



Georgia Bar Journal

December 2007 ■ Volume 13 ■ Number 4

Special Issue:
Immigration Law



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¹Social Security Administration, Fact Sheet, January 31, 2007 • ²2005 Field Guide to Estate Planning, Donald Cad

³Health Affairs, The Policy Journal of the Health Sphere, 2 February 2005

⁴MarketWatch: Illness and Injury as Contributors to Bankruptcy, Health Affairs Web Exclusive, February 2, 2005

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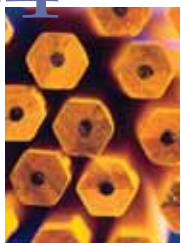


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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) 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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Introduction to Special Immigration Issue

Jack Paar, the former host of the *Tonight Show*, once quipped, “Immigration is the sincerest form of flattery.” America’s many strengths, both natural and economic, attract people from all over the world. Part of the attraction of the United States is its Constitution and legal system. How our great country responds to the millions of immigrants who want to become part of American society depends on the hard work of judges, legislators and practicing lawyers.

The focus of this special issue of the *Georgia Bar Journal* is immigration law. You will find six immigration-related articles and features.

The effect of state immigration law is the subject of “The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia,” by Mark J. Newman and Hon-Vinh Duong. The Georgia Security and Immigration Compliance Act, which took effect on July 1, 2007, places new requirements on public employers, immigration assistance services and public contractors to verify the immigration status of persons whom they employ or to whom they provide counseling services.

Robert Banta’s article, “U.S. Immigration Alternatives for International Businesspersons, Employees and Investors Who Wish to Enter the United States,” provides a detailed analysis of the numerous visa formats and alternatives under current law. Different visas are available depending on the immigrant’s skills and education. Banta also details the various non-immigrant visas for businesspersons, professionals and investors.


In “No Second Chances: Immigration Consequences of Criminal Charges,” Christina Hendrix and Olivia Orza highlight the traps in criminal proceedings involving foreign nationals. The article details how certain state-law violations and even domestic relations

misconduct can be “convictions” under immigration law that result in deportation.

Carnie L. Rosalia-Marion writes about “Understanding the Effects of Consular Relations on the Representation of Foreign Nationals.” The Vienna Convention on Consular Relations provides foreign nationals in criminal and guardianship/trusteeship proceedings with certain rights to communication with consular officials of their native country. Attorneys representing foreign nationals need to know their clients’ rights in this regard.

At the local level, a housing ordinance passed by Cherokee County in 2006 is the subject of a feature by Anne Andrews, “Immigration Policy and the Local Housing Ordinance Explosion: Are Local Communities Running Afoul of the Preemption Doctrine?” The Cherokee County ordinance made it unlawful for any landlord in the county to “let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law.” The article describes how the ordinance was immediately embroiled in litigation and discusses other, similar ordinances (and litigation) in other states.

The last immigration-related item in this issue is a book review by Bob Beer of *Deportation Nation: Outsiders in American History*, by Daniel Kanstroom of Boston College Law School. *Deportation Nation* describes the history of immigration law and policy and the cautious welcome that immigrants have encountered here since 1776.

We hope that you will find this special issue of the *Georgia Bar Journal* interesting as well as useful in your practice. Many thanks to all *Georgia Bar Journal* Editorial Board members, especially Bob Beer and Olivia Orza, as well as Sarah Coole and the rest of the *Georgia Bar Journal* staff, for their hard work in helping to put together this immigration-themed issue. 



Donald P. Boyle Jr. is the editor-in-chief of the *Georgia Bar Journal*. He can be reached at dboyle@dpslegal.com.



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Media and Communication Strategies positioning AILA—and its members—as the “go-to” source for expertise, analysis, and information about immigration law and policy.

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by Gerald M. Edenfield



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Lawyers Should Be a Resource for Lawmakers

The first several months of my term as president of the State Bar have been filled with meetings in all parts of the state, speeches to local bar associations, civic clubs and other groups, and plenty of conversations with my fellow Georgia lawyers on any number of Bar issues. In my “spare time,” I am usually on the road traveling from one meeting to another, and almost never in my law office in Statesboro.

