual. The room that once again captured the largest audience was the dance club where Rupert's Orchestra played popular '80s dance hits along with personal favorites. 



Jennifer R. Mason is the assistant director of communications for the State Bar of Georgia and can be reached at jennifer@gabar.org.

2007-08 Executive Committee

President

Gerald M. Edenfield, *Statesboro*

President-elect

Jeffrey O. Bramlett, *Atlanta*

Immediate Past President

Jay Cook, *Athens*

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S. Lester Tate III, *Cartersville*

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Bryan M. Cavan, *Atlanta*

YLD President

Elena Kaplan, *Atlanta*

YLD Immediate Past President

Jonathan A. Pope, *Canton*

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Phyllis J. Holmen, *Atlanta*

David S. Lipscomb,
Lawrenceville

Kenneth L. Shigley, *Atlanta*

A. Thomas Stubbs, *Decatur*

N. Harvey Weitz, *Savannah*

"What did you like best about the Annual Meeting?"



The best part of the Bar Association meeting was the Opening ceremony, especially the boxing ring. I hope the next meeting could be just as fun!!

-Patrick Hampton

My favorite thing was when we went in the pool and I got to get together with my friend.

-Ryan Hampton

Going to the Golf Course and playing golf. -Dallas NeSmith

The best thing about the kids program was going to the pool.

-Hanna Flanagan

The best part was meeting new friends and seeing my old friends. One of the best times I've had was hanging out with Carlos.

-Michael DelCampo

Cook Says: There is Hope

by Jay Cook

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to “deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia.” Following is the report from President Jay Cook on his year, 2006-07, delivered June 15, at the State Bar’s Annual Meeting.

We have made an admirable dent in the goals I outlined when I accepted the presidential gavel in June 2006: to restore a healthy, balanced vision of the American justice system and the paramount role it plays in preserving and protecting a democratic society.

But I can’t and won’t take credit for the progress we made. It would not have been possible without the endorsement of the Board of Governors. It would not have been possible without the full support of the Executive Committee. It would not have been possible without the vision and leadership of my predecessors—Rob Reinhardt and Robert Ingram—who saw the need for public education and established the Foundations of Freedom Commission during their presidencies. And it would not have been possible if the Bar’s officers—Gerald Edenfield, Jeff Bramlett, Bryan Cavan, and Lester Tate—did not understand that public education must be a permanent fixture in our continuing strategy to safeguard the judiciary’s critical role in preserving founding principles and the American way of life.

But getting everybody on board was only the first step. The next step was to resign ourselves to the fact that lawyers aren’t always the best communicators.



Photo by Sarah I. Coole

2006-07 Bar President Jay Cook at the Plenary Session at the State Bar’s Annual Meeting.

The proof, as they say, is in the pudding. Nothing we’d tried thus far was working. We needed expert help and we were lucky to find a rare breed of consultant that both shared our values and understood how to trigger a values-based conversation about American justice. That dialogue, they convinced us, needed to take place on higher ground, under a standard of American values, and through a clear, truthful message that resonates deeply with the public.

The process taught us other important things: (1) traditional marketing (self-promotion and “selling”) don’t work; (2) facts don’t matter because people think in “frames”—words or phrases that carry deeper meanings and can’t be easily supplanted by data; and (3) most Americans believe in strong courts that are free from political influence, but few understand how the

separation of powers works to uphold the Constitution.

We then developed (and tested) a set of core messages that reveal the ways in which the justice system embodies and preserves American values. Following are some of these messages and how Georgians rated them in a public opinion poll commissioned by the State Bar:

- Justice for all means equal protection under the law and equal rights for all citizens (96 percent agreed)
- Justice for all means upholding the Constitution as the supreme law of the land (95 percent agreed)
- Justice for all requires strong courts, impartial judges, and citizen juries (98 percent agreed)
- Justice for all means defending fair and impartial courts (98 percent agreed)
- Justice for all is a constitutional promise worth keeping (96 percent agreed)

We used these messages to develop radio and television ad campaigns and editorials to improve public understanding of the importance of impartial courts and an independent judiciary; we used these messages to remind the public of the importance of keeping politics out of the judiciary during last year's Supreme Court elections; and we used these messages to advance our perspective under the Gold Dome.

But our work is far from over. And that is why I choose to leave you not with a litany of past achievements, but with a bounty of food for future thought.

"We cherish a myth that the justice system is the last, best hope for the beleaguered 'little guy' in the world of the powerful," Claire Wolfe wrote in her 1998 essay *After the Fall of Justice*. "No matter what happens, we've been told, even the humblest of us can 'have our day in court,' be heard and be vindicated, as long as

truth and fairness are on our side A belief in justice—even an erroneous belief—can be the line that separates gentility from riots in the streets."

While I disagree with Ms. Wolfe's cynical premise that our belief in justice is a myth, I feel she is right about one thing: our deep belief in justice must prevail if we are to preserve a civilized society based on the rule of law.


But we can't ignore the signs that Americans are losing faith in justice. Somewhere along the line, the American people became ashamed rather than proud of asking the courts to resolve legitimate disputes. Somewhere along the line, the American people began perceiving jury service as a chore rather than a privilege and a liberty-sustaining responsibility. And somewhere along the line, the American people began demeaning the role our founding fathers intended for lawyers and judges to play in our system of justice.

Where will it end? Ms. Wolfe pessimistically prognosticates: "Ultimately, the myth dies. Whether you're a constitutional scholar or a semi-literate kid, you know you won't get justice in the justice system. Remember, the justice system isn't the little guy's first hope. It's the last. What do you do when that hope is snuffed?"

It is up to us, as officers of the court, to keep that hope alive. It is up to us—the lawyers, judges, and court administrators—to ensure that the courtroom remains an honorable place for citizens to settle legitimate disputes. This means, first and foremost, honoring the litigants who have demonstrated their faith in the system by asking the court to resolve a disagreement in a civilized, dignified and commonsense way that's fair to both parties. We owe it to the litigants and to ourselves not to shake their faith in justice by making the trial about anything but the fair, impartial and efficient administration of justice.

Ms. Wolfe leaves us with this thought-provoking warning: "Ulti-

mately, prosecutors and judges who behave like tyrants in the courtroom will find that it isn't the little guy . . . who suffers the direst consequences when the justice myth dies. No. When the powerful close the doors to justice—and when common people understand that the doors *are* closed—we have one more place to turn: the streets."

The onus is on us to ensure the doors of justice remain wide open and welcoming. The onus is on us to restore the public's belief in justice through values-based messaging. The path is long, but there is hope. Like Confucius said, "Every journey of a thousand miles begins with a single step." We have taken the first steps. Let's keep going. We need each of you to stand up and take the next step with us. 



Jay Cook is the immediate past president of the State Bar of Georgia and can be reached at jaycook@midsspring.com.



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Edenfield Plans for New Bar Year

by Gerald M. Edenfield

The following is excerpted from Gerald M. Edenfield's presidential speech at the 2007 Annual Meeting in Ponte Vedra Beach, Fla.

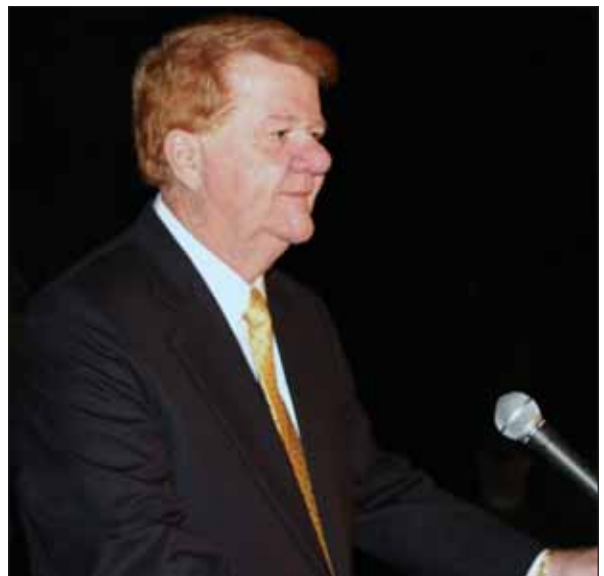
I want to thank all of you for being here tonight and sharing this momentous occasion with me. This will not be a lengthy speech, I promise. But I do want to take the opportunity to thank you once again for this tremendous honor and responsibility—and, before we leave this beautiful setting, to tell you a little about myself and leave you with a few thoughts about our mission for the upcoming year.

As many of you know, I grew up in rural Bulloch County in South Georgia, a child at the beginning of the baby boom. I was reared on a tobacco farm, and so was my wife, who rode to school on a school bus driven by her father, while we were both in elementary school. My parents did not graduate from high school—they were a product of the depression—but education was a major part of my upbringing.

I was told by my parents, as many of you were told by yours, that I could be anything and do anything that I put my mind to as long as I worked hard, persevered, was competent and demonstrated character and manners.

Thanks to this encouragement given not only to me, but to my brother and sister as well, two of the three of us went on to attend college and law school.

In fact, since 1970, I have had the honor and privilege of practicing law in the great state of Georgia. Being a lawyer and practicing law in the county where I was reared is a dream come true for me.



Photos by Sarah I. Coole

2007-08 President Gerald Edenfield addresses the attendees of the Presidential Inaugural Gala.

Indeed, this fulfillment must have manifested itself in my children. Two of the three are lawyers, and the other has yet to select what path to pursue. I would not choose any other life's pursuit for myself, and I hope all of you feel the same.

Much has changed in the practice of law through the years since I began practicing. Many of the changes have been good, including modernization brought on by computers and the Internet. Another positive change is the number of women in the profession. Both of my daughters are practicing attorneys.

There have also been some unfortunate changes. Perhaps the worst is a trend that has gotten some press lately and is something that we talk a lot about at Bar meetings: the public's very negative perception of lawyers and the erosion of confidence in our legal system.

Lawyer jokes are nothing new (in fact most of them are showing their age), but I think what is new is the damage that has been done to our profession and, by extension, our country's justice system.

One of the things that I have realized about being a lawyer is that our profession, and the system we are sworn to serve, provides the foundation upon which liberty and justice stand.

Even though the judiciary was designed as a separate but equal branch of government, it is open to vicious attacks by other branches, when individuals in those other branches do not agree with the law's application.

As retired Justice Sandra Day O'Connor warned, "There is no natural constituency for judicial independence except for a vibrant, responsible lawyer class. We can't just expect the courts to protect themselves." Therefore, it is up to us to protect our profession, the courts and judicial independence as the ultimate weapons against lawlessness.

As everyone here has heard at some point in our professional careers, there were three original professions: ministry, medicine and law.

While each profession has its own significant virtues, our mission is justice. Our work, our service, our dedication to upholding timeless principles of justice allows for this state and this nation to prosper and prevail.

What makes the American system of justice the envy of the world is the unique concept that access to the courts, judicial independence, and professional integrity are essential to the fair administration of justice. The bedrock of the profession is a competent, independent judiciary. Without this, really nothing else matters.

Hovering over the profession, however, is a "suspicion" that we are skilled people doing bad things because we know how. I suppose that's why most lawyers enjoy *To Kill a Mockingbird* and Atticus

Finch. He is one of the few characters whom we all admire and the public reveres.

He was an excellent lawyer who practiced his profession with distinction. Furthermore, he was a wonderful parent, a good neighbor, and a respected member of his community.

And while there are exceptions to every rule, the vast majority of the lawyers that I know represent the ideals for which we so admire in Atticus Finch.

The public's negative perception of lawyers and the legal system is one borne out of a misconception, fueled by the same individuals who hate judicial inde-

I've mentioned tonight, so I ask for your help in galvanizing the protection of these ideals among ALL Georgia lawyers. Unless we stand united on these issues, our defense against these attacks will fail.

I call upon each member of the State Bar to serve in whatever capacity you can to ensure the law is upheld, respected and accessible to those who require it. It does not matter what area of the law you practice in. Whether you are a transactional lawyer, tax lawyer, litigator or lawyer of any other kind, you know that access to justice is the bedrock upon which our entire profession stands. We must all stand together.



The Edenfield family—Sharri, Gerald, Sharon, Gerry and Kristie at the Presidential Inaugural Gala on June 16.

pendence and access to the courts because they cannot control it. If the public knew the truth about what we do and why access to the courts and an impartial judiciary is so important, I do not believe that this misconception would continue.

Therefore, I dedicate my term as president to mobilizing the State Bar to educate the public about what we do and why it is important. I know in some respects that I am "preaching to the choir" regarding some of the topics that

In truth, I must confess that in any organization, a small percentage assume the obligation to lead. Help me to find those lawyers who will assume the responsibility. Even more importantly, let's encourage young lawyers to participate and assume positions of leadership, whether it is in their community, in the State Bar, in the Legislature or by other means.

I challenge you to use the passion you had for the law when you passed the Bar and began your

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practice. Use that passion to convey this mission to the younger generation of lawyers and the public. That mission being the education of others of why lawyers are an integral part of our justice system and the importance of our justice system.

I challenge you to become the rock where liberty and justice can stand and gaze at the possibility of a better tomorrow.

Finally, I wish for my children, and all of us, professional satisfaction. How we improve the status of lawyers and how to provide for their professional and personal needs are worthwhile pursuits of this organization. Creating more meetings and committees is not my objective. It is clear to many that more billable hours, better computers, more depositions and six-figure incomes have not addressed the human needs that our highly intelligent and hard-working profession has. Let's begin a process this year to address

those human needs among our State Bar members.


As the incoming president of this great organization, I plan on leading by example. Those of you who know me can attest to my passion for the law and service.

We have to live the law and become its messenger. After all, as I asked the Board of Governors this morning: if lawyers do not stand up for our justice system and remind our fellow citizens why judicial independence matters, who will?

I want to thank Jay Cook for his outstanding service this past year, and for the trail he and all our past presidents have blazed for this organization. As they have, I know I will benefit from the efforts and expertise of Cliff Brashier and the entire State Bar staff to meet the opportunities and the challenges ahead.

I want to thank my law partners Susan Cox, Marc Bruce, and Michael Classens and our associ-

ates, Charlie Aaron, Sharri Edenfield and Benji Colson. Without these fine lawyers and our terrific staff, I would not be able to serve in this position. I also want to thank my family who is here with me tonight, some of whom have traveled great distance to be with us. Finally, and especially, I want to thank my wife and children for joining me on this next exciting adventure.

As the year progresses, I hope each of you will seize that opportunity to live the law . . . to serve humanity . . . and uphold the principles of liberty and justice for all. We are the beneficiaries of the foundation on which they stand, and we must make sure that it never falters. 



Gerald M. Edenfield is the president of the State Bar of Georgia and can be reached at gerald@ecbcpc.com.



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Gerald M. Edenfield: A Reputation Built on Service

by Joel Alvarado

Gerald Edenfield laughs when recalling his shaky beginning as an attorney in Atlanta. His client was scheduled for a deposition with Edgar Neely, a great trial lawyer with years of experience.

“Mr. Neely was extremely prepared and thoroughly questioned my client, who was a doctor,” Edenfield said. The doctor, totally exasperated from the grilling, requested a break to consult with Edenfield. He wanted to exercise his doctor-patient privilege and refuse to answer any more questions. Edenfield, wanting to satisfy the interest of his client, was more than willing to comply with his request and advised Neely of his client’s desire.

Unfortunately, Edenfield did not study or research doctor-patient privilege and relied on the knowledge of his client. Edenfield now chuckles, for in retrospect he realized “it was a bad move on my part.” Neely, fully aware that such a privilege was not applicable to the case in question, asked for him to research if the doctor-patient privilege was an appropriate request.

The next day, after staying up all night to research the issue, Edenfield came to realize the doctor was wrong and he became a little more humble. Fortunately, Neely was willing to tutor the young aspirant and served as a mentor for years afterward. Although an inglorious beginning, one can argue that Edenfield has spent the next 37 years of his life making amends by providing his clients excellent legal service.

The 45th president of the State Bar of Georgia was born on July 6, 1945. He grew up on a farm in Bulloch County, where his parents instilled in him a strong work ethic and an appreciation for education. His parents were obviously very successful in rearing their children for both he and his brother became attorneys and his sister retired after working as a hearing administrator for the Social Security Administration.

Edenfield, for his part, graduated in 1968 from the University of Georgia with an A.B. in political science and philosophy. By 1970 he graduated from Mercer University’s Walter F. George School of Law in Macon. Throughout his matriculation in both undergraduate and law school, Edenfield worked numerous jobs: selling patent medicine, door-to-door salesperson, laundry truck driver and at a beer distribution company. He was determined to get his education and to never let any obstacle deter him from his

goal of realizing the dreams of his parents.

After passing the bar exam, Edenfield was fortunate to start his legal career with the firm of Heyman & Sizemore. He remembers that “they were always willing to give me the responsibility and the credit for performing the task at hand.” The one thing the senior attorneys emphasized, which has stayed with him to this day, was that a good reputation was essential to having a successful law practice—words to live by.

Edenfield credits the late Lamar Sizemore, a partner at Heyman & Sizemore and father of current Superior Court Judge Lamar Sizemore of Macon, with teaching him many lessons about dealing with clients, how to deal with conflicts that arise, and how to best address controversial matters. To buttress his point, Edenfield told a story of a well-known client, whose son had the misfortune of violating certain traffic laws, and who was constantly bailed out by his father. Finally, it came to a point where no lawyer could successfully defend the client’s son without his spending some time in jail.

The father called Edenfield and asked him to visit the incarcerated son. While meeting the son in jail, Edenfield became aware that the client’s son had an illegal weapon sneaked in. Fearing for the son’s safety, Edenfield met with Sizemore for guidance and they were able to remove the young man from harm without violating his confidences. As has been the case, Edenfield’s commitment to serving his client and maintaining his solid reputation was evident.

Edenfield says he was extreme-

ly lucky to have a close confidant in his life to discuss the law: his brother, U.S. District Judge B. Avant Edenfield. He has always been able to call upon him when situations developed that were difficult. His brother always “emphasized getting to the point, to not embarrass anyone, be succinct, and fully disclose to the court all the information that is necessary for the court to make a just decision.”

More important, his brother as well as another relative, the late

tool that can help advance the legal profession in both collegiality, professionalism, and improve the efficiency of the justice system.” To Edenfield, “serving as a mentor allows a person who has practiced law for many years, and has amassed a great wealth of information, to pass onto other attorneys their experiences and other pearls of wisdom.”

In time, Edenfield moved back to Statesboro. He has been managing partner of Edenfield, Cox, Bruce & Classens since 1988. His

firm represents such local clients as the Bryan County Board of Education, Farmers and Merchants Bank, Bulloch County Board of Education, Candler County Board of Education and other important local organizations. He considers Susan Cox, a partner in the firm, as another great mentor. Edenfield notes that “when things get hectic, she reminds me

that tomorrow is another day. She has a calming effect on all lawyers and always conducts herself in the most professional way.”

Away from the office, Edenfield enjoys relaxing on his farm and fishing. He has been married to his wife Sharon for 39 years, and they have three children. His daughter Sharri is an attorney in Statesboro; Kristie, his other daughter, is also an attorney practicing in Savannah with Hunter Maclean; and their son Gerry is a senior at the University of Georgia. To Edenfield, family is an essential part of his life. Regardless of his work schedule he always found time to attend important family events and share holidays with his loved ones. “I will always be there for my family,” exclaims Edenfield, “for their love



U.S. District Judge Newell Edenfield, cautioned him to “maintain your reputation,” for that is the most important asset an attorney has. Without credibility, a lawyer’s words ring hollow in the face of the Constitution and the system of justice we all cherish.

Mentoring is very important to Edenfield; it has helped with developing his craft and establishing certain principles, which he has relied upon throughout his career. He has never forgotten the advice or generosity of other attorneys. When the opportunity presented itself to serve as a mentor for newly admitted lawyers through the State Bar’s pilot mentoring program, Edenfield was one of the first to sign up. He recognizes that “mentoring is a valuable

and support have allowed me to succeed professionally.”

He has received numerous honors for his legal excellence and volunteerism. Since 2004, Edenfield has been a member of the prestigious American College of Trial Lawyers. This organization is composed of the best of the trial bar from the United States and Canada and is widely considered to be the premier professional trial organization in America. In 2005, he was recognized by *Atlanta Magazine* as a Georgia “Super Lawyer” in litigation. Edenfield was also honored with the Service to Mankind Award in 1995 and the Founders Award from Deen Day Smith, an organization in Statesboro that recognizes the contributions of local leaders.

Edenfield is a member of many legal associations: the State Bar of Georgia, the American Bar Association, and the National Association of School Attorneys, just to name a few. Within these organizations he has served in the following capacities—secretary of the State Bar of Georgia, Legislative Committee for the State Bar of Georgia, Board of


Governors for the State Bar of Georgia, and chairman of the Committee to Relocate the Federal Court. Under his leadership, he will challenge his fellow State Bar members to find that opportunity to live the law, to serve humanity, and uphold the principles of liberty and justice.

Edenfield is also heavily involved in local organizations. He has served as president of the Rotary Club, director of the Statesboro Chapter for the American Lung Association, president of the Statesboro-Bulloch Chamber of Commerce, and director of the Farmers and Merchants Bank. Edenfield agrees with Woodrow Wilson who declared that “(lawyers) are the servants of society, the hand servants of justice.”

To Edenfield, service must extend beyond the courtroom. Attorneys have the knowledge, skill and ethical foundation to serve the public at large. It is a moral imperative to give of oneself to make the world better. No task is too small if it can somehow improve the lives of people. At the end of the day, lawyers are

blessed with an opportunity to not only be caretakers of the law, but caretakers of democracy. It is a responsibility Edenfield does not take lightly and a message he conveys to all new or aspiring attorneys he meets.

Edenfield has built his reputation through more than three decades of service to the public and the justice system. He has never been ashamed to ask for assistance and guidance from his peers nor has been silent when a colleague could benefit from his counsel.

When asked what one piece of advice he can offer, Edenfield quickly responds: “Your reputation as an attorney is the most valuable asset that you have since we all have the same books to read and appear in the same courts. But, if you truly seek justice, your reputation will precede you, and you will accomplish much and be respected by both the bench and the bar.” 



Joel Alvarado is a media consultant to the State Bar of Georgia.



Behind the Scenes at the Meldrim Woods Plantation Photo Shoot

Statesboro native and family friend Lori Grice photographed the Edenfields at their farm on June 18. It was a hot day, but Lori and the family had fun shooting at different locations around the property.



Photos by Sarah I. Coole

Past President Receives 2007 Distinguished Service Award

by Johanna B. Merrill

State Bar Past President Rudolph N. Patterson received the State Bar of Georgia's Distinguished Service Award during the June 16 inaugural ceremony at the 2007 Annual Meeting at the Sawgrass Marriott Resort & Spa in Ponte Vedra Beach, Fla. Outgoing President Jay Cook presented the award to a surprised Patterson, who was unaware that he was the 2007 recipient.

The highest honor bestowed by the Bar, the award recognizes conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in Georgia. Patterson has been an asset and a friend to the Bar since he was admitted to what was then the Georgia Bar Association in 1962, offering outstanding and unflinching service, as not only an attorney in private practice but also as a member of the Board of Governors for almost two decades. His leadership qualities have been felt across local, state and national levels of bar service as president of the Macon Bar Association, president of the State Bar of Georgia, and through many years of service to the American Bar Association and as founder and president of the National Organization of Social Security Claimants' Representatives.

His long-standing commitment to the legal profession includes past and current service as chair of the State Bar's General Practice and Trial Section, chair of the State Bar's General Counsel Committee, president of the Georgia Bar Foundation, vice chair of the Lawyers Foundation of Georgia, chair of the Commission on Continuing Lawyer Competency,




Photo by Sarah I. Coole

Past President Rudolph N. Patterson accepts the 2007 Distinguished Service Award from 2006-07 President Jay Cook.

chairperson of the Institute of Continuing Legal Education in Georgia, attorney trustee of the Institute of Continuing Judicial Education of Georgia, member of the Southern Conference of Bar Presidents, and Georgia delegate for the ABA.

In addition to receiving the Distinguished Service Award, Patterson is a past recipient of the General Practice and Trial Section's Tradition of Excellence award as well as the Georgia Southwestern State University's 21st Century Leadership Award.

A 1963 graduate of Mercer University, Walter F. George School of Law, Patterson practices in the areas of Social Security disability law, personal injury and workers' compensation law. 



Johanna B. Merrill is the section liaison for the State Bar of Georgia and a contributing writer to the *Georgia Bar Journal* and can be reached at johanna@gabar.org.

**State Bar of Georgia
2007 Distinguished Service Award
Rudolph N. Patterson**

WHEREAS, Rudolph N. Patterson has served the legal profession and the State Bar of Georgia with unfailing commitment, enthusiasm and pride since he was admitted to the Bar in 1962; and

WHEREAS, the State Bar of Georgia recognizes Rudolph N. Patterson for his outstanding and unfailing service as a private practice attorney in Macon and as a member of the Board of Governors since 1991, including his service as State Bar President in 1999-2000; and

WHEREAS, Rudolph N. Patterson played a crucial role in the development of the Bar Center by revising a 100-year old easement for the protection of access to the building; and

WHEREAS, during his service to the profession, his leadership qualities have been felt locally as President of the Macon Bar Association, statewide as a member of the State Bar's Executive Committee and as a Chairman of the General Practice and Trial Section, and nationally through the American Bar Association and as the Founder and President of the National Organization of Social Security Claimants' Representatives; and

WHEREAS, his involvement with the ABA as a State Bar of Georgia delegate and member of the National Caucus of State Bars reinforces his dedication and commitment to the profession, not only in the state of Georgia, but nationally; and

WHEREAS, Rudolph N. Patterson has shown extensive devotion to continuing legal education for lawyers and judges with his past and current service as Chair of the Commission on Continuing Lawyer Competency, Chairperson of the Institute of Continuing Legal Education in Georgia and Attorney Trustee of the Institute of Continuing Judicial Education of Georgia; and

WHEREAS, Rudolph N. Patterson has been recognized for his contributions to the public and the profession with the General Practice and Trial Section's Tradition of Excellence Award; the Georgia Southwestern State University Twenty-First Century Leadership Award and as the fifth Guest Lecturer in the Griffin Bell Lecture Series; and

WHEREAS, the State Bar of Georgia has benefited from Rudolph N. Patterson's involvement as Vice Chairman of the Lawyers Foundation of Georgia, President of the Georgia Bar Foundation, a member of the Southern Conference of Bar Presidents, and through his service to numerous State Bar committees; and

WHEREAS, Rudolph N. Patterson has provided sage advice and counsel to Georgia and other state bar leaders, sharing with them historical knowledge of the organized Bar that few lawyers possess; he gives the same sound mentoring to countless young lawyers in Social Security Law and other areas in which he practices; and

WHEREAS, the legal community and citizens of Georgia owe a debt of thanks to Rudolph N. Patterson for giving of himself selflessly for the betterment of our communities through 45 years of dedicated service with the State Bar of Georgia.

NOW THEREFORE BE IT RESOLVED that the State Bar of Georgia does express its gratitude and appreciation to Rudolph N. Patterson for his many years of devotion to the legal profession and to the people of Georgia by presenting him with the Distinguished Service Award—the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia.

Given this 16th day of June 2007.

Jay Cook
President, State Bar of Georgia

Bob Brinson Wins James M. Collier Award

by Len Horton

Robert M. Brinson, past president of the State Bar of Georgia and partner in the law firm of Brinson, Askew, Berry, Seigler, Richardson & Davis in Rome, received the fourth annual James M. Collier Award. The award was presented at the Board of Governors meeting during the State Bar of Georgia's Annual Meeting in Ponte Vedra Beach, Fla., by Rudolph Patterson, president of the Georgia Bar Foundation.

"Bob Brinson exemplifies service to the Georgia Bar Foundation and to IOLTA and the many grant recipients who depend on the Georgia Bar Foundation for funding," said Patterson.

"In the beginning of IOLTA when we were fighting to get the concept accepted by Georgia lawyers and bankers, Bob led the way with his 'Totally Painless Way To Give' marketing campaign. Eventually that effort helped establish IOLTA as one of the most valuable ways a lawyer can contribute to his or her community. It got us over the hump and into the minds of lawyers and bankers who wanted to help solve hundreds of law-related problems in Georgia."

"Those were the voluntary days," Patterson continued, "when lawyers did not need to participate unless



Past President Robert M. Brinson accepts the 2007 James M. Collier Award from Past President Rudolph Patterson.

Photo by Len Horton


they wanted to. By showing the typical Georgia lawyer that IOLTA was okay, it set the stage for mandatory IOLTA five years later. Once Bob had shown that IOLTA, like oatmeal, was the right thing to do, the selling of mandatory IOLTA became much easier. Without the groundwork set by Bob, mandatory might never have happened. Without mandatory IOLTA, civil legal assistance to the poor along with scores of other programs including mock trial, law-related education and efforts to help children at risk might never have happened."

In addition to being an IOLTA pioneer, Brinson remained a source of wisdom whenever the Georgia

Bar Foundation or IOLTA encountered challenges. To this day, Brinson is a pro bono counselor to the Bar Foundation on everything from dealing with legal problems to identifying ways to win needed support in the Legislature. Whether on an airplane heading toward Minnesota to represent a client or in his car or even occasionally at home, he was always reachable, always full of ideas and unfailingly positive.

Patterson went on to say, "As he did with the State Bar, Bob has left footprints on the Georgia Bar Foundation's sands of time, and believe me I know that those prints are from shoes that are difficult to fill. The Georgia Bar Foundation is fortunate to have had him as its pilot in its maiden flight."

The James M. Collier Award is presented annually to a person whose efforts in support of the Bar Foundation and its mission are so extraordinary that they must be recognized. The award honors the extraordinary financial support of Jim Collier, who as an officer in the Bank of Dawson, has been able to provide certificates of deposit with significantly higher interest rates than are available anywhere else. He and his bank together set a standard of support for the Georgia Bar Foundation that demanded recognition and led to the creation of the James M. Collier Award.

Since 1983, the Georgia Bar Foundation has been working with the assistance of the State Bar of Georgia in accordance with orders from the Supreme Court of Georgia to provide funding for law-related organizations throughout the state. In the process thousands of economically disadvantaged Georgians benefit each year. 



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

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LFG Enjoys Another Year at the Annual Meeting

by Lauren Larmer Barrett

Ponte Vedra Beach, Fla., is one of the prettiest spots in the world, and the lawyers of Georgia were lucky enough to gather there this year for the 2007 State Bar of Georgia Annual Meeting. Just a few miles south of the Georgia-Florida border, it was a great spot for reconnecting with friends and colleagues. The Lawyers Foundation's events during the meeting included a silent auction and fellows meeting, as well as the joint YLD/LFG Dinner Gala and the annual Fun Run.

The Lawyers Foundation of Georgia's Silent Auction was a rousing success. More than \$11,000 was raised to benefit the Challenge Grant Program. Thank you to everyone who worked so hard this year obtaining items for us—you are great! And of course, we can't forget to thank those who actually bid on the merchandise. Your willingness to give is much appreciated.



Fellow Judge Philip C. Smith with wife Pamela Boles ready to attend the YLD/LFG Dinner Gala.

Photos by Sarah I. Coole and Johanna B. Merrill

The annual YLD/LFG 5K Fun Run was held on the beach in front of the resort's private Cabana Beach Club. Every runner crossed the finish line and was able to proudly clutch the coveted T-shirt while downing a bottle of cold water.

The fellows meeting, held each year to provide fellows with an update on the foundation and to elect the

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officers and trustees, was held June 15 at a time when many may have preferred to be on the beach, in the pool or on the golf course. Despite the call of the outdoors, the turnout was good. The slate of trustees and officers for the coming year are listed above.

Thank you to the law firms who hosted and to all our sponsors, particularly the platinum, gold and silver level organizations: SunTrust Legal Specialty Group, The Georgia Fund, AT&T (formerly BellSouth) The Coca-Cola Company and Minnesota Lawyers Mutual.

To all those who support the Lawyers Foundation of Georgia, thank you! The continued growth of the foundation is due to your participation and contributions. If you have any questions about the activities, events and programs of the foundation, please contact Lauren Larmer Barrett, 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, lfg_larren@bellsouth.net, 404-659-6867. 



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



Margaret Chasteen, Past President Bobby Chasteen, Board Member Tom Chambers and Carol Chambers before they head off to the YLD/LFG Dinner Gala.



More than \$11,000 was raised in the Lawyers Foundation of Georgia Silent Auction to benefit the Challenge Grant Program.

LFG 2007-08 Board of Trustees

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Young Lawyers Division Celebrates 60 Years

by Deidra Sanderson

The Young Lawyers Division (YLD) and the Lawyers Foundation of Georgia (LFG) joined forces to present a black tie gala in celebration of the 60th anniversary of the Young Lawyers Division, on June 15 at the Tournament Players Club (TPC) in Ponte Vedra Beach, Fla. The evening, “Celebrating 60 Years of Service,” honored YLD presidents since the organization’s establishment in 1947.

Traditionally, the LFG Fellows Dinner and the YLD Dinner take place separately during the State Bar of Georgia’s Annual Meeting, but combining the events allowed for an unforgettable evening for the groups to become familiar, or to reconnect, with each other, providing a foundation to build upon in the future. State Bar Past President Linda Klein said, “It is fitting that the charity of choice for Georgia lawyers would join with the largest group of lawyer volunteers, the YLD, to celebrate their 60th anniversary.”

Three hundred attendees arrived at the majestic new 77,000 square-foot Mediterranean revival-style clubhouse to the sound of bagpipes playing from the balcony. Many YLD past presidents were in attendance, as the evening was dedicated to celebrating the 60th anniversary by honoring the YLD’s past presidents. “It

was wonderful to celebrate the 60th birthday of the YLD with so many former presidents and friends present at such a magnificent place as TPC,” Immediate Past President Jon Pope said.

Past presidents in attendance included: Charles J. Driebe, 1963-64; W. G. Elliott, 1964-65; Matthew H. Patton, 1970-71; Robert M. Brinson, 1973-74; James Elliott, 1976-71; James A. Pannell, 1979-80; Richard T. de Mayo, 1982-83; William D. Barwick, 1984-85; John C. Sammon, 1987-88; Donna G. Barwick, 1988-89; Dana B. Miles, 1989-90; Stanley G. Brading Jr., 1990-91; Rachel K. Iverson, 1993-94; Tina Shadix Roddenbery, 1994-95; J. Henry Walker, 1996-97; Joseph W. Dent, 1999-00; Peter J. Daughtery, 2001-02; Derek J. White, 2002-03; Laurel Payne Landon, 2004-05; and Damon E. Elmore, 2005-06.

“I had too much fun!” Chuck Dreibe, 1963-64 president said. “As the oldest living young lawyer, it was great fun to see all the old codgers. The anniversary event was an excellent party in the grand tradition of the YLD.”

Guests enjoyed a cocktail hour and were treated to a display of YLD memorabilia representing the organization’s 60 years of history. Newsletters, including the very first edition (Fall 1961), ABA Awards of Achievement, scrapbooks, and numerous photographs were on display. A DVD photo montage of past presidents played continuously throughout the evening on four large screen monitors.

“Thanks to the YLD for honoring us past YLD presidents—all 60 years of us. I was impressed that so many past presidents were able to attend—obviously having successfully completed their incarcerations,

rehab, identity makeovers and health issues associated with getting as old as we are. The efforts to accommodate us old timers were admirable—having walkers and wheelchairs readily available was most thoughtful. However, I did think the wheelchair limbo contest was a little over the top. The Alzheimer's jokes were really funny, or at least I think they were because I can't remember any of them. One suggestion I have for the next reunion is to have pictures on the nametags, like high school reunions. With the increased girth, gray (or no) hair and denture replacements, I hardly recognized anyone. Heck, if my name hadn't been on the old pictures I wouldn't have recognized myself!" joked Stan Brading, 1990-91 president.

YLD Award recipients for the 2006-07 Bar year were recognized by Immediate Past President Jon Pope:

- Award of Achievement, Outstanding Service to the Public: Shiriki Cavitt, Terri Gordon, Community Service Projects Committee co-chairs; Ari Mathe', Lea Thompson, Juvenile Law Committee co-chairs
- Award of Achievement, Outstanding Service to the Profession: Derek Bauer, Intrastate Moot Court Competition Committee Chair; Sally Evans, Stacy Rieke, Tania Trumble, High School Mock Trial Committee; Elizabeth Fite, Appellate Admissions Ceremony committee chair
- Outstanding Service to the Bar: Shane Mayes, Scott Masterson, Litigation Committee co-chairs; Mawuli Davis, Stephinie Petties, Minorities in the Profession Committee co-chairs
- Award of Achievement, Outstanding Service to the YLD: Jill Muvdi, State Bar of Georgia Fee Arbitration Department; Sharri Edenfield; Stephanie Kirijan; Scott Masterson; and the Savannah Young Lawyers Division



2007-08 YLD President Elena Kaplan (right) with her parents, Stephanie Brundage and Ken Harkins, prior to the YLD/LFG 60th Anniversary Celebration Dinner Gala.

- Third Annual Young Lawyer Ethics and Professionalism Award: Andrew Goldner
- Distinguished Judicial Service Award: Chief Judge Anne Elizabeth Barnes; and Judge John J. Ellington (Judge of the Year)
- The YLD honored Justice George H. Carley for his service to the YLD in swearing in the YLD officers over the last 15 years. The High School Mock Trial Program also honored Justice Carley for his support.

The inaugural Ross Adams Award, which honors a lawyer personifying the exemplary service and great qualities of the late YLD president, was presented to Ross's close friend Joe Dent, YLD president in 1999-00, who was both surprised and moved by the honor. Robin and Paige Adams, wife and daughter of Ross, attended the dinner and were on stage along with YLD Past Presidents Damon Elmore and Tina Shadix Roddenbery to present the award to Dent. "I thought the event was well planned and appropriately hon-



Far left: YLD Past President Matt Patton with Jennie Derby. Center: Frank Burns, YLD Past Presidents Henry Walker and Joe Dent. Top Right: YLD Past Presidents Dana Miles and Bill Barwick. Bottom Right: Kelly White and YLD Past President Derek White.

Many YLD Past Presidents were honored with tribute gifts for the 60th Anniversary Celebration:

\$1000 and more:

1947-1948: Harry S. Baxter*

Kilpatrick Stockton, LLP

1949-1950: Griffin B. Bell

King & Spalding

1953-1954: Kirk M. McAlpin

Kirk M. McAlpin Jr.

1955-1956: Kenneth M. Henson

Kenneth M. Henson Jr.

1956-1957: Frank C. Jones

Jones, Cork & Miller, LLP

1961-1962: Harry C. Howard

King & Spalding

1967-1968: Robert L. Steed

King & Spalding

1970-1971: Matthew H. Patton

Kilpatrick Stockton LLP

1974-1975: R. William Ide III

McKenna Long & Aldridge LLP

1977-1978: Charles T. Lester Jr.

Sutherland Asbill & Brennan, LLP

1978-1979: Theodore M. Hester

King & Spalding

1979-1980: James L. Pannell

Oliver Maner & Gray LLP

1980-1981: W. Terence Walsh

Alston & Bird

1983-1984: Walter H. Bush Jr.

Schiff Hardin

1984-1985: William D. Barwick

Sutherland, Asbill & Brennan

1988-1989: Donna G. Barwick

Mellon Personal Wealth

Management

1990-1991: Stanley G. Brading Jr.

Miller & Martin

1991-1992: Leland M. Malchow

Nimmons & Malchow

1993-1994: Rachel K. Iverson

Morris Manning & Martin

1994-1995: Tina Shadix Roddenbery

Kidd & Vaughan

1996-1997: J. Henry Walker

AT&T

1999-2000: Joseph W. Dent

Watson, Spence, Lowe &

Chambless, LLP

2000-2001: S. Kendall Butterworth

Kilpatrick Stockton, LLP

AT&T

2001-2002: Peter J. Daughtery

Daughtery Crawford Fuller & Brown

LLP

2004-2005: Laurel Payne Landon

Kilpatrick Stockton, LLP

\$999 and less:

1964-1965: W. G. Elliott

Elliott, Blackburn, Barnes & Gooding, P.C.

1973-1974: Robert M. Brinson

Brinson, Askew, Berry, Seigler, Richardson & Davis LLP

1987-1988: John C. Sammon

McCurdy & Candler, LLC

1989-1990: Dana B. Miles

Miles, McGoff & Moore, LLC

Gifts in Honor of all YLD Past Presidents:

David Farnham

Michael Geoffroy

Charlie Lester

Adam Malone

Tina Shadix Roddenbery

(*deceased)



A gathering of YLD past presidents—Front row: Rachel Iverson, Tina Shadix Roddenbery and Laurel Payne Landon. Second row: Richard de Mayo, Bill Barwick, Donna Barwick, Stan Brading and Jim Pannell. Third row: Chuck Driebe, Matt Patton and Henry Walker. Fourth row: Gus Elliott, John Sammon and Dana Miles. Back: Bob Brinson.

ored the YLD and its past presidents," Dent said. "I was particularly caught by surprise when I was given the Ross J. Adams Award. What an honor to receive an award that memorializes Ross and his commitment to the YLD and the State Bar of Georgia."


Following the award presentations, Justice George H. Carley swore in the 2007-08 YLD officers:

- Elena Kaplan, president
- Josh Bell, president-elect
- Amy Howell, treasurer
- Michael Geoffroy, secretary
- Jonathan A. Pope, immediate past president
- Stephanie Kirijan, newsletter co-editor
- Curtis Romig, newsletter co-editor

The Chief Justice's Commission on Professionalism's Executive

Director Avarita Hanson said, "In the very elegant setting at the TPC Clubhouse, it was special to be part of the tradition of hearing Justice Carley swear in the YLD officers and see his continued enthusiastic support for the mock trial competition."

YLD and State Bar Past President Bill Barwick gave a toast to celebrate the 60th anniversary of the YLD, the LFG, and the evening. "In toasting the YLD on its 60th anniversary, I recalled the fond days of my youth at the Sheraton Savannah on Wilmington Island, or the 'Sheraton Gomorrah' as we liked to call it," Barwick said. "The poolside elections, where there were always more offices than candidates, and where the ballots were seldom counted, were social rather than adversarial occasions. But

more importantly, I reminded those present that while the State Bar has elected but one woman president, the YLD has elected eight. Where the State Bar has elected no African-Americans president, the YLD has done so twice. Atlanta YLD officers alternated with outside Atlanta candidates every other year. Big firm lawyers coexisted with small or solo shop lawyers, and plaintiffs' lawyers got along with their defense brethren. The State Bar could learn a lot from its youth." 



Deidra Sanderson is the director of the Young Lawyers Division for the State Bar of Georgia and can be reached at deidra@gabar.org.

Kudos

> **LawHelp.org** won the **2007 Webby Award for Best Law Site**. A part of the LawHelp consortium, www.LegalAid-GA.org is one of LawHelps' top four public sites. LawHelp beat out such notables as Findlaw, Nolo, Thomas (Library of Congress) and HollywoodReporterESQ.

> **Kilpatrick Stockton** announced that its website was ranked **third** among the top 250 largest law firms in the nation according to the **2006-07 IMA (Internet Marketing Attorney) website reviews and awards**. The site was evaluated based on design, content, usability, interactivity and intangibles.

Also, Kilpatrick Stockton was named a **NameProtect Trademark Insider** Award recipient for 2006. Recognized for its significant trademark filing activities in 2006, the firm was named the **No. 1 trademark law firm in Atlanta**.

Additionally, they announced that *Intellectual Property Today* ranked the firm among the **top 20** trademark firms in the nation. The firm ranked **13th** out of a total of 172 law firms in the publication's list of top trademark firms.