Some have suggested that I am getting a taste of what it’s like to be an elected official. If that’s the case, then my admiration for those who devote so much time to public service has increased exponentially. Members of the Georgia General Assembly, for example, not only carry out a schedule like mine, every two years they run

expensive and demanding re-election campaigns just for the privilege of doing it all over again.

Next month our state senators and representatives will gather at the Capitol for the 2008 legislative session. Their responsibilities are greater than ever. Establishing the priorities for more than \$20 billion in annual state expenditures is just the beginning. The

public policy issues related to education, health care, transportation and public safety have become more complicated by the year as our state’s population continues to grow by leaps and bounds.

Writing laws and balancing budgets that meet the diverse needs of a state like ours has never been easy, and it is so much more challenging today. We should all appreciate the sacrifices our “citizen legislators” make, not only during

the official 40-day legislative session but, these days, year-round. We should be glad there are leaders—including more than 30 Georgia lawyers—who are willing to take the time away from their families, their professional careers and their would-be leisure time to serve in this capacity.

“I am suggesting that, at the local level, each of us contact our legislators and offer our services as a resource when they are drafting or considering legislation.”

As the legislative session nears, I want to discuss the special relationship the State Bar has with the General Assembly and what we can do to strengthen that relationship for the benefit of all Georgians.

This year, State Bar leadership has been proactive in a renewed effort to cultivate stronger relationships with our legislators and with Gov. Sonny Perdue. At each of our Executive Committee meetings being held in locations around the state, lawmakers from that region have been invited, and many have attended and participated in a dialogue with Bar members.

At every opportunity, I thank our elected officials for their public service and ask what the State Bar can do to help them. Members of the Executive Committee, local judges and lawyers, Board of Governors representatives and local news media attend, and this helps build firm relationships with our friends in the legislative and executive branches of government.

This is a healthy beginning, but I encourage you to extend the grassroots element of this effort by getting to know your representatives and senators and letting them know you appreciate their service and are willing to work with them when they need help with legal issues.

Sometimes lawyers tell me they need to meet with their legislators but don't know how to go about it. From my experience over the past 30 years, I don't understand how that is possible. Each campaign season, candidates show up in my office seeking contributions, and I generally try to help each one. The common story is I have to do this in order to "buy back" my waiting room chair for a paying client! However, the truth is candidates do this out of necessity and not by choice. I understand this and do my best to support them.

The divine wisdom of our Founding Fathers—in establishing a system of checks and balances among the legislative, executive and judicial branches—has served us well both at the federal and state

levels for more than 200 years. They formed a governmental structure whereby the functions of establishing, enforcing and interpreting laws would be conducted from three distinct branches.

As Justice Benjamin N. Cardozo noted some time ago, "The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy."

Through the authority of the Supreme Court of Georgia, the State Bar has official regulatory responsibilities over the practice of law in our state. Therefore, as an organization, we are very much a part of the judicial branch of state government.

While the State Legislature and the State Bar represent separate branches of government, and there will be policy issues on which we disagree with the views of some legislators, I believe it is in the best interests of lawyers and lawmakers alike to build and sustain strong working relationships—with mutual respect for each other's viewpoint. I believe the State Bar should commit to be a working partner in the effort to find common ground to help shape public policy that continues to reflect the principles of our U.S. and Georgia Constitutions.


This does not mean we will abdicate our responsibility to form a legislative agenda on specific issues that address people's rights to access to justice. We will strongly advocate or oppose proposed legislation on these issues and let our legislators know why the State Bar has taken a certain position.

But I want us to go beyond legislative advocacy when it comes to communicating with our legislators. Through the years, Georgia lawyers have been asked for and offered their assistance on legal questions related to a variety of proposed legislative measures—not

just those with an impact on the justice system or practice of law. We should not only continue to provide this type of assistance; I am suggesting that, at the local level, each of us contact our legislators and offer our services as a resource when they are drafting or considering legislation.

The same is true for our relationship with the executive branch. Our experience in working with the governor's office on various policy initiatives through the years has been very good. For example, Gov. Perdue has been helpful to the Bar programs related to assisting victims of domestic violence and the creation of the Business Court pilot project in Fulton County.