Awotwi

Johnson

Beck

Lurey



Leonard

Kilpatrick Stockton announced that **Adwoa Awotwi**, an attorney in the firm's corporate department, and **Katherine Johnson**, an attorney in the firm's financial transactions, real estate and restructuring department, were selected as **members** of the **Destiny**

Fund's 2008 class. Intellectual Property Department partner **Joseph M. Beck** was selected to serve on the advisory panel of *The Indian Journal of Intellectual Property Law*. **Al Lurey**, a partner in the financial transactions, real estate and restructuring department, is the 2007 recipient of the annual **Atlanta Bar Association Bankruptcy Section David Pollard Award**. **Jim Leonard**, a partner in the firm's litigation department, was selected to serve on the board of **HARMONY, Atlanta's International Youth Chorus**.

> **Marva Jones Brooks**, a partner with Atlanta law firm **Arnall Golden Gregory LLP**, won an American Bar Association (ABA) **2007 Margaret Brent Women Lawyers of Achievement Award**. Brooks is one of

five 2007 winners chosen from more than 100 nominees. The award was established by the ABA Commission on Women in the Profession in 1991 to recognize and celebrate the accomplishments of women lawyers who have excelled in their field and have paved the way to success for other women lawyers. The award is named for Margaret Brent, the first woman lawyer in America.

> Gov. Sonny Perdue announced the following executive appointments. Sherrod & Bernard partner **Kenneth R. Bernard Jr.** was appointed **13th Congressional District Representative** to the Board of Regents of the University System of Georgia. Atlanta attorney **J. Max Davis** was appointed **4th Congressional District Representative**, and Macon attorney **Rebecca Robin Davis** was appointed **8th Congressional District Representative** to the Nonpublic Postsecondary Education Commission. Smith, Gambrell & Russell, LLP, partner **David James Burge** and Eastman attorney **C. Michael Johnson** were appointed to the **Georgia Superior Court Clerks' Cooperative Authority**.

> Fisher & Phillips LLP partner **Robert W. Ashmore** and associate **Brian M. Herman** are recipients of the **2007 Burton Award for Legal Writing**. The award is given to recognize effective legal writing, honoring law firm partners and other attorneys who use plain, clear, and concise language, avoiding stilted legalese. The Atlanta attorneys wrote an article that was one of only 30 honored.

> **McGuireWoods** attorney **Curtis L. Mack** has been appointed to the **Board of Trustees of The Leadership Academy for Women of Color Attorneys**, a national organization focused on helping women of color attorneys to develop their careers and manage diversity issues in the workplace. Among other activities, the Leadership Academy hosts an annual conference to provide participants a dynamic exchange of ideas on advancing a career; developing a legal business; achieving personal and professional satisfaction through work-life balance strategies; and managing workplace diversity issues, as well as one's physical and emotional well-being.

> **Arnall Golden Gregory LLP** received two awards recognizing the firm's commitment to pro bono legal representation. The **Atlanta Volunteer Lawyers Foundation** recognized Arnall Golden Gregory for its pro bono representation of low-income clients by

honoring the firm with its 2007 **S. Phillip Heiner Award**. The award is given each year to the individual or firm who stands out as a leader in pro bono within the Atlanta legal community. The **American Civil Liberties Union (ACLU) of Georgia** recognized Arnall Golden Gregory pro bono efforts in *PRIDE v. White County Schools* with the organization's **Georgia Civil Liberties Pro Bono Award**, presented during the annual ACLU Bill of Rights dinner.

- >  **Carlton Fields** shareholder **Lawrence M. Gold** was asked to serve on the **Board of Trustees of the Lawyers Committee for Civil Rights (LCCR)**. The LCCR was formed in 1963 to involve the private bar in securing equal justice under the law for segments of our society who have been subjected to various social injustices. Gold handles corporate matters for both public and private businesses, with significant experience in mergers and acquisitions; arranging corporate financings including equity and debt arrangements; and advising businesses on succession strategies and strategic investments.

- > **Fish & Richardson P.C.** was selected as the **U.S. Patent Litigation Firm of the Year** by *Managing Intellectual Property Magazine*. The publication conducted a survey based on extensive research and interviews with practitioners worldwide and then ranked firms in each geographic area based on the survey results. This is the second top patent ranking that Fish & Richardson has received this year.

- >  **Julian R. Friedman**, of Savannah, joined the **National Arbitration Forum's** national panel of independent and neutral arbitrators and mediators. Friedman added to the National Arbitration Forum's outstanding panel of more than 1,600 neutrals. Panelists adhere to ethical and legal standards, follow stringent rules to ensure that parties' rights are protected, and uphold all ethical principles. Friedman, a fellow in both the American College of Trust and Estate Counsel and the American College of Tax Counsel, has expertise in estate and trust law, probate, corporate law and federal taxation.


- > The legal team of **Anna Green, Kellie Hill, Sheila Ross** and **Clint Rucker** were awarded the **Home Run Hitters Award of Excellence** by the **National District Attorneys Association** for their prosecution of the 2006 James Sullivan murder trial. The veteran prosecutors joined a long list of distinguished prose-

cuting attorneys who have been honored for successfully bringing to justice killers in notorious cases. In recognition of the award, State Bar Past President Jay Cook hosted a reception for the Sullivan team in Courtroom 8-A of the Slaton (Fulton) County Courthouse, where the case was tried.

- > **Woodcock Washburn LLP** attorney **Eduardo Carreras** presented a networking luncheon seminar entitled, "Intellectual Property Issues with Converters" in June at the 2007 CMM International Conference. The biennial CMM International is the world's largest showcase and educational forum for the global converting and package printing industries.

- >    **Fisher & Phillips LLP** attorneys **Steven M. Bernstein, Douglas R. Sullenberger** and **James M. Wal-**

ters were among those recognized by the Labor Relations Institute as "**Top 100 Labor Attorneys.**" This year's elite list was chosen from 8,600 practicing labor lawyers, based on the extent of their experience in labor law and their win records.


- >  **McGuireWoods** attorney **Mark L. Keenan** was named to the "**Top One Hundred Labor Attorneys**" in the United States by the Labor Relations Institute. The honor places Keenan in the top 1 percent of all labor attorneys in the United States. To be eligible for consideration, lawyers must have represented clients in a substantial volume of union representation elections during the last 10 years with a win rate in excess of 50 percent, based on NLRB election results.

- > **Constangy, Brooks & Smith, LLC**, announced managing members, **Townsell G. Marshall Jr.** and **Clifford H. Nelson Jr.** in the firm's Atlanta office, and **W. Melvin Haas III** in the Macon office were named "**Top One Hundred Labor Attorneys**" in the United States for 2007, as determined by Labor Relations Institute, Inc., a leading industry information source. Haas, Marshall and Nelson made the elite list due to the number of National Labor Relations Board elections in which they represented clients and the success of those election outcomes. They were selected from more than 8,700 labor attorneys evaluated by Labor Relations Institute.

On the Move

In Atlanta

> **Lisa Steinmetz Morchower** joined **Berman Fink Van Horn P.C.** as **of counsel**. Morchower, previously an attorney with the Atlanta law firm of Fine and Block and former senior assistant city attorney for the city of Atlanta responsible for all alcoholic beverage and general licensing matters, will continue to represent clients in alcoholic beverage and general licensing, zoning and land use, hospitality law, governmental regulation and general litigation matters. The firm is located at 3423 Piedmont Road NE, Suite 200, Atlanta, GA 30305; 404-261-7711; Fax 404-233-1943; www.bfvlaw.com.

>  Immigration attorney **Gary C. Furin** announced the relocation of his office. The new office is located at 5447 Roswell Road, Atlanta, GA 30362; 404-237-1932; Fax 404-264-1149.

> Attorneys **William H. Lawson** and **William R. Moseley Jr.** announced the formation of **Lawson & Moseley, LLP**. The firm will provide legal counsel and representation in the areas of corporate, business and transactional matters for individuals and corporations, governmental affairs as well as commercial and personal injury litigation. Joining the firm as **associates** are **Andrew C. Matteson** and **Heather M. Davis**. The firm is located at 950 East Paces Ferry Road, Suite 1550, Atlanta Plaza, Atlanta, GA 30326; 404-812-0777; Fax 404-814-0497; www.lawsonandmoseley.com.



Ashburn

Powell Goldstein LLP announced the election of four new **partners**: **Tia L. Cottey**, **Ryan T. Pumpian**, **Rebecca L. Sigmund** and **Kathryn B. Vargo**, and one **counsel**, **Daniel G. Ashburn**. Cottey is a member of the firm's real estate capital markets practice. Pumpian is a member of the firm's technology and intellectual property litigation group. Sigmund specializes in immigration law. Vargo practices exclusively in the labor and employment law field.

Ashburn serves as a member of the firm's special matters and investigations team, and practices in the areas of securities, corporate and financial institutions litigation. The firm's Atlanta office is located at One Atlantic Center, 14th Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.pogolaw.com.

> **Smith Moore LLP** gained an Atlanta office by joining with Carter & Ansley LLP. Smith Moore currently has four North Carolina locations. The Atlanta office is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3700, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.

> **Carlton Fields** announced that intellectual property attorneys, **James J. Wolfson**, **Brooke Lewis** and **Gail Podolsky**, all formerly of Greenberg Traurig, have joined the firm in its Atlanta office. Wolfson, who will serve as co-chair of the firm's IP practice group, focuses his practice on intellectual property litigation and counseling, including IP portfolio management. Lewis and Podolsky both have experience in intellectual property and general commercial litigation. The firm's Atlanta office is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3000, Atlanta, GA 30309; 404-815-3400; Fax 404-815-3415; www.carltonfields.com.

> The executive committee of **Arnall Golden Gregory LLP** appointed partner **Sherman Cohen** to the position of **chairman** of the **corporate practice group**. In his new role, Cohen is responsible for administrative matters and business and strategic planning affecting the corporate practice group. Cohen's practice concentrates on transactional matters including public and private company mergers and acquisitions, securitizations, and equity and debt financings. The firm is located at 171 17th St. NW, Suite 2100, Atlanta, GA 30363; 404-873-8500; Fax 404-873-8501; www.agg.com.

> **Woodcock Washburn LLP** announced the addition of three **partners**, **Lance Reich**, **Andrea Bates** and **Michelle Tyde**, and **associate Carmen Lyles-Irving**. All previously were with Carlton Fields. Reich specializes in complex patent prosecution and litigation, with a particular emphasis in the electronics, computer software and business methods areas. Bates is a transactional attorney with significant experience in the development, structure, prosecution, licensing, defense, utilization and monetization of intellectual property. Tyde specializes in intellectual property strategy and manage-

Civil Right To Representation Argued in CLE Mock Hearing Before Supreme Court of Georgia

By Len Horton

Civil justice in the United States of America is a work in progress. It is still evolving into the idea that "with liberty and justice for all" applies to everyone, not just people who can afford to buy legal representation. Inspired by the possibility of closing the "justice gap," the Supreme Court of Georgia's Equal Justice Commission and the Committee on Civil Justice created a CLE seminar to explore whether a civil right to counsel is supported by the U.S. Constitution. This seminar was presented on June 15, during the State Bar of Georgia's Annual Meeting, which was held this year in Ponte Vedra Beach, Fla.

Arguing in favor of such a right was Gerald R. Weber Jr., legal director of the American Civil Liberties Union of Georgia. Timothy W. Floyd, professor of law and director of the Law and Public Service Program at Mercer University's Walter F. George School of Law, provided opposing argumentation. Supreme Court of Georgia Chief Justice Leah Ward Sears presided over the mock hearing; other Supreme Court of Georgia justices participating included Presiding Justice Carol Hunstein, Justice George H. Carley, Justice Hugh P. Thompson and Justice P. Harris Hines.

Peppered with questions that would have distracted any advocate, Weber deviated from his prepared presentation to answer penetrating questions and observations and then gently guided the discussion back to his presentation with such smoothness that the audience might have thought it was observing a stage play in which protagonist Weber had rehearsed his lines hundreds of times. Judging from the aggressive, often interrupting, barrage of sincere questions Weber received, this was no play, and these were not actors in

search of a playwright. Weber was really that good an advocate, and the Court openly displayed its intellectual fire. Always cordial, always reasoning, the Court became a whirlwind of the thoughts of five justices devouring ideas, spinning some away as garbage but carefully and constantly arranging and rearranging others in pursuit of the correct course of action to bring justice to the forefront.

Floyd received a no less fervent greeting from the Court. Dutifully accepting his antagonist role in the clash of ideas, Floyd entered the debate and added his own thoughts to the mix. He, too, became engaged in a give and take of thinking, sometimes almost brainstorming, with the Court. Of course, his statements often disputed points made by Weber, and he had to defend those statements after further questions from the Court.

If truth requires clash to have the best chance to become evident, then truth had a good chance at this seminar. The clash was real, and the Court and audience had much to think about after participating.

After the Court departed, the crowd discussed the merits of the arguments and observations made. No matter which side each member of the audience thought had won, unanimity was clear about two things: Karlise Grier, former staff attorney to the Supreme Court's Committee on Civil Justice, put together a great seminar; and Anne W. Lewis, vice chairperson of the Committee on Civil Justice, had produced an event that people will talk about for a long time.



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

ment, and assists companies in acquiring, protecting and monetizing their IP assets. Lyles-Irving is a former USPTO examiner in the chemical and materials group, and a registered patent attorney with extensive experience in the chemical arts. The firm's Atlanta office is located at 2002 Summit Blvd., Suite 800, Atlanta, GA 30319; 404-459-0050; Fax 404-459-5734; www.woodcock.com.

➤ **Susan L. Howick, M. Todd Westfall, Louis G. McBryan and Michael C. Kaplan**, formerly partners in the law firm of Macey, Wilensky, Kessler,

Howick & Westfall, LLP, announced the formation of a new law firm under the name of **Howick, Westfall, McBryan & Kaplan, LLP**. The firm will continue to focus on creditor's rights, including bankruptcy and commercial litigation as well as commercial real estate and domestic relations. The four partners were also joined by **associates David Dolinsky, Jonathan Rotenberg, Christopher Cooper and Virginia Bogue**. The firm is located at One Tower Creek, Suite 600, 3101 Towercreek Parkway, Atlanta, GA 30339; 678-384-7000; Fax 678-384-7034; www.hwmklaw.com.

Chambers USA 2007


Chambers and Partners Publishing, based in London, produces the annual *Chambers USA: America's Leading Lawyers for Business*. For the current U.S. directory, more than 14,000 interviews were conducted covering the entire country and were carried out by a team of more than 40 full-time researchers over a period of six months. Below are a list of firms and their members that were included in the publication.*

- > **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC:** Michael J. Powell, managing shareholder of the firm's Atlanta office, was ranked as a leading practitioner in the area of intellectual property in Georgia.
- > **Chamberlain, Hrdlicka, White, Williams & Martin:** Chamberlain Hrdlicka ranked both nationally and regionally in tax litigation. Listed were David Aughtry, Atlanta managing shareholder, and Charles E. Hodges II, Atlanta shareholder.
- > **Hunton & Williams LLP:** Hunton & Williams was ranked nationally in business process outsourcing and regionally in environment, banking & finance, intellectual property, labor & employment and general commercial litigation. Attorneys listed were: W. Christopher Arbery, Matthew J. Calvert, L. Traywick Duffie, James A. Harvey, Robert E. Hogfoss, Catherine D. Little, James E. Meadows, Kurt A. Powell, William M. Ragland Jr., Melvin S. Schulze and John R. Schneider.

- > **Kilpatrick Stockton LLP:** Kilpatrick Stockton achieved a No. 1 ranking for Georgia for intellectual property, bankruptcy/restructuring, construction and labor & employment. In Atlanta, 36 attorneys were recognized: Miles Alexander, Rupert M. Barkoff, Joseph Beck, Stanley Blackburn, William Boice, Richard Boisseau, William H. Brewster, Susan Cahoon, Tim Carssow, Richard R. Cheatham, A. Stephens Clay, James Coil, Brian Corgan, William Dorris, Jim Ewing, Candace L. Fowler, Lynn Fowler, Randall F. Hafer, Richard Hankins, Richard Horder, Hilary P. Jordan, Colvin T. Leonard III, Alfred Lurey, Dennis Meir, Todd Meyers, John Pratt, Susan Richardson, Paul M. Rosenblatt, George Anthony Smith, Jerry Smith, Jim Steinberg, David Stockton, Phillip Street, Jerre Swann, Neal Sweeney and David Zacks.
- > **Paul, Hastings, Janofsky & Walker LLP:** 22 Atlanta-based Paul Hastings attorneys were listed: Richard M. Asbill, Jesse Austin, Wayne N. Bradley, Daryl Buffenstein, Cindy J. Davis, Leslie Dent, Weyman Johnson, Walter Jospin, Karen B. Koenig, Mark S. Lange, Frank Layson, Deborah Marlowe, Philip Marzetti, Chris D. Molen, Elizabeth H. Noe, John Parker, Rey Pascual, Andy Scott, Charles Sharbaugh, Kyle Sherman, Geoff Weirich and John F. Wymer.

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

- > **J. Scott Anderson** joined **Needle & Rosenberg, P.C.**, as an **associate** in the litigation and mechanical practice groups. Anderson's practice focuses on all aspects of intellectual property litigation and the prosecution of patents for mechanical systems, medical technology, computer software, optical components and business methods. The firm's Atlanta office is located at 999 Peachtree St., Suite 1000, Atlanta, GA 30309; 678-420-9300; Fax 678-420-9301; www.needlerosenberg.com.

- >  **Andrew G. Phillips** joined **McGuire-Woods LLP** as an **associate** in the firm's environmental litigation/toxic tort department. He practices primarily in the areas of product liability, toxic tort, consumer class action litigation and aviation law. Phillips was previously an associate with Nelson Mullins in Atlanta. The firm's Atlanta office

is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

- > **Fish & Richardson P.C.** announced that **Jay P. Smith III** joined the firm as an **associate** in its litigation group. Smith focuses his practice on intellectual property litigation, including patent and trade secret litigation. Prior to joining Fish & Richardson, he was an associate at Alston & Bird LLP. The firm's Atlanta office is located at 1180 Peachtree St., 21st Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.

In Columbus

- > **J. Anderson "Andy" Harp** and **Jefferson "Cal" Callier** have formed the firm of **Harp & Callier, LLP**. The firm continues its practice focused on catastrophic injury and wrongful death cases throughout

the southeast, including brain and spinal cord injury, burn injuries, railroad injuries, medical malpractice, products liability and motor vehicle collisions. The firm is located at Suite 900, The Corporate Center, 233 12th St., Columbus, GA 31901; 706-323-7711; Fax 706-323-7544; www.harpcallier.com.

In Johns Creek

>



Schaefer



Carter

The Johns Creek City Council approved the appointments of **Donald Schaefer** and **Scott Carter** as the city's first **municipal judges**. Schaefer is a partner in the private Decatur law

firm of Brownlow & Schaefer, specializing in traffic and criminal law, and works as a part-time judge for the cities of Alpharetta, Sandy Springs and Loganville and the Recorder's Court of DeKalb County. Carter, in private practice in Chamblee since 2000, has been a Municipal Court Judge in the city of Doraville for 18 years. The Johns Creek Municipal Court is located at 11445 Johns Creek Parkway, Johns Creek, GA 30097; 678-512-3444; www.johnscreek-ga.gov/court.

In Savannah

>



David E. Laesser II joined **Weiner, Shearouse, Weitz, Greenberg & Shawe** as an **associate**. Laesser was formerly associated with the firm of John F. Gilhool in Southgate, Mich. His practice will include the areas of civil litigation and business transactions. The office is located at 14 East State St., Savannah, GA 31401; 912-233-2251; Fax 912-235-5465; www.wsws.com.

In Birmingham, Ala.

>

Carter H. Dukes announced a new shareholder to the firm, which is now **Scott Dukes & Geisler, P.C.** The firm is located at 2100 Third Ave. N, Suite 700, Birmingham, AL 35203; 205-251-2300; Fax 205-251-6773; www.scottdukeslaw.com.

In Lincoln, Neb.

>

David D. Cookson was named **Chief Deputy Attorney General** for **Nebraska**. He formerly served as special counsel to the attorney general, responsible for interstate water issues, environmental law and major litigation. Prior to his work for the Nebraska attorney general, Cookson was a partner with the law firm Webb, Carlock, Copeland, Semler & Stair in Atlanta. The Nebraska attorney general's office is located at 2115 State Capitol, Lincoln, NE 68509; 402-471-2682; Fax 402-471-3297; www.ago.state.ne.us.

Have an Announcement You Want to Share With Georgia's Legal Community?

If you have an announcement you would like to place in Bench & Bar, please send your submission to stephaniew@gabar.org or Stephanie Wilson, State Bar of Georgia, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303-2743.

Children At Risk Symposium Veterans Reconvene

On May 18 attendees of the first Children at Risk symposium reconvened at Alston & Bird in Atlanta to learn how each had applied the ideas learned at the first symposium last December. Many of the attendees of the first symposium were so interested in the concepts being presented that they wanted to get back together to share their experiences implementing the children at risk concept.

"I've never seen people so motivated to share ideas and talk about their experiences," said Rudolph Patterson, president of the Georgia Bar Foundation. "Showing kids how they can become self-sufficient by learning about and applying the concepts of the free enterprise system has proven to be a winner." Everyone attending had a slightly different approach to how these principles can be applied to help children.

The symposium again featured Ed Menifee and his creativity as a motivational speaker and his knowledge of how to introduce children at risk in entrepreneurial ideas that can change their lives. Menifee expanded upon many of the concepts from his first children at risk symposium last December.

Each symposium features a person who went through Menifee's Children at Risk program, which features free enterprise system training. Andre Dickens, president of City Living Home Furnishings, spoke to the attendees and explained how his experiences in Menifee's training program gave him the skills to start his own business.

"Without his training, I would not have known that starting my own business was even an option for me," said Dickens. "This program made all the difference for me."

A total of 31 people representing 25 organizations evaluated these new observations and left the meeting with even stronger beliefs that the Georgia Bar Foundation's children at risk ideas are worth implementing in their own organizations.

Is It Unethical To Try Your Case in the Media?

by Paula Frederick

“**G**otta run,” your partner announces, handing his credit card to the waiter. “I’ve got a press conference in 45 minutes.”

“A press conference? About the *Niedermeyer* case?” you ask.

“Yep. The investigating police officer was on the news last night squawking about the DNA test results. I called a press conference to respond.”

“Wait a minute!” you caution. “Respond to *what*? I thought it was unethical to try your case in the media. You can’t just call a press conference and start arguing about the evidence on the six o’clock news!”

Or can you?

Rule 3.6 of the Georgia Rules of Professional Conduct prohibits a lawyer involved in a case from making out-of-court statements that will materially prejudice the trial of the case.¹ Since the absence of restrictions in this area could result in “the nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence,”² the Rule seeks to strike a balance between competing interests—free speech versus the right of an accused to a fair trial.




The Rule and Comments contain specific examples of the type of information a lawyer may discuss publicly. For instance, if a client has been subjected to recent publicity that will have “substantial undue prejudicial effect,” the lawyer may make a limited statement to mitigate the adverse publicity.

Comment 5A provides a laundry list of topics that would likely be prejudicial, such as the character, credibility, or reputation of a party or suspect, the results of examinations or tests, and information that would likely be inadmissible as evidence in a trial.

Comment 5B provides a similar laundry list of subjects that are usually safer to discuss, such as the nature of the claim, information contained in a public record, and requests for assistance in obtaining evidence.

Most importantly, the lawyer considering a public statement needs to be certain that it will benefit the client, and not just provide free publicity for the lawyer’s practice. The lawyer should carefully explain the pros and cons of going public, and of course should obtain the client’s advance permission to do so.

In modern times trial publicity may be unavoidable for all but the most mundane of cases. Review the rules, and think before you speak! 



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

Endnotes

1. Rule 3.6, *Trial Publicity*, provides in part that “a lawyer who is participating . . . in the investigation or litigation of a matter shall not make an extrajudicial statement . . . that will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”
2. Rule 3.6, Comment 1.



A New Cash Option for Structured Settlement Annuity Holders

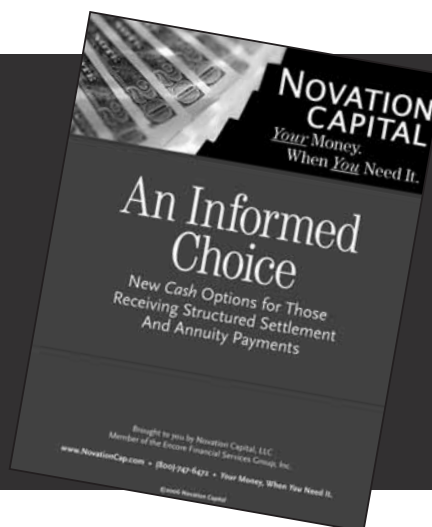
Recently enacted statutes now afford structured settlement and annuity holders a **NEW CASH OPTION.**

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Discipline Summaries

(April 13, 2007 through June 21, 2007)

by Connie P. Henry

Review Panel Reprimands

Newell McAfee Hamilton

Brunswick, Ga.

Admitted to Bar in 1997

On June 4, 2007, the Supreme Court of Georgia ordered that Newell McAfee Hamilton (State Bar No. 320905) be administered a Review Panel reprimand with conditions. In 2003 Respondent developed severe depression and started to abuse alcohol. During this time he failed to provide at least eight clients with the assistance they deserved. In 2006 Hamilton undertook significant efforts to rectify the issues that led to his depression and substance abuse; contacting clients and apologizing in writing for his inattentiveness and reimbursing retainers or fees paid, where he thought he had not earned the fee, referring many of his cases to other attorneys and correcting the outstanding issues in other cases.

In mitigation the Court found that Respondent had no prior disciplinary record; that he fully accepts responsibility for his behavior; that he is deeply remorseful for his conduct; that he has taken steps to remedy the substance abuse; that he reimbursed the fees he had not earned; and that he fully cooperated in the disciplinary proceedings. The Court ordered Respondent to continue with the treatment program recommended by the Lawyer Assistance Program and his physicians; that he provide to the Office of the General Counsel written updates and treatment records showing his progress; that he waive his right to confidentiality of his treatment records; and that he be administered a Review Panel reprimand.

Suspensions

Arthur Hurst English

McDonough, Ga.

Admitted to Bar in 2000

On April 24, 2007, the Supreme Court of Georgia ordered that Arthur Hurst English (State Bar No.

248852) be suspended from the practice of law pending appeal of his felony conviction on three counts of theft by receiving in the Superior Court of Lamar County. Upon termination of the appeal, the State Bar shall seek appointment of a special master pursuant to Bar Rule 4-106(f)(I).

Jon Philip Carr

Milledgeville, Ga.

Admitted to Bar in 1987

On June 4, 2007, the Supreme Court of Georgia accepted the petition of Jon Philip Carr (State Bar No. 111888) for suspension pending appeal of his felony convictions in the Superior Court of Baldwin County.

Suspension and Public Reprimand

Monique Walker

Augusta, Ga.

Admitted to Bar in 1996

On May 14, 2007, the Supreme Court of Georgia ordered that Monique Walker (State Bar No. 731241) be suspended from the practice of law for 120 days and be administered a public reprimand. Walker pled guilty in federal court to filing a fraudulent tax return. She accepted a check that bore the notation "consulting fees," for \$700 from her father's company, and did not report the money as income. Walker contends she believed the money was a gift. In her Petition for Voluntary Discipline, Walker is remorseful and contrite for her negligence in not reporting the check as income and she states that she did not intend to deceive the Internal Revenue Service. Walker has paid the taxes and penalties owed.

Reinstatement Granted


David Lee Judah

Riverdale, Ga.

On May 14, 2007, the Supreme Court of Georgia ordered that David Lee Judah (State Bar No. 405605)

be reinstated as an attorney to practice law in the state of Georgia. In 2000 the Court imposed on Judah a three-year suspension with conditions for reinstatement. Judah complied with all the procedural and legal requirements to be readmitted.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since April 12, 2007, two lawyers have been suspended for violating this Rule, and one lawyer has been reinstated. 



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

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

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Wrap Up Your Practice Before Retirement

by Pamela Myers



You're contemplating retirement. What do you do with your practice? In the coming years, we expect to hear that question more frequently. Those of us who are now on the cusp of retirement have, most likely, been thinking seriously for a number of years how to wind down or wrap up the practice.

It may be that you, like attorneys in Italy, Germany and France, decide that you're not going to retire. You may reduce your case load and work well into your 70s, 80s or 90s. That'd be great! Most likely, though, you'll follow the retirement path of American and British practitioners and retire anywhere from age 55 to 70.

Lawyers in partnership are often governed by the partnership agreement, with stated retirement age that may or may not be negotiable. Solo practitioners have a bit more leeway in retirement planning.

The assumption is that you've taken care of all the other important aspects of retirement planning, but now you've got to make a decision as to what to do with the practice. For all intent, you can phase down or you can sell.

Phasing down is a popular method. Don't accept new cases and concentrate on closing open cases. Eventually the last case will disappear and you can pack your bags and head for paradise. If you don't want to wait until you've closed your cases, you might find another attorney who is willing to take over the open files. But the client must be given the opportunity to accept the new attorney or find new counsel. Be aware that there are instances where the courts may not be willing to accept new counsel mid-case.

Many lawyers don't think their small firms have much value, but most practices are saleable. The biggest mistake a lawyer can make in closing a practice is to walk away from possible money in the bank. Ed Poll, author of *Selling Your Law Practice: The Profitable Exit Strategy*, recalls an attorney who was weary of practicing law and wanted a complete change in lifestyle. She had planned to just walk away from her practice, but Poll persuaded her to sell the firm and helped her negotiate with a buyer. "She sold her practice for \$300,000—she never believed she could get that much," Poll says.

If you'd like to sell your firm, it is best to get help. (Also, refresh yourself with Bar Rules 1.16(d) and 1.17 in this regard.) There are a number of valuation firms, locally and across the country that can provide assistance. Few lawyers regularly buy or sell practices and most have no experience in setting price or terms for a sale. Since each situation is unique, it would be advantageous if you begin the process of selling the practice to another lawyer or firm as part of your retirement plan. This can alleviate urgency and pro-


vide time for fair negotiation with potential buyers.

There are many possible factors that might affect the price of your practice and all need to be taken into account. Valuation is not a science, as there are no absolutes in the process. Below are just a few examples of what is needed to conduct a comprehensive valuation:

1. Financial statements and state and federal tax returns for the previous five years
2. Fee schedules for the previous five years
3. Leases still in effect for the premises and all equipment
4. Notes payable, deeds of trust, conditional sale contracts
5. Documents relating to the acquisition and obligations on real and personal property investments
6. Cash receipts, cash disbursements, sales, purchase, payroll and general journals

7. General ledger
8. Bank statements, cancelled checks (if available) and bank reconciliations
9. Aged accounts receivable listing
10. Work in progress detail
11. Insurance policies
12. Data on key personnel of selling attorney who will assist in the transition or remain employed by the buying attorney
13. Firm brochure
14. Annual appointment books or electronic calendars
15. Goodwill
 - a. Immediate use of tangible assets
 - b. Trained and assembled work force
 - c. Case files and qualified client/prospect list
16. Liabilities of the practitioner related to the practice which will be taken over by the buyer
17. Other relevant documents

Some solo practitioners and small firms may feel that the list is too burdensome, but the appraiser will need to have access to all this information to give a fair and full value to the practice.

Although this article has been directed toward the valuation and sale of your practice, there are many other aspects of closing your practice with which you'll need to become familiar. The Law Practice Management Program has material to help with all aspects of closing a practice—whether related to retirement or not. I hope you'll contact us the minute you think about taking down your shingle. 



Pamela Myers is the resource advisor of the State Bar of Georgia's Law Practice Management Program and can be reached at pam@gabar.org.



LAWYERS FOUNDATION OF GEORGIA

Memorial Gifts

The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia.

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers

Foundation of Georgia provides a lasting remembrance. Once a gift is received, a written acknowledgment is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

Information

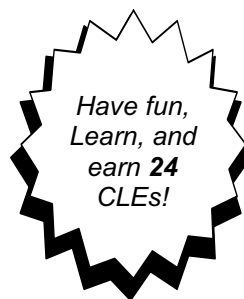
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Getting the Most Out of Casemaker: Searching the State Code

by Jodi McKenzie

One of the most common questions we get at the Casemaker helpdesk is, “Can you access the state code through Casemaker?”

Absolutely! You can search the library using statute numbers, key words or phrases, or a combination of both statute numbers and key words or phrases. Let’s take a closer look at how to search the code in Casemaker.

In order to search the state code, you would enter the Georgia Casemaker Library. From here, you would locate the “Georgia Codes and Acts” link at the bottom of the Georgia Library Content page (see fig. 1). At this point you have the option to either search or browse the code.

The search mode allows you to search the current statute library using a statute number, a key word or phrase, or a combination of a statute number and key word or phrase. For example, if you wanted to find O.C.G.A. § 9-11-9, you would simply enter the number with the dashes (see fig. 2). Casemaker will not accept a search with “O.C.G.A. §.” For this example we will enter “9-11-9.” Once the number is entered, click on the target search button to begin.

The search will give you results of statutes included in 9-11-9. The second result in this example is the statute we are looking for (see fig. 3). To open the statute, simply click on the blue, underlined statute number.

You now have access to the content of the statute. You may move through the content of the statute by using the scroll bar located vertically on the right hand side of the statute. Or you also have the option to switch to the browse mode from the search mode. In the middle of the Casemaker tool bar you will see the option for search mode or browse mode. Since you started your search in the search mode, the search mode box will be highlighted. To switch to the browse mode, simply click on the browse box (see fig. 4).


The browse mode gives you the option of previous doc or next doc buttons. Clicking on the next doc button will move you forward through the statute. In this example, you would move forward from 9-11-9 to 9-11-9.1. If you continued to click on this button you would move to 9-11-9.2 then 9-11-9.3 and so on. Previous doc would move you back a page (see fig. 4).

If you do not know the exact statute that you are looking for, you can also search the library using a key word or phrase. In this example, we entered the term “land surveyors” (see fig. 5). Again, click on the search target button to begin.

The results will include all statutes that include the words land and surveyor in the content of the statute. You may then view the two-line summary given with the results to choose the statute most relevant to your issue. You would then open the statute by clicking on the blue, underlined statute number (see fig. 6).

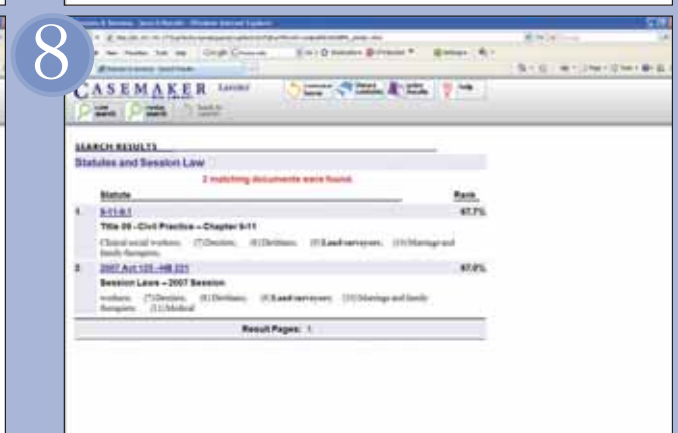
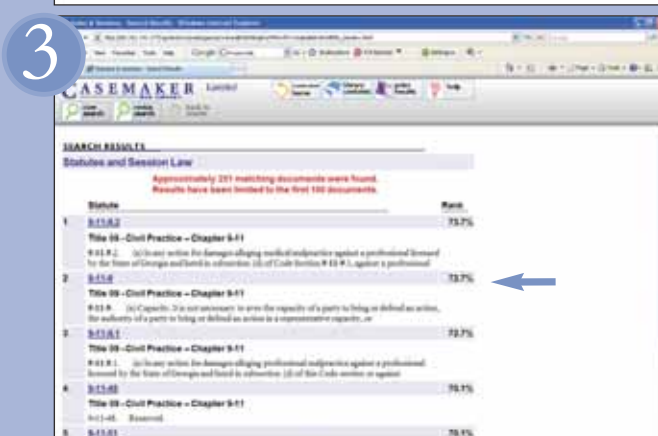
You may also do a search using a combination of both key words and a statute number. In this example, you may add the statute number 9-11-9 to your key words. It is important to note that it is not necessary for the statute to appear in front of or behind your key words. You could have entered “9-11-9 land surveyors” to receive the same results (see fig. 7). Again, click the search target button to view your results.

In this instance, you retrieve two results that are within statute 9-11-9 that contain both the land and surveyor (see fig. 8).

Casemaker is one of the most widely used member benefits the State Bar of Georgia offers. The Georgia Codes and Acts library is just one of the many features Casemaker makes available for free. To learn more about this valuable member benefit, please look for upcoming training sessions on the Bar’s homepage under the News and Events section at www.gabar.org, or call the Casemaker helpdesk at 877-227-3509. 



Jodi McKenzie is the member benefits coordinator for the State Bar of Georgia. She can be reached at 404-526-8618 or jodi@gabar.org.



Using Citations Effectively

by Karen J. Sneddon and David Hricik

The last installment of “Writing Matters” addressed reducing citation clutter by generally not using statutes or cases as the subjects of sentences. This installment continues to tackle citation usage by addressing two of the several techniques to maximize the effectiveness of citations. Lawyers should maximize the impact of citations by using signals and explanatory parentheticals. The use of string cites (i.e., a series of cases unaccompanied by explanatory parentheticals that identify the cases’ relevance) illustrate ineffective use of citations.

Consider the following example:

Although there is no U.S. Supreme Court case on point, a majority of the courts that have addressed the issue have held that motions to dismiss for improper venue based upon the parties’ forum selection clauses must be raised as required by Federal Rule of Civil Procedure 12(b)(3) or be waived. *Sucampo Pharmaceuticals, Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544 (4th Cir. 2006); *Lipcon v. Underwriters at Lloyd’s, London*, 148 F.3d 1285 (11th Cir. 1998).

This writing is not persuasive to the opposing party or the judge, because it provides only the citation, without explanation or even pinpoint citation, to two cases. Further, the sentence says that a majority of courts support the proposition, but the lawyer cites two: is there only one other, and so it’s two of three? Worse, if the

judge were to look up the cases to find what the lawyer meant, she might confront lengthy cases, and the lawyer has not even given the judge a pinpoint citation for where to look for each court’s discussion.

The paragraph is neither informative nor persuasive. Three things are missing: an accurate signal, pinpoint citations and parenthetical explanations. The use of all three makes citations more effective. We’ll cover signals in the next installment.

Pinpoint citations are simply the page number in the case where the pertinent point is made. A citation without at least a pinpoint cite indicates laziness and lack of clarity. It also leaves too much work to the reader to be informative or persuasive. To us, it also indicates sloppiness and inattention to detail – neither of which signals a strong opponent. At minimum, a citation should include the page number (or page numbers) where the relevant proposition exists.

Using explanatory parentheticals increases the persuasive and informative impact of citations. If the case is not quoted in the text, a concise explanatory parenthetical inserted after the citation can state its pertinence. Explanatory parentheticals typically take one of three forms: (1) an entire quoted sentence, (2) a short statement (generally a two or three word phrase), or (3) a phrase that begins with a present participle. Here is the example with pinpoint cites and each type of parenthetical (and the signal, “*see, e.g.,*”):

Although no 8th Circuit case is on point, a majority of the courts that have addressed the issue have held that motions to dismiss for improper venue based upon the parties’ forum selection clauses must be raised as required by Federal Rule of Civil Procedure 12(b)(3) or be waived. *See, e.g., Sucampo Pharmaceuticals, Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 549 (4th Cir. 2006) (holding that such motions are governed by Rule 12(b)(3) because that approach was “more consistent with the Supreme Court’s treatment of such clauses”); *Lipcon v. Underwriters at*

Lloyd's, London, 148 F.3d 1285, 1290 (11th Cir. 1998) (“[W]e consider Rule 12(b)(3) a more appropriate vehicle through which to assert the motion to dismiss.”); *Shipco Transp., Inc. v. Cyclo Indus., LLC*, 2007 WL 988884 (S.D. Fla. March 30, 2007) (following *Lipcon*).

This discussion should reveal the inherent ineffectiveness of string cites. The seductiveness of string cites springs from the writer’s desire to highlight the thoroughness of the research and to buttress arguments. However, when reading a string cite, particularly one without even pinpoint citations, many readers assume that the author either failed to review the authorities carefully or is simply inattentive to detail. Proving that is sometimes what happens, a court recently observed that a string cite in a brief actually undercut the party’s argument. The court stated that “[i]ronically, although the Transit Authority argues that [the statute] is not applicable to it, it string cites to eight decisions, all of which” held that the statute did apply to it. *Williams v. N.Y.C. Transit Authority*, 724 N.Y.S.2d 830, 832 (N.Y. City Civ. Ct. App. 2001).

Practice Problem

This problem is a little different than previous practice problems. We’ve put a paragraph below explaining, hypothetically, the state of the law in California on an interpretation of a statute, and we follow it with a short paragraph for you to re-write to more effectively use the citations. Here is the law:

California statutes have long made it a crime to mistreat animals. The power of the court depends upon the type of animal that was mistreated. If it is a “fighting animal,” then the court may order forfeiture of the animal; otherwise, the court may only require the owner to reimburse the government for costs

incurred during impoundment of the animal. Cal. Penal Code § 599aa. In either case, the court may also impose fines.


The term “fighting animal” has been construed twice. A 50-year old slow-moving herbivorous tortoise named “Rocky” was found not to be a “fighting animal” because he was “a slow-moving, grass-grazing, giant tortoise.” *Jett v. Municipal Court*, 223 Cal. Rptr. 111, 114 (Cal. App. 1986). In contrast, roosters that had been equipped with small knives and other sharp objects have been held to be “fighting animals.” *People v. Baniqued*, 101 Cal. Rptr. 2d 835, 841 (Cal. App. 2000).

Here is the paragraph to revise:

Defendant submits that the dog is not subject to forfeiture because it is not a “fighting animal.” Even large turtles with razor-sharp teeth are not “fighting animals,” although roosters used in cockfights can be. See *Jett v. Municipal Court*, 223 Cal. Rptr. 111 (Cal. App. 1986); *People v. Baniqued*, 101 Cal. Rptr. 2d 835 (Cal. App. 2000). Dogs are man’s best friend and share more in common with a slow-moving tortoise than with a rooster with metal claws. So, while a dog is an “animal,” it is not a “fighting animal” that is subject to forfeiture.

Possible Revision:

Defendant submits that the dog is not subject to forfeiture because it is not a “fighting animal.” Even large turtles with razor sharp teeth are not “fighting animals.” *Jett v. Municipal Court*, 223 Cal. Rptr. 111, 114 (Cal. App. 1986) (holding that an enormous turtle capable of ripping through grass with its teeth was, nonetheless, not a “fighting animal”). In addition, the dog here was not equipped to fight other animals and so is unlike

roosters used in cockfights, which have been held to be “fighting animals.” *People v. Baniqued*, 101 Cal. Rptr. 2d 835, 841 (Cal. App. 2000). Dogs are man’s best friend and share more in common with a slow-moving turtle than with a rooster with metal claws. Thus, while a dog is an “animal,” it is not a “fighting animal” that is subject to forfeiture. 



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 consistently rated as one of the top two legal writing programs in the country by U.S. News & World Report.



First Impression, Lasting Legacy

by Bonne Cella

State Court Judge Larry Mims of the Tift Judicial Circuit is a champion for children and an advocate of law education. His dedication earned him the 2007 Law Related Education (LRE) Supporter of the Year Award. Christine Ledvinka, interim director of the LRE, presented the award to an unsuspecting Mims, while he was in Atlanta with 24 fourth graders on a tour of the Bar Center.¹

Back at home, Mims invites local students into the courtroom and explains our justice system, often using mock trials. He then encourages the students to enter a First Impressions essay contest about their courtroom experience.