Whether we are associated with the legislative, judicial or executive branch of state government, we all have one thing in common: we have taken an oath to uphold the constitutions of both our nation and our state. In other words, we are all in this together.

Let's take this opportunity to salute those who have given up their time to represent our communities at the state Capitol. At the same time, let's remember to lend our talents and expertise to the process when we can. The end result will be a better understanding among branches of government—and better laws for our state. 

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



An Invitation to Your Community's Students

Law-related education (LRE) for our youth is the legacy that our generation of lawyers can leave for the future of America's system of justice. It

is the beacon of light shining on the hope of all citizens for their children's freedoms and liberties.

At the Jan. 15, 2005, dedication of the Bar Center, Supreme Court of the United States Justice Anthony M. Kennedy said, "One of the greatest duties of any generation, and particularly of its bar, is to transmit the idea of freedom and the rule of law to the next generation."

For 20 years the State Bar of Georgia, with the assistance of lawyer coaches and school teachers, has made our high school mock trial program one of the best in the United States. There are currently 123 high school teams registered in Georgia, and at least two teachers and three attorneys coach each team. The program was founded as a YLD initiative under 1987-88 YLD President John Sammon, and was given full committee status the following Bar year by then YLD

President Donna Barwick. As proof of Georgia's success with the mock trial program, teams from South Gwinnett, Clarke Central and Jonesboro high schools have won the national championships. Apart from Iowa—who also boasts three national champions—no other state has produced more winning teams than

Georgia.

Law-related civic education helps to develop young citizens who can sustain and build our nation by making a reasoned and informed commitment to democracy. Law-related civic education has demonstrated promise in preventing delinquency by fostering social responsibility, personal commitment for the public good and effective participation among our nation's youth. Maintaining our democracy is not an easy task, for each succeeding generation must commit itself to the ideals and institutions that com-

prise our democratic foundations. Our democracy is a living, constantly evolving set of principles that must be nurtured and guarded by all its citizens. Mock trials are designed to give students an inside perspective of the legal system, providing them with an understanding of the mechanism through which society chooses to resolve many of its disputes. Students involved with a

"With the purchase of the Bar Center came a new opportunity to help children in elementary, middle and high schools to better understand and appreciate the justice system."


competitive mock trial team benefit from improved critical thinking and communication skills and they learn the importance of quality preparation, teamwork and following rules. Additionally, the experience they gain, through oral advocacy and networking with other students, teachers, attorneys and judges will stand them in good stead throughout their lives, regardless of their chosen career path.

In 2009, Georgia will host the High School Mock Trial's annual championship. Hosting the national mock trial competition is an exceptional way to highlight what the Bar and the legal community in Georgia are doing to promote LRE in the state and nationwide.

With the purchase of the Bar Center came a new opportunity to help children in elementary, middle and high schools to better understand and appreciate the justice system. At the 2005 dedication, Justice Kennedy urged Bar leaders to use the Bar Center to "invite young people to come inside the law."

The Bar's Journey Through Justice program does just that. From the moment students enter the Bar Center, they are greeted by local, legal history in the form of a replica of President Woodrow Wilson's 19th century Atlanta law office. The students are then taken to the third-floor conference center where they attend a mini law school and then take a "bar exam." After passing their bar exam, students don robes and fill the jury box in the Bar's mock courtroom as they participate in age-appropriate cases, where they play the roles of judge, lawyers, witnesses and juries. Whether they are defending the Big, Bad Wolf in the Three Little Pigs trial or cross-examining Little Red Riding Hood, students are engaging in our justice system in a relevant, tangible way. To finish off the afternoon, the students tour the Museum of Law and view *Reel Justice*, a 12-minute compilation of movies depicting a variety of law-related courtroom scenes and cases.

I am asking you to share the State Bar's LRE opportunities with your local school teachers, principals, administrators and school boards. The Journey Through Justice tour is a free, educational field trip like no other in the state and every school that has come once has elected to return. The Bar has produced an LRE brochure which you can obtain by contacting the Communications Department at 404-527-8792—that you can use to share with them, or you can simply share this column or direct them to the Bar's website at www.gabar.org.

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

Leveraging Your Mind

In Shakespeare's *Hamlet*, Lord Polonious advises his son "neither a borrower nor a lender be."