This year's essay contest winner, Nataliah Mazhar, received her award at the Tifton Circuit Bar's Law Day Celebration. The 2007 Liberty Bell Award was also presented in tribute to the late Michael Cantlebury of the Juvenile Justice Department and reads in part: *We hereby acknowledge that Michael Cantlebury spent his entire life working for the good of others within the court system with professionalism and dedication. His life's work instilled a greater sense of individual responsibility in the youth of this circuit.*




Christine Ledvinka presents the 2007 Law Related Education Supporter of the Year Award to Judge Larry Mims.



Linda Cantlebury listens to the tribute paid to her late husband Michael Cantlebury at the Tifton Circuit Bar's Law Day Celebration.

Photos by Bonne Cella

Special guest speaker for the Law Day event, 2006-07 Bar President Jay Cook offered a heartfelt address on the Foundations of Freedom,² which no doubt, left a lasting impression on Nataliah, the Bar members and their guests. 



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

Endnotes

1. Marlene Melvin presents an exceptional interactive tour of the Bar Center called Journey Through Justice. Contact Faye First, conference center manager for the State Bar, at 404-527-8700 to arrange the tour for students in your area.
2. Contact Sarah Coole, director of communications for the State Bar, at 404-527-8791 for more information on the Foundations of Freedom program.



2006-07 Bar President Jay Cook speaks at the Tifton Circuit Bar's Law Day Celebration.

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Annual Meeting Hosts Section Functions

by Johanna B. Merrill

State Bar sections have long been an active presence at the Bar's annual meetings. The 2007 Annual Meeting, which took place at the Sawgrass Marriott Resort in Ponte Vedra Beach, Fla., was no exception. Twenty-eight sections donated a record amount in sponsorships for the Opening Night Festival, which was a family-friendly affair filled with music, breakdancers, stilt walkers and carnival games. (See sidebar on page 43 for a list of sponsoring sections.)

On June 14 the Family Law Section co-sponsored the CLE "Nuts and Bolts, Excel and Excedrin: A Primer for the New Child Support Guidelines." The seminar highlighted significant changes in child support guidelines and the impact of the new law on the preparation and presentation of child support cases. It focused on the new vocabulary, new procedures for filing cases, temporary hearings and final judgments, advocacy in present child support cases using the new law and the expanded definition of income and deviations, tips for using the Internet-based and downloadable Excel child support calculators, and changes in the modification laws and jury trial procedures. Elizabeth Green Lindsey, a past section chair, presided; speakers were Paul Johnson, Tina Shadix Roddenberry and Laurie Dyke.

The majority of sections' activities took place on June 15, the second day of the meeting. The **School and College Law, Military Law/Veterans Affairs, Tort and Insurance Practice** and **Taxation Law** sections held business breakfast meetings that morning. The **Labor**



ICLE Executive Director Larry Jones accepts the Section of the Year award from 2006-07 Bar President Jay Cook on behalf of the Business Law Section.

and Employment Law Section also hosted a breakfast meeting on June 15; Paul DeCamp, administrator from the U.S. Department of Labor's Wage and Hour Division was the featured speaker.

Photos by Sarah I. Coole, Alison Danacean and Johanna B. Merrill



The IP Law Section hosted its second annual Spring Reception on May 30, where the 2007 Outstanding Leadership Award was presented to Joe Bankoff (left). Miles Alexander (right), the 2006 recipient, was on hand to introduce Bankoff during the presentation ceremony.



The General Practice and Trial Section's 2007 "Tradition of Excellence Award" recipients received their plaque at the section breakfast at the Sawgrass Marriott Hotel on June 15. (Left to right) Charles J. Driebe (general practice); Supreme Court of Georgia Presiding Justice Carol W. Hunstein (judicial); L. Hugh Kemp (defense); and Paul Kilpatrick Jr. (plaintiff).

Also held that day was the **General Practice and Trial Section's** annual Tradition of Excellence Awards breakfast. The 2007 award recipients were Charles J. Driebe (general practice); Supreme Court of Georgia Presiding Justice Carol W. Hunstein (judicial); L. Hugh Kemp (defense); and Bar Past President Paul Kilpatrick Jr. (plaintiff). The section also held a reception to honor the awardees later that evening.

And finally, the **Appellate Practice Section** hosted a lunch meeting with guest speaker Hon. Marion T. Pope on June 15. The section also held elections to select officers for the 2007-08 Bar year.

During the Plenary Session on June 15, 2006-07 Bar President Jay Cook presented section awards. The 2007 winners were:

- Section of the Year – **Business Law**, Paul Cushing, chair
- Awards of Achievement – **Intellectual Property Law**, Griff Griffin, chair; **Technology Law**, Michael Stewart, chair; **Family Law**, Shiel Edlin, chair; and **Real Property Law**, David Burge, chair

The **Intellectual Property Law Section** hosted its second annual Spring Reception on May 30 at Trois restaurant in Midtown

Atlanta. During the reception, the section's Outstanding Leadership Award was presented to Joseph R. Bankoff of the Woodruff Arts Center. Section Chair Griff Griffin welcomed the approximately 60 attendees to the reception before Miles Alexander, the award's 2006 recipient, introduced Bankoff.

On June 27, the IP Law Section hosted its annual Summer Associate Mixer at the Four Seasons Hotel. The mixer is an opportunity for summer associates to meet practicing attorneys in Atlanta's intellectual property community. Michael Bishop of AT&T IP Corporation, Cynthia Parks of Parks & Knowlton LLC and Stephen Schaezel of King & Spalding LLP gave a short presentation, offering different perspectives on the practice of IP law.

The **Technology Law Section** hosted its fourth quarterly CLE luncheon of the Bar year and annual meeting on June 27 at the offices of Troutman Sanders. The panel discussion titled "The Art of Negotiating Technology Acquisition Deals," examined acquisition deals from the differing perspectives of the parties involved; topics included negotiation pitfalls, indemnification concerns and limitations of liability. Kevin Cranman of Tandberg Television moderated the panel, which consisted of speakers Lael

Bellamy of Home Depot, Inc., and Sandra Sheets Gardiner of Morris, Manning and Martin LLP. 



Johanna B. Merrill is the section liaison for the State Bar of Georgia and can be reached at johanna@gabar.org.

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Guard Your Credibility

by Douglas S. Lavine

In the early 1950s, three members of the Psychology Department at Yale University conducted a series of experiments relating to persuasion.

In one of the experiments, two test groups were exposed to the same communication, which attempted to answer the question: "Can a practicable atomic-powered submarine be built at the present time?" One of the groups was told that the source of the communication was Robert J. Oppenheimer, the famous physicist and the "father" of the atomic bomb. The other group was told the communication came from *Pravda*, the Communist Party of the Soviet Union's official newspaper.

Although the communications were identical, the groups hearing them evaluated them through entirely different lenses. Ninety-six percent of the group believing the communication came from Oppenheimer considered the author "fair" in his presentation, and 80 percent felt the author's conclusion was "justified" by the facts. But only 69.4 percent of the group believing that the communication came from *Pravda* thought the author's presentation was "fair" and only 44.4 percent thought the author's conclusion was "justified" by the facts. Identical communications, dramatically different responses. The three Yale researchers were Carl I. Hovland, Irving L. Janis and Harold H. Kelly. The results of their experiments are found in *Communication and Persuasion* (Yale University Press, 1953).

Lawyers Need To Guard Their Credibility Scrupulously

The result of this Cold War experiment would have been no surprise to Aristotle, who understood the prin-

ciple at issue more than 2,300 years ago when he wrote in *The Rhetoric*:

"Persuasion is achieved by the speaker's personal character when the speech is so spoken as to make us think him more readily credible. We believe good men more fully and readily than others: this is true generally whatever the question is and absolutely true where exact certainty is impossible and opinions are divided It is not true, as some writers assume in their treatises on rhetoric, that the personal goodness revealed by the speaker, contributes nothing to his power of persuasion; on the contrary, his character may almost be called the most effective means of persuasion he possesses."

If I could ask Aristotle one question, it would be this: If the personal goodness of the communicator is so essential to his or her power of persuasion, why have some of history's most vicious and blood-thirsty rulers been such effective communicators? Since I am unlikely to have the opportunity to pose that question anytime soon, let me proceed on the solid assumption that the credibility of the communicator is a key component of successful advocacy. And let me explore the simple question: Why?

Do not think this discussion is of theoretical interest only. It is of crucial importance to every practicing lawyer, wherever they may be and whatever sort of legal work they do. Experienced lawyers and judges will tell you that credibility is the single most precious asset a lawyer possesses in a case, and over a career. All lawyers need to guard their credibility scrupulously, because, once it is lost, it is impossible to recover. It is possible to build an entire theory of successful advocacy around one proposition: everything that enhances credibility is a good thing and should be encouraged, and everything that detracts from credibility is a bad thing and should be discouraged.

There is, of course, no simple or perfect answer to the question of why credibility is so important. I would be interested to hear from readers on this subject.

But my view comes down to understanding this fundamental principle of persuasion: changed attitudes are self-induced, not the result of heavy-handed, coercive appeals. That is, the persuasive advocate is able to appeal to one, or more, of the audience's cluster of beliefs, emotions, and allegiances, triggering something inside the audience that produces a particular way of viewing a bundle of facts, circumstances and human interactions. Stated otherwise, the effective advocate does not superimpose his or her own beliefs on the audience, pushing decision-makers to come to conclusions with which they are uncomfortable. Rather, persuasion is a more subtle process, in which the decision-maker is gently led to view things as the advocate wants.

Think about your daily life, particularly in the context of a desire to obtain information from someone, or make a purchase. Think about the first moments of contact and communication with someone you have not met before. Instantaneously, and to some extent unconsciously, you start making judgments. Do you like the person? Do they seem authentic? Do you trust the person? Is what the person says believable? Would you feel comfortable relying on what the person says? Does the person seem logical and reasonable in what they assert? Are his or her assertions supported by credible evidence?

Very quickly, an initial opinion forms. Soon, you make a gut decision about whether you would buy the proverbial used car from this person. If you would not, your defenses go up, your willingness to be open goes down, and the interaction takes on a certain defensiveness. But if you do trust the person, you find yourself on a different trajectory. You find yourself opening up to what they say.

The same is true in a legal context. When you establish yourself as

a credible communicator—one who is prepared, accurate, honest, fair, knowledgeable about legal and factual issues, courteous and professional—what you say is more likely to be believed. To use an analogy, you are taking bricks out of your advocacy wheelbarrow and your job of persuasion is lighter.

But when you fail to establish your credibility, you are adding bricks into the wheelbarrow and your job of persuasion becomes much more onerous. Adding bricks is never a good thing.

Consider the two obvious consequences of a loss of credibility in front of a court or a jury—or any groups of decision-makers.

First, when you are not credible, the decision-maker loses confidence in you. Once you have demonstrated that you are not trustworthy, or that what you say is not accurate or truthful, as to Issue A, the odds are that you will not be believed on Issue B. This brings to mind the jury instruction that judges give to juries all the time: "If you find that a witness has been untruthful as to one issue, you may choose to believe some, all or none of that witness says as to other issues."

Therefore, when you lose credibility on one issue, your ability to persuade as to other issues is radically diminished and your ability to succeed in your case is substantially, sometimes fatally, undermined. The opposite, of course, is also true. If the decision-maker finds you credible on Issue A, they are more likely to be predisposed to find you credible on Issue B. Second, in the long run, your reputation in the community of lawyers with whom you practice, and judges before whom you appear, is compromised. Connecticut, where I live and work, is a relatively small state with a comparatively small bar. It does not take long for a lawyer to gain a reputation as someone whose word can be trusted. It also does not take long for someone to gain a reputation as someone who needs to be watched closely. Word travels fast in most

legal communities. Just as lawyers talk about judges, so do judges talk about lawyers.

Just As In School, Bad Reputations Are Hard To Shake

If a lawyer believes that another lawyer is not as good as his or her word, he or she will communicate that to colleagues. And if a judge has a bad experience with a lawyer, you can be sure that other judges will be warned to be careful. You never want to be the lawyer who doesn't know that he is wearing an invisible "Do Not Trust This Person" sign around his neck. Remember the kid in high school who was quickly labeled by teachers as never prepared? Once reputations are established, they are hard to shake. This is as true in the legal field as in any other arena.

In real estate, it is often said that the three key considerations relating to the sale of property are: "location, location, location." In advocacy, the three factors at the heart of successful advocacy are "credibility, credibility, credibility."

So take the high ground. Candor, professionalism and accuracy should undergird everything you say, write and do. You should work tirelessly to build a reputation as a credible, competent, trustworthy lawyer with your colleagues and with the bench.

The alternative is really no alternative at all. 



Douglas S. Lavine, a judge on the Connecticut Appellate Court, is the author of *Cardinal Rule of Advocacy* (NITA 2002)

and *Questions from the Bench* (ABA Section of Litigation 2004).

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In Memoriam

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.

Walter W. Calhoun

Alpharetta, Ga.
Admitted 1949
Died March 2007

Kenneth Alan Clark

Marietta, Ga.
Admitted 1996
Died May 2007

Eugene Cline

Decatur, Ga.
Admitted 1949
Died April 2007

Scott Sterling Colavolpe

Chino Hills, Calif.
Admitted 1987
Died April 2007

William Stuart Conner

Columbus, Ga.
Admitted 1979
Died April 2007

B. W. Crecelius

Newborn, Ga.
Admitted 1961
Died June 2007

John J. Flynt Jr.

Griffin, Ga.
Admitted 1938
Died June 2007

Arnold Eugene Gardner

Johns Creek, Ga.
Admitted 1984
Died April 2007

Glenville Haldi

Roswell, Ga.
Admitted 1963
Died May 2007

George E. Hibbs

Atlanta, Ga.
Admitted 1982
Died May 2007

James V. Hilburn

Dublin, Ga.
Admitted 1969
Died May 2007

Naiyareh Karimimanesh

Atlanta, Ga.
Admitted 2006
Died April 2007

Thomas P. Kiley

Augusta, Ga.
Admitted 1975
Died January 2007

W. Robert Lane

Dallas, Ga.
Admitted 1962
Died May 2007

Evan Garland Lea

Cartersville, Ga.
Admitted 1995
Died April 2007

Kenneth Alexander Main

Decatur, Ga.
Admitted 1993
Died January 2007

S. Elaine McChesney

Chicago, Ill.
Admitted 1987
Died April 2007

William H. Newsom

Marietta, Ga.
Admitted 1962
Died March 2007

James M. Nichols

Conyers, Ga.
Admitted 1947
Died May 2007

William R. Patterson

Atlanta, Ga.
Admitted 1951
Died March 2007

John A. Pierce

Savannah, Ga.
Admitted 1984
Died September 2006

H. T. Quillian Jr.

LaGrange, Ga.
Admitted 1947
Died May 2007

Thomas Matthew Rego

Cedartown, Ga.
Admitted 1990
Died April 2007

Philip L. Ruppert

Stockbridge, Ga.
Admitted 1976
Died April 2007

E. S. Sell Jr.

Macon, Ga.
Admitted 1938
Died February 2007

Robert Harvey Shannon

Flint, Mich.
Admitted 1998
Died May 2007

Thomas G. Smith

Darien, Ga.
Admitted 1975
Died April 2007

C. Gordon Statham

Decatur, Ga.
Admitted 1970
Died April 2007

Robert Edward Surles

Summerville, Ga.
Admitted 1951
Died May 2007

Arthur Blenn Taylor Jr.

St. Simons Island, Ga.
Admitted 1964
Died June 2007

Darryl R. Vandeford

Lawrenceville, Ga.

Admitted 1971

Died May 2007



Former Congressman **John J. Flynt Jr.**, of Griffin, passed away in June 2007. John James Flynt Jr. was born on Nov. 8, 1914, the only

son of John James Flynt Sr. and Susan Winn Banks Flynt. He was educated in the Spalding County School System and graduated from Georgia Military Academy. After graduating from the University of Georgia (A.B.) in 1936, he attended law schools at the University of Georgia, Emory University and received an LLB from George Washington University Law School in 1940. In 1936, he received his commission in the U.S. Army Reserves. Flynt was assigned to the 6th Horse Cavalry Regiment at Fort Oglethorpe, Ga. He later graduated from Air Corps Advanced Flying School, Brooks Field, Texas and the Command and General Staff College.

In World War II, he served as Aide-de-Camp for Brigadier Gen. Robert W. Grow in the 3rd Armored Division in France and was awarded the Bronze Star Medal in 1944. He later retired a colonel in the U.S. Army Reserves. Flynt was appointed Assistant U.S. Attorney for the Northern District of Georgia from 1939-41 and 1945-46. He served in the Georgia House of Representatives from 1947-49, then in 1949, was elected solicitor general of the Griffin Judicial Circuit and served until 1954. In 1954, Flynt was first elected to the U.S. House from the 4th District of Georgia (later the 6th District) where he served continuously for 13 terms, defeating political newcomer Newt Gingrich in 1974 and 1976.

While in Congress, Flynt served as a ranking member of the Interstate and Foreign Commerce and on the powerful Appropriations Committee. He

was a strong supporter of national defense serving on the Defense Subcommittee as well as the Subcommittee for State, Justice, Commerce and the Judiciary. He also served as chairman of the Committee on Standards of Official Conduct (Ethics Committee). Flynt is still remembered by many Georgians for his help and services to his constituents, particularly those serving in the armed forces.

After retiring from Congress in 1979, he returned home to Griffin and joined Robert H. Smalley Jr. and John M. Cogburn Jr., creating the law firm of Smalley, Cogburn & Flynt. Flynt was an organizer and director of the Bank of Spalding County until its merger with Premier Bank, now BB&T Bank. He was a member of the American Bar Association and State Bar of Georgia for 67 years, serving as State Bar President in 1954, the American Legion, Veteran of Foreign Wars, Sons of Confederate Veterans, Georgia Farm Bureau, Sigma Alpha Epsilon, Phi Delta Phi, lifelong member of the Griffin First United Methodist Church, served on the Board of Trustees at LaGrange College, Georgia Methodist Children's Home and was chairman of the Board of Visitors at the United States Air Force Academy from 1963 until 1978. He was also a Mason, Elk, Moose, Woodman of the World, Kiwanian and lifetime member of the National Rifle Association, where he made the keynote address at the annual meeting in 1958.

Flynt is survived by his wife of 65 years, the former Patricia Irby Bradley, daughter Susan Flynt Stirn of Arlington, Va.; sons and daughters-in-law, John J. Flynt III and wife, Susan of Augusta, Ga., and Crisp B. Flynt and wife, Patricia Baker Flynt of Griffin; grandchildren, Laura Flynt Vetter, Anna Flynt, Crisp B. Flynt Jr. and Margaret Corrine Flynt; and great-grandchildren Killian and Zara Vetter.




Philip Louis Ruppert passed away in April 2007. Ruppert was well respected and loved by all. He was described as a lawyer's lawyer.

Ruppert was born in 1933 in Manhattan, N.Y., to the late Henry William and Philippine Gertrude Freese Ruppert. He was preceded in death by his son, Philip Louis Ruppert Jr.

He served his country in the U.S. Marine Corps from 1951-54 and considered it a life-changing experience. He not only was a diehard Marine, but he felt the call to serve others. He graduated from John Marshall Law School in Atlanta in 1975.

Ruppert dedicated his life and the last 32 years to serving his fellow man. He handled thousands of clients regardless whether they had money or not. He cared for every client as if it were his own son or daughter. Ruppert's wife was his soul mate, partner and constant companion. Their clients loved them for who they were and what they gave to everyone. The lives of all people who met or knew Philip Ruppert were made better because of this man.

Ruppert had retired and moved to Florida in 1997 but moved back to Georgia in 2001. He loved tennis. He loved the Yankees. He was involved in theatrical productions in Florida and with the Henry County Players. Ruppert was a loving husband, father and grandfather.

He is survived by soul mate and partner, Dianne Ruppert of Stockbridge; children, Renee and Ken Staples of Lawrenceville, Darlene Godwin of Jefferson, Kelly Ruppert of Jefferson, Michael Mullinax of Indian Harbour, Fla.; Cindy and Rob Hargis of Knoxville, Tenn.; Sheila Ruppert and Kim Shaffer of Indian Harbour, Fla.; Philip (Beau) Ruppert III of McDonough; 13 grandchildren and 1 great-grandchild; brother, Henry (Bud) Ruppert of Deland, Fla.; sister, Eleanor Coady of Buford; numerous nieces and nephews; and his great friend, partner and confidant, Gary Bowman. 