Lord Polonious was speaking of borrowing between friends and how it could cause the destruction of the friendship; however, prudence is also important when borrowing from a financial institution.

Young lawyers are apt to have a variety of debt: student loans, a car note, a mortgage, credit card debt, and, for some, business start-up debt. In some respects, this debt is good because it promotes upward mobility and, in a broader sense, keeps our economy moving. However, there are downsides to the debt, including the impact it may have on our profession, as well as the borrower's mental state.

Over the past several decades, college and law school tuition has increased at a rate that has outpaced inflation. Scholarships and grants have not kept up. Instead, borrowing, both through federal student loans and private loans, has filled the gap. Because of the ease of getting a loan, the demographics of law school students have expanded to include more

people from middle and lower income backgrounds. These people might otherwise have felt that law school (and even college) was closed to them, but because of the availability of loans, they are now able to leverage their minds in order to build a better future.

The ease of getting a loan also impacts how one analyzes the cost of law school. Instead of looking at the total cost, one might treat it like buying a house and only look at the future monthly payment. However, because they are future monthly payments and are contemplated before one knows one's other cost of living

variables, their impact is theoretical and distant and, thus, might not have what should be the appropriate impact on one's decision about where to attend.

I am a part of the group that was only able to attend law school because of easy credit. My parents were able to support me through college. When I began law school, however, my brother was in his second year of college. My parents were in no position to fund both of us, so I had to find a way to pay for law school on my own. I turned to readily available federal and private student loans and borrowed more

than \$30,000 each year to attend American University's law school in Washington, D.C. In retrospect, I am also guilty of not appropriately taking cost into consideration when choosing where to attend; although, I did deter-

"I feel extraordinarily lucky that, after a few stumbles, I have found a niche that I find intellectually stimulating and personally fulfilling. However, there have been points along the way where I have considered ditching it all and going to the business world."

mine at the time that I would have to earn at least \$50,000 per year after law school in order to service the debt and maintain my then current standard of living in my 600 square foot efficiency apartment.

On the positive side, the availability of loans has resulted in the profession becoming more diverse. However, it has also resulted in lawyers who must for the first 10-20 years of practice make choices surrounding their career in a manner that ensures they can service that debt. This decision making affects where they practice geographically, what practice area they pursue, for whom they can work, and how much time they can allocate to public and pro bono service.

Of course, student loan debt is not the only type of debt under which young lawyers may be burdened. Shortly after graduating from law school and starting that first job, many young lawyers buy a new car to replace the model they've been driving since high school. There's also the new apartment that must be furnished. And a few years down the road, many young lawyers buy their first house or condominium, requiring additional cash infusions for decorating and more furniture. Chances are good that some of these acquisitions will be financed through loans. Add to that any lingering credit card debt from college and law school and you find that a young lawyer may have more than \$40,000 in consumer debt.

Unfortunately, the decisions that young lawyers make with their finances are not always instructed by their long-term interests. For example, my anecdotal experience has been that most young lawyers are not maxing out their contributions to their 401(k) plan—some are not contributing at all. In many instances it seems that the choices young lawyers make are impacted more by a common view of what lawyers should be and what they should have. Take, for example, the car bought shortly after law school. When I bought mine—a Jeep Grand Cherokee—I insisted on a new vehi-

cle with leather seats and a sunroof. A lot of fun—yes; a great investment—no. Some such splurges are, of course, okay. The trouble comes when every purchase must be the nicest of that particular item with the justification being, “I work hard and I deserve it.”

Another type of debt that young lawyers might have is business start up debt. This could take the form of a formal loan or line of credit or just living off your credit cards until you settle a case. Business debt can be particularly vicious if you get caught in a cycle of borrowing to live and just using settlements and client fees to pay down debt. This is because you never get ahead; you are just constantly living off of your financial expectations.


So, why is all this debt a problem? If the young lawyer can service the debt, is it really a big deal? Absolutely, for a number of reasons. First, the debt and spending choices are a problem if they result in a young lawyer not maximizing their retirement savings. While it seems like there are many years between the beginning of practice and retirement, the fact is that before long, marriage and kids and career changes can result in it becoming harder, not easier, to save. Furthermore, if tragedy strikes, a nest egg (along with proper insurance) will provide an excellent safety net.