August-October

AUG 2	Lorman Education Services <i>Workers Compensation Update</i> Athens, Ga. 6 CLE Hours	AUG 16	District of Columbia Bar — Forum Bar Association <i>Introduction to Effective Writing for Lawyers</i> Washington, D.C. 4 CLE Hours
AUG 8-9	Institute of Continuing Legal Education in Georgia <i>Real Property Law Institute Video Replay</i> Duluth, Ga. See www.iclega.org for locations 12 CLE Hours	AUG 21	Lorman Education Services <i>Real Estate Development From Beginning to End</i> Macon, Ga. 6 CLE Hours
AUG 9-10	Institute of Continuing Judicial Education of Georgia <i>20 Hour Domestic Violence Retreat</i> Braselton, Ga. 8 CLE Hours	AUG 23	Lorman Education Services <i>Commercial Real Estate Financing</i> Atlanta, Ga. 6 CLE Hours
AUG 9	Cobb County Superior Court <i>Mediation Styles – Evaluative v. Facilitative</i> Marietta, Ga. 3 CLE Hours	AUG 24	Lorman Education Services <i>Real Estate Development From Beginning to End</i> Atlanta, Ga. 6 CLE Hours
AUG 10	Lorman Education Services <i>Leaves of Absence, FMLA and Beyond</i> Atlanta, Ga. 6 CLE Hours	AUG 24	Institute of Continuing Legal Education in Georgia <i>Contract Litigation</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
AUG 10	Institute of Continuing Legal Education in Georgia <i>Nuts & Bolts of Franchise Law</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	AUG 24	Institute of Continuing Legal Education in Georgia <i>Nuts and Bolts of Family Law</i> Savannah, Ga. See www.iclega.org for locations 6 CLE Hours
AUG 15	Lorman Education Services <i>Accounting for Estates and Trusts</i> Atlanta, Ga. 6.7 CLE Hours	AUG 24	NBI, Inc. (Formerly National Business Institute) <i>Deposition A-Z</i> Atlanta, Ga. 6.1 CLE Hours
AUG 16	NBI, Inc. (Formerly National Business Institute) <i>Drafting Commercial Real Estate Leases</i> Atlanta, Ga. 6 CLE Hours		

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



- AUG 29** Lorman Education Services
Effective Choice of Entity Planning in Georgia – From the Basics to Advanced
Atlanta, Ga.
6.7 CLE Hours
- AUG 30** Institute of Continuing Legal Education in Georgia
Residential Real Estate, 2007, Video Replay
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours
- AUG 30** Institute of Continuing Legal Education in Georgia
The Future Practice of Law, 2007, Video Replay
Atlanta, Ga.
See www.iclega.org for locations
3 CLE Hours
- AUG 31-1** Institute of Continuing Legal Education in Georgia
18th Annual Urgent Legal Matters
St. Simons Island, Ga.
See www.iclega.org for locations
12 CLE Hours
- SEPT 7** Institute of Continuing Legal Education in Georgia
Professionalism, Ethics & Malpractice
Kennesaw, Ga.
See www.iclega.org for locations
4 CLE Hours
- SEPT 7** Institute of Continuing Legal Education in Georgia
Health Care Fraud
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours
- SEPT 7-8** Institute of Continuing Legal Education in Georgia
Lawyers and Disability
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours
- SEPT 11** NBI, Inc. (Formerly National Business Institute)
Fundamentals of Water Law
Atlanta, Ga.
6 CLE Hours
- SEPT 12** Institute of Continuing Legal Education in Georgia
Beginning Lawyers Program
Atlanta, Ga.
See www.iclega.org for locations
- SEPT 16-21** Institute of Continuing Judicial Education of Georgia
40 Hour Civil Basic Certification Program – Non Attorney Magistrates
Athens, Ga.
22 CLE Hours
- SEPT 19** NBI, Inc. (Formerly National Business Institute)
Helping Your Client Select the Best Option
Atlanta, Ga.
6.7 CLE Hours
- SEPT 13-14** Institute of Continuing Legal Education in Georgia
City and County Attorneys Institute
Athens, Ga.
See www.iclega.org for locations
12 CLE Hours
- SEPT 14** Institute of Continuing Legal Education in Georgia
Nuts and Bolts of Family Law
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours
- SEPT 17** Institute of Continuing Legal Education in Georgia
Government Attorneys
Amicalola Falls, Ga.
See www.iclega.org for locations
6 CLE Hours

August-October

SEPT 20 Institute of Continuing Legal Education in Georgia
Whistleblower Law Symposium
Atlanta, Ga.
See www.iclega.org for locations
3 CLE Hours

SEPT 20 Institute of Continuing Legal Education in Georgia
Employment Law
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

SEPT 20 NBI, Inc. (Formerly National Business Institute)
Property Taking Through Eminent Domain in Georgia
Atlanta, Ga.
6 CLE Hours

SEPT 21 Institute of Continuing Legal Education in Georgia
Punitive Damages
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

SEPT 21 Institute of Continuing Legal Education in Georgia
Agricultural Law
Macon, Ga.
See www.iclega.org for locations
6 CLE Hours

SEPT 27-29 Institute of Continuing Legal Education in Georgia
Insurance Law Institute
St. Simons Island, Ga.
See www.iclega.org for locations
12 CLE Hours

SEPT 27 Institute of Continuing Legal Education in Georgia
Doing Business in China and Taiwan
Atlanta, Ga.
See www.iclega.org for locations
3 CLE Hours

SEPT 28 Institute of Continuing Legal Education in Georgia
Construction Law
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

SEPT 28 Institute of Continuing Legal Education in Georgia
Cutting Edge in Courtroom Persuasion
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

OCT 4-6 Institute of Continuing Legal Education in Georgia
Workers' Compensation Law Institute
St. Simons Island, Ga.
See www.iclega.org for locations
12 CLE Hours

OCT 4-5 Institute of Continuing Legal Education in Georgia
Business Law Institute
Atlanta, Ga.
See www.iclega.org for locations
12 CLE Hours

OCT 4 Institute of Continuing Legal Education in Georgia
School and College Law
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

OCT 4 Institute of Continuing Legal Education in Georgia
Title Standards
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours

OCT 5 Institute of Continuing Legal Education in Georgia
Professional and Ethical Dilemmas
Atlanta, Ga.
See www.iclega.org for locations
3 CLE Hours



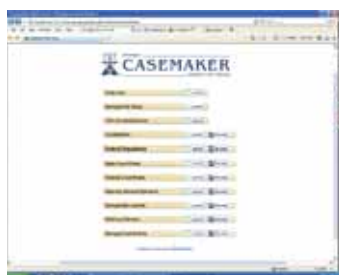
- | | | | |
|---------------|---|---------------|---|
| OCT 10 | National Conference of Bankruptcy Judges
<i>National Conference of Bankruptcy Judges</i>
Orlando, Fla.
8 CLE Hours | OCT 11 | Institute of Continuing Legal Education in Georgia
<i>Ethics of Rhetoric</i>
Atlanta, Ga.
See www.iclega.org for locations
3 CLE Hours |
| OCT 11 | Institute of Continuing Legal Education in Georgia
<i>Keep It Simple</i>
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours | OCT 12 | Institute of Continuing Legal Education in Georgia
<i>Class Actions</i>
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours |
| OCT 11 | Institute of Continuing Legal Education in Georgia
<i>U.S. Supreme Court Update</i>
Atlanta, Ga.
See www.iclega.org for locations
6 CLE Hours | OCT 12 | Institute of Continuing Legal Education in Georgia
<i>Securities Litigation</i>
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Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

No earlier than thirty days after the publication of this Notice, the State Bar of Georgia will file a Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia pursuant to Part V, Chapter 1 of said Rules, 2005-2007 *State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as “*Handbook*”).

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member of the State Bar of Georgia who desires to object to these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102, *Handbook*, p. H-6.

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

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT STATE OF GEORGIA

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

MOTION TO AMEND 2007-1

MOTION TO AMEND THE RULES AND REGULATIONS OF THE STATE BAR OF GEORGIA

COMES NOW, the State Bar of Georgia, pursuant to the authorization and direction of its Board of Governors in a regular meeting held on June 16, 2007, and upon the concurrence of its Executive Committee, and presents to this Court its Motion to Amend the Rules and Regulations of the State Bar of Georgia as set forth in an Order of this Court dated December 6, 1963 (219 Ga. 873), as amended by subsequent Orders, 2006-2007 *State Bar of Georgia Directory and Handbook*, pp. 1-H, *et seq.*, and respectfully moves that the Rules and Regulations of the State Bar of Georgia be amended in the following respects:

I.

It is proposed that Rule 1-404 of Chapter 4 of Part I of the Rules of the State Bar of Georgia regarding the

eligibility of candidates for the position of President-elect be amended by deleting the rule in full. The current rule reads as follows:

Rule 1-404. Eligibility of President-elect

No person shall be eligible for election as President-elect if a member of the judicial circuit in which such person is a member was elected to the office of President-elect at any time within one year immediately prior to the election in which such person is a candidate.

In lieu of said rule, the membership of the State Bar at the plenary session of the annual meeting on June 16, 2007 conditionally approved the following new paragraph in Article V, Section 3 of the bylaws should this Court grant the motion to delete Rule 1-404:

Section 3. The President-Elect

No person shall be eligible for election as President-elect if a member of the judicial circuit in which such person is a member was elected to the office of President-elect at any time within one year immediately prior to the election in which such person is a candidate. This Provision may be waived by a majority of the present and voting members at a duly noticed meeting of the Board of Governors. Once a waiver has been obtained, no additional waiver may be requested by anyone from the judicial circuit that was the subject of the waiver until the fourth mid-year meeting of the Board of Governors following the waiver's approval.

The President-elect shall perform duties delegated to him or her by the President, prescribed by the Board of Governors and as otherwise provided in the Bar Rules and Bylaws. Upon the absence, death, disability, or resignation of the President, the President-elect shall preside at all meetings of the State Bar and the Board, and shall perform all other duties of the President.

To insure continuity in the program of the State Bar for the benefit of the legal profession and the public, the President-elect shall plan the program for the year in which he or she shall act as President and make needed arrangements for the prompt inauguration of the program upon taking office as President.

II.

It is proposed that Rule 1-501 of Chapter 5 of Part I of the Rules of the State Bar of Georgia regarding license fees be amended by deleting the struck-through portions of the rule and inserting those portions in boldface italics as follows:

Rule 1-501. License Fees

(a) Annual license fees for membership in the State Bar shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees and late fees for the current and prior years have been paid, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar is delinquent ~~without reasonable cause~~ in the payment of *any* license fees, *late fee, assessment, reinstatement fee or penalty of any nature* for a period of one (1) year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(i) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(ii) provide the membership section of the State Bar the following:

(A) a certificate from the Office of General Counsel of the State Bar that the suspended member is not presently subject to any disciplinary procedure;

(B) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education;

(C) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(iii) payment to the State Bar of a non-waivable reinstatement fee as follows:

(A) \$150.00 for the first reinstatement paid within the first year of suspension, plus \$150.00 for each year of suspension thereafter up to a total of five years;

(B) \$250.00 for the second reinstatement paid within the first year of suspension, plus \$250.00 for each year of suspension thereafter up to a total of five years;

(C) \$500.00 for the third reinstatement paid within the first year of suspension, plus \$500.00 for each year of suspension thereafter up to a total of five years; or

(D) \$750.00 for each subsequent reinstatement paid within the first year of suspension, plus \$750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated for any fraction of the fiscal year in which it is actually paid.

(c) A member suspended ~~for a license fee delinquency~~ *under subsection (b) above* for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar. The terminated member shall not be entitled to a hearing as set out in section (d) below. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b)(iii) above plus an additional \$750.00 as a readmission fee to the State Bar.

(d) Prior to suspending ~~a membership member for a license fee delinquency~~ *under subsection (b) above*, the State Bar shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that either the fee and all penalties related thereto are paid within sixty (60) days or a hearing to establish reasonable cause is requested within sixty (60) days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar Headquarters within ninety (90) days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten (10) days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it and a copy thereof

shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship short of adjudicated bankruptcy shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was reasonable cause therefor, the matter shall be deferred for one (1) year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the Respondent attorney. The Respondent attorney may file with the Court any written exceptions (supported by the written argument) said Respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court and served on the Executive Committee by service on the General Counsel within twenty (20) days of the date that the findings were served on the Respondent attorney. Upon the filing of exceptions by the Respondent attorney, the Executive Committee shall within twenty (20) days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court. The Court may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Court may grant oral argument on any exception filed with it upon application for such

argument by the Respondent attorney or the Executive Committee. The Court shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgement. A copy of the Court's judgement shall be transmitted to the Executive Committee and to the Respondent attorney by the Court.

Within thirty (30) days after a final judgement which suspends membership, the suspended member shall, under the supervision of the Supreme Court, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court, upon its motion, or upon the motion of the State Bar, and after ten (10) days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar appointed by the Supreme Court to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the court.

~~(e) Any member terminated solely for license fee delinquency after January 1, 1997 shall be eligible to apply for reinstatement on the same terms and conditions and in the same manner as a member suspended for license fee delinquency may apply for lifting of suspension pursuant to (b) above.~~

If this motion of the State Bar of Georgia is granted, the amended rule 1-501 will read as follows:

Rule 1-501. License Fees

(a) Annual license fees for membership in the State Bar shall be due and payable on July 1 of each year. Upon the failure of a member to pay the license fee by September 1, the member shall cease to be a member in good standing. When such license fees and late fees for the current and prior years have been paid, the member shall automatically be reinstated to the status of member in good standing, except as provided in section (b) of this Rule.

(b) In the event a member of the State Bar is delinquent in the payment of any license fees, late fee, assessment, reinstatement fee or penalty of any nature for a period of one (1) year, the member shall be automatically suspended, and shall not practice law in this state. The suspended member may thereafter lift such suspension only upon the successful completion of all of the following terms and conditions:

(i) payment of all outstanding dues, assessments, late fees, reinstatement fees, and any and all penalties due and owing before or accruing after the suspension of membership;

(ii) provide the membership section of the State Bar the following:

(A) a certificate from the Office of General Counsel of the State Bar that the suspended member is not presently subject to any disciplinary procedure;

(B) a certificate from the Commission on Continuing Lawyer Competency that the suspended member is current on all requirements for continuing legal education;

(C) a determination of fitness from the Board to Determine Fitness of Bar Applicants;

(iii) payment to the State Bar of a non-waivable reinstatement fee as follows:

(A) \$150.00 for the first reinstatement paid within the first year of suspension, plus \$150.00 for each year of suspension thereafter up to a total of five years;

(B) \$250.00 for the second reinstatement paid within the first year of suspension, plus \$250.00 for each year of suspension thereafter up to a total of five years;

(C) \$500.00 for the third reinstatement paid within the first year of suspension, plus \$500.00 for each year of suspension thereafter up to a total of five years; or

(D) \$750.00 for each subsequent reinstatement paid within the first year of suspension, plus \$750.00 for each year of suspension thereafter up to a total of five years.

The yearly increase in the reinstatement fee shall become due and owing in its entirety upon the first day of each next fiscal year and shall not be prorated

for any fraction of the fiscal year in which it is actually paid.

(c) A member suspended under subsection (b) above for a total of five years in succession shall be immediately terminated as a member without further action on the part of the State Bar. The terminated member shall not be entitled to a hearing as set out in section (d) below. The terminated member shall be required to apply for membership to the Office of Bar Admissions for readmission to the State Bar. Upon completion of the requirements for readmission, the terminated member shall be required to pay the total reinstatement fee due under subsection (b)(iii) above plus an additional \$750.00 as a readmission fee to the State Bar.

(d) Prior to suspending a member under subsection (b) above, the State Bar shall send by certified mail a notice thereof to the last known address of the member as contained in the official membership records. It shall specify the years for which the license fee is delinquent and state that either the fee and all penalties related thereto are paid within sixty (60) days or a hearing to establish reasonable cause is requested within sixty (60) days, the membership shall be suspended.

If a hearing is requested, it shall be held at State Bar Headquarters within ninety (90) days of receipt of the request by the Executive Committee. Notice of time and place of the hearing shall be mailed at least ten (10) days in advance. The party cited may be represented by counsel. Witnesses shall be sworn; and, if requested by the party cited, a complete electronic record or a transcript shall be made of all proceedings and testimony. The expense of the record shall be paid by the party requesting it and a copy thereof shall be furnished to the Executive Committee. The presiding member or special master shall have the authority to rule on all motions, objections, and other matters presented in connection with the Georgia Rules of Civil Procedure, and the practice in the trial of civil cases. The party cited may not be required to testify over his or her objection.

The Executive Committee shall (1) make findings of fact and conclusions of law and shall determine whether the party cited was delinquent in violation of this Rule 1-501; and (2) upon a finding of delinquency shall determine whether there was reasonable cause for the delinquency. Financial hardship short of adjudicated bankruptcy shall not constitute reasonable cause. A copy of the findings and the determination shall be sent to the party cited. If it is determined that no delinquency has occurred, the matter shall be dismissed. If it is determined that delinquency has occurred but that there was rea-

sonable cause therefor, the matter shall be deferred for one (1) year at which time the matter will be reconsidered. If it is determined that delinquency has occurred without reasonable cause therefor, the membership shall be suspended immediately upon such determination. An appropriate notice of suspension shall be sent to the clerks of all Georgia courts and shall be published in an official publication of the State Bar. Alleged errors of law in the proceedings or findings of the Executive Committee or its delegate shall be reviewed by the Supreme Court. The Executive Committee may delegate to a special master any or all of its responsibilities and authority with respect to suspending membership for license fee delinquency in which event the special master shall make a report to the Committee of its findings for its approval or disapproval.

After a finding of delinquency, a copy of the finding shall be served upon the Respondent attorney. The Respondent attorney may file with the Court any written exceptions (supported by the written argument) said Respondent may have to the findings of the Executive Committee. All such exceptions shall be filed with the Clerk of the Supreme Court and served on the Executive Committee by service on the General Counsel within twenty (20) days of the date that the findings were served on the Respondent attorney. Upon the filing of exceptions by the Respondent attorney, the Executive Committee shall within twenty (20) days of said filing, file a report of its findings and the complete record and transcript of evidence with the Clerk of the Supreme Court. The Court may grant extensions of time for filing in appropriate cases. Findings of fact by the Executive Committee shall be conclusive if supported by any evidence. The Court may grant oral argument on any exception filed with it upon application for such argument by the Respondent attorney or the Executive Committee. The Court shall promptly consider the report of the Executive Committee, exceptions thereto, and the responses filed by any party to such exceptions, if any, and enter its judgement. A copy of the Court's judgement shall be transmitted to the Executive Committee and to the Respondent attorney by the Court.

Within thirty (30) days after a final judgement which suspends membership, the suspended member shall, under the supervision of the Supreme Court, notify all clients of said suspended member's inability to represent them and of the necessity for promptly retaining new counsel, and shall take all actions necessary to protect the interests of said suspended member's clients. Should the suspended member fail to notify said clients or fail to protect their interests as herein required, the Supreme Court, upon its motion, or upon the

motion of the State Bar, and after ten (10) days notice to the suspended member and proof of failure to notify or protect said clients, may hold the suspended member in contempt and order that a member or members of the State Bar take charge of the files and records of said suspended member and proceed to notify all clients and take such steps as seem indicated to protect their interests. Any member of the State Bar appointed by the Supreme Court to take charge of the files and records of the suspended member under these Rules shall not be permitted to disclose any information contained in the files and records in his or her care without the consent of the client to whom such file or record relates, except as clearly necessary to carry out the order of the court.

III.

It is proposed that Rule 1-703 of Chapter 7 of Part I of the Rules of the State Bar of Georgia regarding the Younger Lawyers Division be amended by deleting the struck-through portions of the rule and inserting those portions set out in boldface italics as follows:

Rule 1-703. Young Lawyers Division

There shall be a division of the State Bar composed of (1) all members of the State Bar who have not reached their thirty-sixth birthday prior to the close of the preceding Annual Meeting of the State Bar and (2) all members of the State Bar who have been admitted to their first bar less than ~~three~~ *five* years. All persons holding an elective office or post in the Young Lawyers Division who are qualified by age to assume such office or post on the date of his or her election shall remain members of the Young Lawyers Division for the duration of their offices or posts. In the case of a President-elect of the Young Lawyers Division who is qualified by age to assume such office on the date of such person's election, such person shall remain a member of the Young Lawyers Division for the duration of the terms of President and Immediate Past President to which he or she succeeds.

The Young Lawyers Division shall have such organization, powers, and duties as may be prescribed by the Bylaws of the State Bar.

If this motion of the State Bar of Georgia is granted, the amended rule 1-703 will read as follows:

Rule 1-703. Young Lawyers Division

There shall be a division of the State Bar composed of (1) all members of the State Bar who have not reached their thirty-sixth birthday prior to the close of the preceding Annual Meeting of the State Bar and (2) all members of the State Bar who have been admitted

to their first bar less than five years. All persons holding an elective office or post in the Young Lawyers Division who are qualified by age to assume such office or post on the date of his or her election shall remain members of the Young Lawyers Division for the duration of their offices or posts. In the case of a President-elect of the Young Lawyers Division who is qualified by age to assume such office on the date of such person's election, such person shall remain a member of the Young Lawyers Division for the duration of the terms of President and Immediate Past President to which he or she succeeds.

The Young Lawyers Division shall have such organization, powers, and duties as may be prescribed by the Bylaws of the State Bar.

IV.

It is proposed that Rule 4-103 of Chapter 1 of Part IV of the Rules of the State Bar of Georgia regarding multiple disciplinary violations, and Rules 4-201 and 4-203 of Chapter 2 of Part IV of the Rules of the State Bar of Georgia regarding the State Disciplinary Board be amended as set out below. In addition, the Board of Governors moves to amend Rule 9.4 of the Georgia Rules of Professional Conduct found in Chapter 1 of Part IV of the Rules of the State Bar of Georgia.

The Board of Governors moves that Rule 4-103 be amended by inserting those portions set out in boldface italics as follows:

Rule 4-103. Multiple Violations

A finding of a third or subsequent disciplinary infraction under these rules shall, in and of itself, constitute discretionary grounds for suspension or disbarment. The Review Panel may exercise this discretionary power when the question is appropriately before that Panel. *Any discipline imposed by another jurisdiction as contemplated by Rule 9.4 may be considered a disciplinary infraction for the purpose of this Rule.*

Should this Court grant the motion, the rule in its entirety would read as follows:

Rule 4-103. Multiple Violations

A finding of a third or subsequent disciplinary infraction under these rules shall, in and of itself, constitute discretionary grounds for suspension or disbarment. The Review Panel may exercise this discretionary power when the question is appropriately before that Panel. Any discipline imposed by another jurisdiction as contemplated by Rule 9.4 may be considered a disciplinary infraction for the purpose of this Rule.

The Board of Governors moves that Rule 4-201(b)(5) be amended by deleting the struck-through portions of the rule and inserting those portions set out in boldface italics as follows:

Rule 4-201. State Disciplinary Board

(a) . . .

(b) The Review Panel shall consist of the Immediate Past President of the State Bar, the Immediate Past President of the Young Lawyers Division or a member of the Young Lawyers Division designated by its Immediate Past President, nine members of the State Bar, three from each of the three federal judicial districts of the State appointed as described below, and four public members appointed by the Supreme Court of Georgia.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) The Review Panel shall elect a chairperson and such other officers as it may deem proper in July of each year. ~~A majority~~ *The presence of six members* of the Panel shall constitute a quorum. ~~A majority of a quorum~~ *Four members of the Panel* shall be authorized to act except that a recommendation of the Review Panel to suspend or disbar shall require the affirmative vote of at least six members of the Review Panel, with not more than four negative votes. However, in any case in which one or more Review Panel members are disqualified, the number of members constituting a quorum and the number of members necessary to vote affirmatively for disbarment or suspension, shall be reduced by the number of members disqualified from voting on the case. No recommendation of disbarment or suspension may be made by fewer than four affirmative votes. *For the purposes of this rule the recusal of a member shall have the same effect as disqualification.*

Should this Court grant the motion, Rule 4-201 in its entirety would read as follows:

4-201. State Disciplinary Board

The powers to investigate and discipline members of the State Bar of Georgia and those authorized to practice law in Georgia for violations of the Standards of Conduct set forth in Bar Rule 4-102 are hereby vested in a State Disciplinary Board and a Consumer Assistance Program. The State

Disciplinary Board shall consist of two panels. The first panel shall be the Investigative Panel of the State Disciplinary Board (Investigative Panel). The second panel shall be the Review Panel of the State Disciplinary Board (Review Panel). The Consumer Assistance Program shall operate as described in Part XII of these Rules.

(a) The Investigative Panel shall consist of the President-elect of the State Bar of Georgia and the President-elect of the Young Lawyers Division of the State Bar of Georgia, one member of the State Bar of Georgia from each judicial district of the State appointed by the President of the State Bar of Georgia with the approval of the Board of Governors of the State Bar of Georgia, one member of the State Bar of Georgia from each judicial district of the State appointed by the Supreme Court of Georgia, one at-large member of the State Bar of Georgia appointed by the Supreme Court, one at-large member of the State Bar of Georgia appointed by the President with the approval of the Board of Governors, and six public members appointed by the Supreme Court to serve as public members of the Panel.

(1) All members shall be appointed for three-year terms subject to the following exceptions:

(i) any person appointed to fill a vacancy caused by resignation, death, disqualification or disability shall serve only for the unexpired term of the member replaced unless reappointed;

(ii) ex-officio members shall serve during the term of their office; and

(iii) certain initial members as set forth in paragraph (2) below.

(2) It shall be the goal of the initial appointments that one-third (1/3) of the terms of the members appointed will expire annually.

(3) A member may be removed from the Panel pursuant to procedures set by the Panel for failure to attend regular meetings of the Panel. The vacancy shall be filled by appointment of the current President of the State Bar of Georgia.

(4) The Investigative Panel shall annually elect a chairperson, a vice-chairperson, or a vice-chairperson for any subcommittee for which the chairperson is not a member to serve as chairperson for that subcommittee, and such other officers as it may deem proper. The Panel shall meet in its entirety in July of each year to elect a chairperson. At any time the Panel may

decide to divide itself into subcommittees or to consolidate after having divided. A majority shall constitute a quorum and a majority of a quorum shall be authorized to act. However, in any matter in which one or more Investigative Panel members are disqualified, the number of members constituting a quorum shall be reduced by the number of members disqualified from voting on the matter.

(5) The Investigative Panel is authorized to organize itself into as many subcommittees as the Panel deems necessary to conduct the expeditious investigation of disciplinary matters referred to it by the Office of the General Counsel. However, no subcommittee shall consist of fewer than seven (7) members of the Panel and each such subcommittee shall include at least one (1) of the public members.

(b) The Review Panel shall consist of the Immediate Past President of the State Bar, the Immediate Past President of the Young Lawyers Division or a member of the Young Lawyers Division designated by its Immediate Past President, nine members of the State Bar, three from each of the three federal judicial districts of the State appointed as described below, and four public members appointed by the Supreme Court of Georgia.

(1) The nine members of the Bar from the federal judicial districts shall be appointed for three year terms so that the term of one Panel member from each district will expire each year. The three vacant positions will be filled in odd years by appointment by the President, with the approval of the Board of Governors, and in even years by appointment by the Supreme Court of Georgia.

(2) The Panel members serving at the time this rule goes into effect shall continue to serve until their respective terms expire. New Panel members shall be appointed as set forth above.

(3) Any person appointed to fill a vacancy caused by resignation, death, disqualification or disability shall serve only for the unexpired term of the member replaced unless reappointed.

(4) Ex-officio members shall serve during the term or terms of their offices.

(5) The Review Panel shall elect a chairperson and such other officers as it may deem proper in July of each year. The presence of six members of the Panel shall constitute a quorum. Four members of the Panel shall be

authorized to act except that a recommendation of the Review Panel to suspend or disbar shall require the affirmative vote of at least six members of the Review Panel, with not more than four negative votes. However, in any case in which one or more Review Panel members are disqualified, the number of members constituting a quorum and the number of members necessary to vote affirmatively for disbarment or suspension, shall be reduced by the number of members disqualified from voting on the case. No recommendation of disbarment or suspension may be made by fewer than four affirmative votes. For the purposes of this rule the recusal of a member shall have the same effect as disqualification

The Board of Governors moves that Rule 4-203(b)(7) be amended by inserting those portions set out in bold-face italics as follows:

Rule 4-203. Powers and Duties

(a)

(b) In accordance with these rules, the Review Panel or any subcommittee of the Panel shall have the following powers and duties:

(1) To receive reports from special masters, and to recommend to the Supreme Court the imposition of punishment and discipline;

(2) To adopt forms for subpoenas, notices, and any other written instruments necessary or desirable under these rules;

(3) To prescribe its own rules of conduct and procedure;

(4) (Reserved).

(5) Through the action of its chairperson or his or her designee and upon good cause shown, to allow a late filing of the respondent's answer where there has been no final selection of a special master within thirty days of service of the formal complaint upon the respondent;

(6) Through the action of its chairperson or his or her designee, to receive and pass upon challenges and objections to special masters;

(7) To receive Notices of Reciprocal Discipline and to recommend to the Supreme Court the imposition of punishment and discipline pursuant to Bar Rule 9.4(b)(3).

Should this Court grant the motion, Rule 4-201 in its entirety would read as follows:

Rule 4-203. Powers and Duties

(a) In accordance with these rules, the Investigative Panel shall have the following powers and duties:

(1) To receive and evaluate any and all written grievances against members of the State Bar and to frame such charges and grievances as shall conform to the requirements of these rules. A copy of any grievance serving as the basis for investigation or proceedings before the Panel shall be furnished to the respondent by the procedures set forth in Rule 4-204.2;

(2) To initiate grievances on its own motion, to require additional information from a complainant, where appropriate, and to dismiss and reject such grievances as to it may seem unjustified, frivolous, or patently unfounded. However, the rejection of a grievance by the Investigative Panel shall not deprive the complaining party of any right of action he or she might otherwise have at law or in equity against the respondent;

(3) To issue letters of instruction when dismissing a grievance;

(4) To delegate the duties of the Panel enumerated in subparagraphs (1), (2), (11) and (12) hereof to the chairperson of the Panel or chairperson of any subcommittee of the Panel or such other members as the Panel or its chairperson may designate subject to review and approval by the Investigative Panel or subcommittee of the Panel;

(5) To conduct probable cause investigations, to collect evidence and information concerning grievances, to hold hearings where provided for in these rules, and to certify grievances to the Supreme Court for hearings by special masters as hereinafter provided;

(6) To pass upon petitions for protection of the clients of deceased, disappearing or incapacitated members of the State Bar;

(7) To adopt forms for formal complaints, subpoenas, notices, and any other written instruments necessary or desirable under these rules;

(8) To prescribe its own rules of conduct and procedure;

(9) To receive, investigate, and collect evidence and information; and to review and accept or reject such Petitions for Voluntary Discipline which request the imposition of confidential discipline and are filed with the Investigative Panel prior to the time of issuance of a formal complaint by Bar counsel. Each such petition shall contain admissions of fact and admissions of conduct in violation of Part IV, Chapter 1 of these rules sufficient to authorize the imposition of discipline. Bar counsel shall, upon filing of such petition, file with the Panel its recommendations as to acceptance or rejection of the petition by the Panel, giving the reasons therefor, and shall serve a copy of its recommendation upon the respondent presenting such petition;

(10) To sign and enforce, as hereinafter described, subpoenas for the appearance of persons and for the production of things and records at investigations and hearings;

(11) To extend the time within which a formal complaint may be filed;

(12) To issue letters of formal admonition and Investigative Panel Reprimands as hereinafter provided;

(13) To enter a Notice of Discipline providing that unless the respondent affirmatively rejects the notice, the respondent shall be sanctioned as ordered by the Investigative Panel;

(14) To use the investigators, auditors, and/or staff of the Office of the General Counsel in performing its duties.

(b) In accordance with these rules, the Review Panel or any subcommittee of the Panel shall have the following powers and duties:

(1) To receive reports from special masters, and to recommend to the Supreme Court the imposition of punishment and discipline;

(2) To adopt forms for subpoenas, notices, and any other written instruments necessary or desirable under these rules;

(3) To prescribe its own rules of conduct and procedure;

(4) (Reserved);

(5) Through the action of its chairperson or his or her designee and upon good cause

shown, to allow a late filing of the respondent's answer where there has been no final selection of a special master within thirty days of service of the formal complaint upon the respondent;

(6) Through the action of its chairperson or his or her designee, to receive and pass upon challenges and objections to special masters;

(7) To receive Notices of Reciprocal Discipline and to recommend to the Supreme Court the imposition of punishment and discipline pursuant to Bar Rule 9.4(b)(3).

The Board of Governors moves to amend Rule 9.4 of the Georgia Rules of Professional Conduct found in Chapter 1 of Part IV of the Rules of the State Bar of Georgia by deleting the struck-through portions of the rule and inserting those portions set out in boldface italics as follows:

RULE 9.4: JURISDICTION AND RECIPROCAL DISCIPLINE

(a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or removal from practice on any of the grounds provided in Rule ~~4-105~~ **4-104** of the State Bar, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of the Georgia Rules of Professional Conduct or any Rules or Code subsequently adopted by the court in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the State Bar of Georgia State Disciplinary Board.

(b) Reciprocal Discipline. Upon being ~~disciplined~~ **suspended or disbarred** in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been disciplined in another jurisdiction, the Office of General Counsel shall obtain a certified copy of the disciplinary order and file it with the ~~Investigative Panel Clerk~~ **Panel Clerk** of the State Disciplinary Board. ***Nothing in this Rule shall prevent a lawyer disciplined in another jurisdiction from filing a petition for voluntary discipline under Rule 4-227.***

(1) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to

practice in Georgia has been ~~disciplined~~ **disbarred or suspended** in another jurisdiction, the ~~Investigative Panel Clerk~~ of the State Disciplinary Board shall docket the matter and forthwith issue a notice directed to the lawyer containing:

(i) A copy of the order from the other jurisdiction; and

(ii) ~~An order directing~~ **A notice approved by the Review Panel** that the lawyer must inform the Office of General Counsel and the Review Panel, within thirty days from service of the notice, of any claim by the lawyer predicated upon the grounds set forth in paragraph (b)(3) below, that the imposition of ~~the identical~~ **substantially similar** discipline in this jurisdiction would be unwarranted and the reasons for that claim.

(2) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this jurisdiction shall be deferred until the stay expires.

(3) Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph (b)(1), the Review Panel shall recommend to the Georgia Supreme Court ~~the identical~~ **substantially similar** discipline, or removal from practice on the grounds provided in Rule 4-104, unless the Office of General Counsel or the lawyer demonstrates, or the Review Panel finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(iv) The reason for the original disciplinary status no longer exists; or

(v) (a) the conduct did not occur within the state of Georgia; and,

(b) the discipline imposed by the foreign jurisdiction exceeds the level of discipline allowed under these Rules.

(vi) The discipline would if imposed in identical form be unduly severe or would require action not contemplated by these Rules.

If the Review Panel determines that any of those elements exists, the Review Panel shall make such other recommendation to the Georgia Supreme Court as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(4) The Review Panel may consider exceptions from either the Office of the General Counsel or the Respondent for the grounds enumerated at Part (b)(3) of this Rule, and may in its discretion grant oral argument. Exceptions and briefs shall be filed with the Review Panel within thirty days from service of the Notice of Reciprocal Discipline. The responding party shall have ten days after service of the exceptions within which to respond.

~~(4)~~ (5) In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct, or has been removed from practice on any of the grounds provided in Rule 4-104 of the State Bar, shall establish conclusively the misconduct or the removal from practice for purposes of a disciplinary proceeding in this state.

(6) Discipline imposed by another jurisdiction but of a lesser nature than disbarment or suspension may be considered in aggravation of discipline in any other disciplinary proceeding.

The maximum penalty for a violation of this Rule is disbarment.

Should this Court grant the motion, Rule 4-201 in its entirety would read as follows:

RULE 9.4 JURISDICTION AND RECIPROCAL DISCIPLINE

(a) Jurisdiction. Any lawyer admitted to practice law in this jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or removal from practice on any of the grounds provided in Rule 4-104 of the State Bar, or with respect

to acts subsequent thereto which amount to the practice of law or constitute a violation of the Georgia Rules of Professional Conduct or any Rules or Code subsequently adopted by the court in lieu thereof, and any Domestic or Foreign Lawyer specially admitted by a court of this jurisdiction for a particular proceeding and any Domestic or Foreign Lawyer who practices law or renders or offers to render any legal services in this jurisdiction, is subject to the disciplinary jurisdiction of the State Bar of Georgia State Disciplinary Board.

(b) Reciprocal Discipline. Upon being suspended or disbarred in another jurisdiction, a lawyer admitted to practice in Georgia shall promptly inform the Office of General Counsel of the State Bar of Georgia of the discipline. Upon notification from any source that a lawyer within the jurisdiction of the State Bar of Georgia has been disciplined in another jurisdiction, the Office of General Counsel shall obtain a certified copy of the disciplinary order and file it with the Clerk of the State Disciplinary Board. Nothing in this Rule shall prevent a lawyer disciplined in another jurisdiction from filing a petition for voluntary discipline under Rule 4-227.

(1) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Georgia has been disbarred or suspended in another jurisdiction, the Clerk of the State Disciplinary Board shall forthwith issue a notice directed to the lawyer containing:

(i) A copy of the order from the other jurisdiction; and

(ii) A notice approved by the Review Panel that the lawyer must inform the Office of General Counsel and the Review Panel, within thirty days from service of the notice, of any claim by the lawyer predicated upon the grounds set forth in paragraph (b)(3) below, that the imposition of the substantially similar discipline in this jurisdiction would be unwarranted and the reasons for that claim.

(2) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this jurisdiction shall be deferred until the stay expires.

(3) Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph (b)(1), the Review Panel shall recommend to the Georgia Supreme Court substantially similar discipline, or removal from

practice on the grounds provided in Rule 4-104, unless the Office of General Counsel or the lawyer demonstrates, or the Review Panel finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(i) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) The discipline imposed would result in grave injustice or be offensive to the public policy of the jurisdiction; or

(iv) The reason for the original disciplinary status no longer exists; or

(v) (a) the conduct did not occur within the state of Georgia; and,

(b) the discipline imposed by the foreign jurisdiction exceeds the level of discipline allowed under these Rules.

(vi) The discipline would if imposed in identical form be unduly severe or would require action not contemplated by these Rules.

If the Review Panel determines that any of those elements exists, the Review Panel shall make such other recommendation to the Georgia Supreme Court as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

(4) The Review Panel may consider exceptions from either the Office of the General Counsel or the Respondent on the grounds enumerated at Part (b)(3) of this Rule, and may in its discretion grant oral argument. Exceptions and briefs shall be filed with the Review Panel within thirty days from service of the Notice of Reciprocal Discipline. The responding party shall have ten days after service of the exceptions within which to respond.

(5) In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been

guilty of misconduct, or has been removed from practice on any of the grounds provided in Rule 4-104 of the State Bar, shall establish conclusively the misconduct or the removal from practice for purposes of a disciplinary proceeding in this state.

(6) Discipline imposed by another jurisdiction but of a lesser nature than disbarment or suspension may be considered in aggravation of discipline in any other disciplinary proceeding.

The maximum penalty for a violation of this Rule is disbarment.

SO MOVED, this ____ day of _____, 2007.

Notice of Proposal to Amend Rule 1-502, Amount of License Fee

In July, the Executive Committee of the State Bar of Georgia voted to recommend to the Board of Governors that it petition the Supreme Court of Georgia to raise the cap on annual dues for the first time in 12 years. Under the proposal, Bar dues, which are now set at \$230 and capped at \$250, would be capped at \$350.

Raising the cap does not necessarily mean that Bar members should expect to pay higher dues next year. Asking the Supreme Court to raise the cap is merely a way to ensure that the Bar has leeway, if needed in the future, to meet the rising costs of its annual operations. Introduced by Supreme Court Order in 1983, the first dues cap was set at \$150. The cap was then raised to \$250 in 1995, where it has remained. But inflation estimates show that \$250 in 1995 would be the equivalent of \$330 in today's marketplace.

The Board sets annual dues each year, usually at its spring meeting. By rule, the Board is limited to a maximum increase of \$25 in one year. They make every effort to maintain a reasonable dues level for Georgia lawyers. In comparison with the 28 unified bars in the United States, we rank fifth in lawyer population and 19th in dues level.

Pursuant to State Bar of Georgia Rule 5-104, Notice is hereby provided to all members that a proposal to raise limit on the license fee amount contained in Rule 1-502 from \$250 to \$350 will be considered at the next meeting of the Board of Governors scheduled for 2 p.m. on Friday, Nov. 2, 2007 at Callaway Gardens, Pine Mountain, Ga.

A verbatim copy of the proposed amendment to State Bar Rule 1-502 is as follows:

Counsel for the State Bar of Georgia

William P. Smith, III
General Counsel
State Bar No. 665000

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

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

Rule 1-502. Amount of License Fees

The amount of such license fees for active members shall not exceed ~~\$250.00~~ **\$350.00**, and shall annually be fixed by the Board of Governors for the ensuing year; provided, however, that except in the case of an emergency, such annual dues shall not be increased in any one year by more than \$25.00 over those set for the next preceding year. The annual license fees for inactive members shall be in an amount not to exceed one-half (1/2) of those set for active members. Subject to the above limitations, license fees may be fixed in differing amounts for different classifications of active and inactive membership, as may be established in the bylaws.

Members who wish to submit comments or objections regarding the proposed amendment may do so either by contacting their circuit representative to the Board of Governors, or by presenting such comments or objections in person before the meeting of the Board of Governors on Nov. 2, 2007, or by submitting them in writing to the following address:

Bar Counsel
State Bar of Georgia
104 Marietta Street; Suite 100
Atlanta, GA 30303

I hereby certify that the text of the proposed amendment contained in the notice above is a verbatim copy of the proposed amendment to be considered at the meeting of the Board of Governors to be held on Nov. 2, 2007.

Cliff Brashier
Executive Director

Supreme Court Issues Formal Advisory Opinion No. 05-6 Pursuant to 4-403(d)

The second publication of this opinion appeared in the December 2005 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about November 30, 2005. The opinion was filed with the Supreme Court of Georgia on December 19, 2005. On December 30, 2007, the State Bar of Georgia filed State Bar of Georgia's Petition for Discretionary Review with the Supreme Court of Georgia. On May 3, 2007, the Supreme Court of Georgia issued an Order granting review of Formal Advisory Opinion No. 05-6 and approving Formal Advisory Opinion No. 05-6 as the replacement for Formal Advisory Opinion No. 92-2. 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. 05-6

Approved and Issued On May 3, 2007 Pursuant to Bar Rule 4-403

By Order Of The Supreme Court Of Georgia Thereby Replacing FAO No. 92-2

Supreme Court Docket No. S06U0799

QUESTION PRESENTED:

Ethical propriety of a lawyer advertising for legal business with the intention of referring a majority of that business out to other lawyers without disclosing that intent in the advertisement.

SUMMARY ANSWER:

It is ethically improper for a lawyer to advertise for legal business with the intention of referring a majority of that business out to other lawyers without disclosing that intent in the advertisement and without complying with the disciplinary standards of conduct applicable to lawyer referral services.

OPINION:

Correspondent seeks ethical advice for a practicing attorney who advertises legal services but whose ads do not disclose that a majority of the responding callers will be referred to other lawyers. The issue is whether the failure to include information about the lawyers referral practices in the ad is misleading in violation of the Georgia Rules of Professional Conduct. Rule 7.1 of the Georgia Rules of Professional Conduct governing the dissemination of legal services permits a lawyer to "advertise

through all forms of public media...so long as the communication is not a false, fraudulent, deceptive, or misleading communication about the lawyer or the lawyer's services." A communication is false or misleading if it "[c]ontains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading," Rule 7.1(a)(1).

The advertisement of legal services is protected commercial speech under the First Amendment. Bates v. State Bar of Arizona, 433 U.S. 350 (1977). Commercial speech serves to inform the public of the availability, nature and prices of products and services. In short, such speech serves individual and societal interests in assuring informed and reliable decision-making. Id. at 364. Thus, the Court has held that truthful ads including areas of practice which did not conform to the bar's approved list were informative and not misleading and could not be restricted by the state bar. In re R.M.J., 455 U.S. 191 (1982).

Although actually or inherently misleading advertisements may be prohibited, potentially misleading ads cannot be prohibited if the information in the ad can be presented in a way that is not deceiving. Gary E. Peel v. Attorney Registration and Disciplinary Comm'n of Illinois, 496 U.S. 91, 110 S.Ct. 2281, 2287-2289 (1990). Requiring additional information so as to clarify a potentially misleading communication does not infringe on the attorney's First Amendment. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 651 (1985).

Georgia Rules of Professional Conduct balance the lawyer's First Amendment rights with the consumer's interest in accurate information. In general, the intrusion on the First Amendment right of commercial speech resulting from rationally based affirmative disclosure requirements is minimal.

A true statement which omits relevant information is as misleading as a false statement. So, for example, when contingency fees are mentioned in the communication, the fees must be explained. Rule 7.1(a)(5). The Rules prohibit communications which are likely to create an unjustified explanation about results the lawyer can achieve or comparison of service unless the comparison can be substantiated. Rule 7.1(a)(2), (3).

The Rules evidence a policy of full disclosure enabling the client to investigate the attorney(s) and the services offered. Any advertisement must be clearly marked as an ad, unless it is otherwise apparent from the context that it is such a communication and at least one respon-

sible attorney's name must be included. Rule 7.1(a)(4), (6)(b). Law firms practicing under a trade name must include names of practicing attorneys. The firm's trade name cannot imply connections to an organization with which it has no connection. Rule 7.5(a)(2). An attorney is prohibited from implying associations with other attorneys when an association does not exist and may state or imply practice in a partnership or other organizations only when that is the fact. Rule 7.5(d). These disclosure requirements assure that the public receives accurate information on which to base decisions.

Similarly, other jurisdictions have required disclosure of attorney names and professional associations in the advertisement of either legal services or referral services. A group of attorneys and law firms in the Washington, D.C. area planned to create a private lawyer referral service. The referral service's advertising campaign was to be handled by a corporation entitled "The Litigation Group." Ads would state that lawyers in the group were willing to represent clients in personal injury matters. The person answering the telephone calls generated by the ad would refer the caller to one of the member law firms or lawyers.

The Virginia State Bar Standing Committee on Legal Ethics found the name misleading because it implied the entity was a law firm rather than simply a referral service. The Committee required the ad include a disclaimer explaining that "The Litigation Group" was not a law firm. Virginia State Bar Standing Committee on Legal Ethics, Opinion 1029, 2/1/88.

The Maryland State Bar Association Committee on Ethics was presented with facts identical to those presented in Virginia. The Maryland Committee also required additional information in the ad to indicate the group was not a law firm or single entity providing legal services. Maryland State Bar Association Committee on Ethics, Opinion 88-65, 2/24/88.

Similarly, an opinion by the New York Bar Association prohibited an attorney from using an advertising service which published ads for generic legal services. Ads for legal services were required to include the

names and addresses of participating lawyers and disclose the relationship between the lawyers. New York Bar Association, Opinion 597, 1/23/89.

The situations presented to the Virginia, Maryland and New York committees are analogous to the facts presented here. The advertiser in all these cases refers a majority of the business generated by the ad, without disclosure. The ad here does not disclose any association with other attorneys.

The advertisement at issue conveys only the offer of legal services by the advertising attorney and no other service or attorney. The ad does not accurately reflect the attorney's business. The ad conveys incomplete information regarding referrals, and the omitted information is important to those clients selecting an attorney rather than an attorney referral service.

Furthermore, the attorney making the referrals may be circumventing the regulations governing lawyer referral services. Attorneys may subscribe to and accept referrals from a "a bona fide lawyer referral service operated by an organization authorized and qualified to do business in this state; provided, however, such organization has filed with the State Disciplinary Board, at least annually a report showing its terms, its subscription charges, agreements with counsel, the number of lawyers participating, and the names and addresses of lawyers participating in the service." Rule 7.3(c)(1). These regulations help clients select competent counsel. If the attorney is not operating a bona fide lawyer referral in accordance with the Rules, the client is deprived of all of this information. The attorneys accepting the referrals also violate Rule 7.3(c) by participating in the illicit service and paying for the referrals.

Assuming that the advertisements at issue offers only the advertising attorneys services and that the attorney accepts cases from the callers, the ad is not false or inherently misleading. However, where a majority of the responding callers are referred out, this becomes a lawyer referral service. The Rules require disclosure of the referral as well as compliance with the Rules applicable to referral services.

Notice of Filing Formal Advisory Opinions in Supreme Court

**Second Publication of
Proposed Formal Advisory Opinion No. 05-7
Hereinafter known as
"Formal Advisory Opinion No. 05-7"**

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board

has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after August 15, 2007.

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

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

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

**STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION
BOARD
PURSUANT TO RULE 4-403 ON JUNE 15, 2007
FORMAL ADVISORY OPINION NO. 05-7 (Redrafted
Version of Formal Advisory Opinion No. 93-2)**

QUESTION PRESENTED:

Ethical considerations of an attorney representing an insurance company on a subrogation claim and simultaneously representing the insured.

SUMMARY ANSWER:

A lawyer representing an insurance company on a subrogation claim should not undertake the simultaneous representation of the insured on related claims, unless it is reasonably likely that the lawyer will be able to provide adequate representation to both clients, and only if both the insurance company and the insured have consented to the representation after consultation with the lawyer, have received in writing reasonable and adequate information about the material risks of the representation, and have been given the opportunity to consult with the independent counsel. Rule 1.7, Conflict of Interest: General Rule.

OPINION:

This inquiry addresses several questions as to ethical propriety and possible conflicts between the representation of the client, the insurance company, and its insured.

Hypothetical Fact Situation

The insurance company makes a payment to its insured under a provision of an insurance policy which provides that such payment is contingent upon the transfer and assignment of subrogation of the insured's rights to a third party for recovery with respect to such payment.

Question 1: May the attorney institute suit against the tortfeasor in the insured's name without getting the insured's permission?

Pursuant to the provisions of Rule 1.2(a), a lawyer may not institute a legal proceeding without obtaining proper authorization from his client. The ordinary provision in an insurance policy giving the insurance company the right of subrogation does not give the lawyer the right to institute a lawsuit in the name of the insured without specific authority from the insured. The normal subrogation agreements, trust agreements or loan receipts which are executed at the time of the payment by the insurer usually give the insurance company the right to pursue the claim in the insured's name and depending upon the language may grant proper authorization from the insured to proceed in such fashion. Appropriate authorization to bring the suit in the insured's name should be obtained and the insured should be kept advised with respect to developments in the case.

Question 2: Does the attorney represent both the insured and the insurance company, and, if so, would he then have a duty to inform the insured of his potential causes of action such as for diminution of value and personal injury?

The insurance policy does not create an attorney/client relationship between the lawyer and the insured. If the lawyer undertakes to represent the insured, the lawyer has duties to the insured, which must be respected with respect to advising the insured as to other potential causes of action such as diminution of value and personal injury. Rule 1.7(b); see also, Comment 10 (assuring independence of counsel) and Comment 12 (common representations permissible even with some differences in interests).

Question 3: Is there a conflict of interest in representing the insured as to other potential causes of action?

In most instances no problem would be presented with representing the insured as to his deductible, diminution of value, etc. Generally an insurance company retains the right to compromise the claim, which would reasonably result in a pro-rata payment to the insurance carrier and the insured. The attorney representing the insured must be cautious to avoid taking any action, which would preclude the insured from any recovery to which the insured might otherwise be entitled. Rule 1.7, Conflict of Interest: General Rule, (b); see also, Comment 10 (assuring independence of counsel) and Comment 12 (common representations

permissible even with some differences in interest.) to Rule 1.7.

A much more difficult problem is presented in the event an attorney attempts to represent both an insurance company's subrogation interest in property damage and an insured's personal injury claim. In most cases the possibility of settlement must be considered. Any aggregate settlement would necessarily have to be allocated between the liquidated damages of the subrogated property loss and the unliquidated damages of the personal injury claim. Any aggregate settlement would require each client's consent after consultation, and this requirement cannot be met by blanket consent prior to settlement negotiations. Rule 1.8(g); see also Comment 6 to Rule 1.8. Only the most sophisticated of insureds could intelligently waive such a conflict, and therefore in almost all cases an attorney would be precluded from representing both the insurer and the insured in such cases.

In conclusion, a lawyer representing an insurance company on a subrogation claim should not undertake the simultaneous representation of the insured on related claims, unless it is reasonably likely that the lawyer will be able to provide adequate representation to both clients, and only if both the insurance company and the insured have consented to the representation after consultation with the lawyer, have received in writing reasonable and adequate information about the material risks of the representation, and have been given the opportunity to consult with independent counsel. Rule 1.7(a) and (b).

Supreme Court Issues Formal Advisory Opinion No. 05-13 Pursuant to 4-403(d)

The second publication of this opinion appeared in the April 2007 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about April 6, 2007. The opinion was filed with the Supreme Court of Georgia on April 16, 2007. On April 16, 2007, the State Bar of Georgia filed State Bar of Georgia's Petition for Discretionary Review with the Supreme Court of Georgia, asking the Court to review Formal Advisory Opinion No. 05-13 and adopt it as the replacement for Formal Advisory Opinion No. 93-1. On June 21, 2007, the Supreme Court of Georgia issued an Order granting review of Formal Advisory Opinion No. 05-13 and approving Formal Advisory Opinion No. 05-13 as the replacement for Formal Advisory Opinion No. 93-1. 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. 05-13
Approved And Issued On June 21, 2007 Pursuant to
Bar Rule 4-403
By Order Of The Supreme Court Of Georgia Thereby
Replacing FAO No. 93-1
Supreme Court Docket No. S07U1159**

QUESTION PRESENTED:

(1) Whether the designation "Special Counsel" may be used to describe an attorney and/or law firm affiliated with another law firm for the specific purpose of providing consultation and advice to the other firm in specialized legal areas: (2) and whether the ethical rules governing conflict of interest apply as if the firm, the affiliated attorney and the affiliated firm constitute a single firm.

SUMMARY ANSWER:

It is not improper for a law firm to associate another lawyer or law firm for providing consultation and advice to the firm's clients on specialized matters and to identify that lawyer or law firm as "special counsel" for that specialized area of the law. The relationship between the law firm and special counsel must be a *bona fide* relationship. The vicarious disqualification rule requiring the additional disqualification of a partner or associate of a disqualified lawyer does apply to the outside associated lawyer or law firm.

OPINION:

This opinion deals with the following questions:

1. May a law firm which associates a lawyer for providing consultation and advice to the firm's clients on specialized matters identify that lawyer as being, for example, "Special Counsel for Trust and Estate and Industrial Tax Matters"?
2. May a law firm which associates another law firm for providing consultation and advice to the firm's clients on specialized matters identify that law firm as being, for example, "Special Counsel for Tax and ERISA Matters"?
3. Should Rule 1.10,¹ the vicarious disqualification rule requiring the additional disqualification of a partner or associate of a disqualified lawyer, apply to outside associated lawyers and law firms?

The problem should be viewed from the standpoint of clients. Can the law firm render better service to its clients if it establishes such relationships? If the answer is yes, there is no reason such relationships cannot be created and publicized.

There is no Rule which would prohibit a law firm from associating either an individual lawyer or law firm as special counsel and such association may be required by Rule 1.1.² While the American Bar Association has concluded that one firm may not serve as counsel for another (Formal Opinion No. 330, August 1972) this court declines to follow that precedent. Moreover, a subsequent ABA opinion recognized that one firm may be associated or affiliated with another without being designated "of counsel." (Formal Opinion No. 84-351, October 20, 1984). In the view of this court, it is not improper to establish the type of relationship proposed. If established, it must be identified and identified correctly so that clients and potential clients are fully aware of the nature of the relationship.

Finally, the relationship between the law firm and special counsel (whether an individual lawyer or a law

firm) must be a *bona fide* relationship that entails the use of special counsel's expertise. The relationship cannot be established merely to serve as a referral source. Any fees charged between special counsel and the law firm, of course, must be divided in accordance with the requirements of Rule 1.5.³

The first two questions are answered in the affirmative.

The third question presents a more complex issue.

The Georgia vicarious disqualification rule is founded on the lawyer's duty of loyalty to the client. This duty is expressed in the obligations to exercise independent professional judgment on behalf of the client, and to decline representation or withdraw if the ability to do so is adversely affected by the representation of another client. Recognizing that the client is the client of the firm and that the duty of loyalty extends to all firm members, it follows that the duty to decline or withdraw extends to all firm members. Rule 1.10.

Identifying an associated firm or lawyer is calculated to raise the expectation in the mind of the client that the relationship is something more than casual. Indeed it is calculated to convey to the client that the client's matter is being handled by a unit made up of the associating and associated firm or lawyer, so that the expertise of all can be brought to bear on the problem. Accordingly, in the situation presupposed in the hypothetical, the clients of the associating firm become, for the purposes of Rule 1.10, the clients of the associated firm or lawyer and *vice versa*. The unit as a whole has a duty of loyalty to the client and must exercise independent professional judgment on behalf of the client as an entirety.

Reference should be made to Georgia Rules of Professional Conduct, Rule 1.10, imputed disqualification; General Rule. Rule 1.10 discusses when an imputed disqualification can bar all attorneys at a firm or office from representing a particular client.

Rule 1.10 and Comment 1 of the Rule make affiliations among lawyers or law firms less complex. Rule 1.10 applies to entities other than associated lawyers and law firms to include in addition to lawyers in a private firm, lawyers in the legal department of a corporation or other organization, or in legal services organizations.

As set forth in Comment 1,⁴ two practitioners who share office space and who occasionally assist each other in representation of clients, may not regard themselves as a law firm. However, if they present themselves to the public suggesting that they are indeed a firm, they may be regarded as a firm for purposes of these Rules. Factors such as formal agreements between associated lawyers, as well as maintenance of mutual access to information concerning clients, may be rele-

vant in determining whether practitioners who are sharing space may be considered a firm under the Rule.

The third question is answered in the affirmative. In light of the adoption of Rule 1.1, ethical rules governing conflict of interest apply to entities and affiliations of lawyers in a broader sense than what has traditionally been considered a “law firm.”

1. Rule 1.10

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7: Conflict of Interest: General Rule, 1.8(c): Conflict of Interest: Prohibited Transactions, 1.9: Former Client or 2.2: Intermediary.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6: Confidentiality of Information and 1.9(c): Conflict of Interest: Former Client that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7: Conflict of Interest: General Rule.

The maximum penalty for a violation of this Rule is disbarment.

2. Rule 1.1

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer’s level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The maximum penalty for a violation of this Rule is disbarment.

3. Rule 1.5

(a) A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to

the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) (1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. (2) Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the following:

(i) the outcome of the matter; and,

(ii) if there is a recovery, showing the:

(A) remittance to the client;

(B) the method of its determination;

(C) the amount of the attorney fee; and

(D) if the attorney’s fee is divided with another lawyer who is not a partner in or an associate of the lawyer’s firm or law office, the amount of fee received by each and the manner in which the division is determined.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The maximum penalty for a violation of this Rule is a public reprimand.

4. Comment 1 of Rule 1.10

[1] For purposes of these Rules, the term “firm” includes lawyers in a private firm, and lawyers in the legal department of a corporation or other organization, or in a legal services organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to the other.

Notice of Filing Formal Advisory Opinions in Supreme Court

Second Publication of Proposed Formal Advisory Opinion Request No. 05-R2 Hereinafter known as “Formal Advisory Opinion No. 07-1”

Members of the State Bar of Georgia are hereby NOTIFIED that the Formal Advisory Opinion Board has issued the following Formal Advisory Opinion, pursuant to the provisions of Rule 4-403(d) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia approved by order of the Supreme Court of Georgia on May 1, 2002. This opinion will be filed with the Supreme Court of Georgia on or after August 15, 2007.

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

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

Pursuant to Rule 4-403(e) of Chapter 4 of the Rules and Regulations of the State Bar of Georgia, if the Supreme Court of Georgia declines to review the Formal

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

STATE BAR OF GEORGIA ISSUED BY THE FORMAL ADVISORY OPINION BOARD PURSUANT TO RULE 4-403 ON JUNE 15, 2007 FORMAL ADVISORY OPINION NO. 07-1

QUESTION PRESENTED:

May a lawyer ethically disclose information concerning the financial relationship between the lawyer and his client to a third party in an effort to collect a fee from the client?

SUMMARY ANSWER:

A lawyer may ethically disclose information concerning the financial relationship between himself and his client in direct efforts to collect a fee, such as bringing suit or using a collection agency. Otherwise, a lawyer may not report the failure of a client to pay the lawyer's bill to third parties, including major credit reporting services, in an effort to collect a fee.

OPINION:

This issue is governed primarily by Rule 1.6 of the Georgia Rules of Professional Conduct. Rule 1.6 provides, in pertinent part:

(a) A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, or are required by these rules or other law, or by order of the Court.

Comment 5 to Rule 1.6 provides further guidance:

Rule 1.6: Confidentiality of Information applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

Former Standard 28 limited confidentiality to “confidences and secrets of a client.” However, Rule 1.6 expands the obligations by requiring a lawyer to “maintain in confidence all information gained in the professional relationship” including the client’s secrets and confidences.

An attorney’s ethical duty to maintain confidentiality of client information is distinguishable from the attorney-client evidentiary privilege of O.C.G.A. §§24-9-21, 24-9-24 and 24-9-25. Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206, 209-10 (2000). Thus, Rule 1.6 applies not only to matters governed by the attorney-client privilege, but also to non-privileged information arising from the course of representation. Information concerning the financial relationship between the lawyer and client, including the amount of fees that the lawyer contends the client owes, may not be disclosed, except as permitted by the Georgia Rules of Professional Conduct, other law, order of the court or if the client consents.

Rule 1.6 authorizes disclosure in the following circumstances:

(b)(1) A lawyer may reveal information covered by paragraph (a) which the lawyer reasonably believes necessary:

...

(iii) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil action against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

The comments to Rule 1.6 clarify that such disclosures should be made only in limited circumstances. While Comment 17 to Rule 1.6 provides that a lawyer entitled to a fee is permitted to prove the services rendered in an action to collect that fee, it cautions that a lawyer must make every effort practicable to avoid unnecessary disclosure of information related to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure. Further caution is found in Comment 12, which pro-

vides that “[i]n any case, a disclosure adverse to the client’s interest should be no greater than a lawyer reasonably believes necessary to the purpose.”

In Georgia, it is ethically permissible for a lawyer to retain a collection agency as a measure of last resort in order to collect a fee that has been properly earned. Advisory Opinion No. 49 issued by the State Disciplinary Board. Advisory Opinion 49, however, only applies to a referral to a “reputable collection agency”. Advisory Opinion 49 further states that a lawyer should exercise the option of revealing confidences and secrets necessary to establish or collect a fee with considerable caution. Thus, while use of a reputable collection agency to collect a fee is ethically proper, disclosures to other third parties may not be ethically permissible. Formal Advisory Opinion 95-1 provides that limitations exist on a lawyer’s efforts to collect a fee from his client even through a fee collection program.

Other jurisdictions that have considered similar issues have distinguished between direct efforts to collect an unpaid fee, such as bringing suit or using a collection agency, from indirect methods in which information is disclosed to third parties in an effort to collect unpaid fees. In these cases, the direct methods have generally been found to be ethical, while more indirect methods, such as reporting non-paying clients to credit bureaus, have been found to be unethical. South Carolina Bar Advisory Opinion 94-11 concluded that a lawyer may ethically use a collection agency to collect past due accounts for legal services rendered but cannot report past due accounts to a credit bureau. The Opinion advises against reporting non-paying clients to credit bureaus because (1) it is not necessary for establishing the lawyer’s claim for compensation, (2) it risks disclosure of confidential information, and (3) it smacks of punishment in trying to lower the client’s credit rating. S.C. Ethics Op. 94-11 (1994). See also South Dakota Ethics Op. 95-3 (1995) and Mass. Ethics Op. 00-3 (2000)

The Alaska Bar Association reached a similar conclusion when it determined that “an attorney who lists a client with a credit agency has revealed confidential information about the client for a purpose not permitted by ARPC 1.6 (b) (2) since such a referral is at most an indirect attempt to pressure the client to pay the fee.” Alaska Ethics Op. No. 2000-3 (2000). The Alaska Bar Ethics Opinion is based on the notion that listing an unpaid fee with a credit bureau is likely to create pressure on the client to pay the unpaid fee more from an in terrorem effect of a bad credit rating than from any merit to the claim.

The State Bar of Montana Ethics Committee concluded that an attorney may not report and disclose unpaid fees to a credit bureau because such reporting “is not necessary to collect a fee because a delinquent fee can

be collected without it.” Mont. Ethics Op. 001027 (2000). The Montana Opinion further concluded, “The effect of a negative report is primarily punitive [and] it risks disclosure of confidential information about the former client which the lawyer is not permitted to reveal under Rule 1.6.” See also New York State Ethics Opinion 684 (1996) (reporting client’s delinquent account to credit bureau does not qualify as an action “to establish or collect the lawyer’s fee” within the meaning of the exception to the prohibition on disclosure of client information). But see Florida Ethics Opinion 90-2 (1991) (it is ethically permissible for an attorney to report a delinquent former client to a credit reporting service, provided that confidential information unrelated to the collection of the debt was not disclosed and the debt was not in dispute).

While recognizing that in collecting a fee a lawyer may use collection agencies or retain counsel, the *Restatement (Third) of the Law Governing Lawyers* concludes that a lawyer may not disclose or threaten to dis-

close information to non-clients not involved in the suit in order to coerce the client into settling and may not use or threaten tactics, such as personal harassment or asserting frivolous claims, in an effort to collect fees. *Restatement (Third) of the Law Governing Lawyers* § 41, comment d (2000). The *Restatement* has determined that collection methods must preserve the client’s right to contest the lawyer’s position on the merits. *Id.* The direct methods that have been found to be ethical in other jurisdictions, such as bringing suit or using a collection agency, allow the client to contest the lawyer’s position on the merits. Indirect efforts, such as reporting a client to a credit bureau or disclosing client financial information to other creditors of a client or to individuals or entities with whom the client may do business, are in the nature of personal harassment and are not ethically permissible. Accordingly, a lawyer may not disclose information concerning the financial relationship between himself and his client to third parties, other than through direct efforts to collect a fee, such as bringing suit or using a collection agency.

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

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

A copy of the proposed amendments may be obtained on and after Aug. 1, 2007, 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 [phone: 404-335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by Aug. 31, 2007.

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