Second, and perhaps more relevant to our profession, the debt is similar to golden handcuffs and narrows the career choices one can make. This has a number of repercussions. It may mean that the young lawyer is not pursuing a practice that best meshes with their skills. It may mean that the young lawyer is not able to spend time doing pro bono or public service work. It may mean that the young lawyer is prevented from following their destiny. It may even mean that the unhappiness the young lawyer feels because of the burden of their debt affects other areas of life and causes the young lawyer to dislike things (such as that first job)

that would otherwise be satisfying without the shadow of the debt.

So, why is the golden handcuffs issue relevant to the profession? After all, isn't it a great thing for a firm when an associate buys a car and a house because then they've settled in and have to keep working? Yes. (Although, it is just as likely that the associate will switch firms a few times.) However, there is a problem if we are losing smart, capable lawyers in the middle of their career because they never found fulfillment in practicing law. Additionally, there is a problem if lawyers do not fulfill their obligation to serve those less fortunate through pro bono service. Further, there is a problem when the number of lawyers serving in the legislature is at an all time low.

I feel extraordinarily lucky that, after a few stumbles, I have found a niche that I find intellectually stimulating and personally fulfilling. However, there have been points along the way where I have considered ditching it all and going to the business world. I have friends who have done exactly that—practiced for a period of time, paid off their student loans, and left for seemingly greener pastures. Still others are laboring away, resigned to their lot and assuaging their unhappiness in various excesses.

I don't mean to suggest that I think that debt is the only reason for these issues facing the profession. However, I do think they are part of the equation; a part that we can and should address by educating young lawyers about the impact of the choices they make and helping them make choices that are best for their long-term goals. After all, leveraging your mind does not lead to building a better future if that future does not provide satisfaction and fulfillment. 

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The Georgia Security and Immigration Compliance Act:

Comprehensive Immigration Reform in Georgia—
“Think Globally....Act Locally”

by Mark J. Newman and Hon-Vinh Duong

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LAST FIRST MIDDLE CITY STATE
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QUESTIONS
ANSWER ANY OF THE QUESTIONS IN THIS FRAMED AREA UNLESS THE EMPLOYEE
RECEIVING A QUESTION, THEREBY INDICATING THAT THE INFORMATION IS REQUIRED
NATIONAL QUALIFICATION, OR DICTATED BY NATIONAL SECURITY LAWS, OR IS
LY PERMISSIBLE REASONS.

Height _____ feet _____ inches
Weight _____ lbs.

Foreign Languages do you speak fluently? _____

☐ Citizen of _____
☐ Date of Birth _____

Against a backdrop of a globalizing economy, heightened awareness of terrorism and security issues, and growing numbers of undocumented immigrants, immigration reform has become a hot topic. With Congress’s failed immigration reform efforts, state legislatures have passed a raft of bills addressing varied immigration-related topics from eligibility for employment and public benefits to human trafficking and law-enforcement guidelines. Thirty-two states now have immigration laws of their own.

In an effort to cope with the void left by the federal government and the surfeit of immigrants into the state, Georgia’s state legislature has enacted one of the strictest and most comprehensive bills, the Georgia Security and Immigration Compliance Act (GSICA).¹ Signed into law by Gov. Sonny Perdue in April 2006,

GSICA has been both a benchmark for other states' legislation and a focal point for political debate. GSICA, which took effect on July 1, 2007,² will have far-reaching effects because it requires all public employers, their contractors and subcontractors to participate in a Federal Work Authorization Program to verify the employment eligibility of all new employees.³

Traditionally a federal responsibility, immigration has recently become an important topic for the states because of their continuing responsibility for educating, caring for, punishing, and integrating the growing numbers of immigrants, particularly in light of the federal government's failure to provide any substantial immigration reform. Immigration legislation has raised some important issues of federalism as the states have begun to assert substantial authority in this area of law by introducing more than 1,150 immigration-related bills in 2007, doubling the number introduced in 2006.⁴ In a further twist, state laws such as GSICA mandate participation in and compliance with federal programs.

As one of the most comprehensive immigration reform laws, GSICA covers many disparate issues—some connected only by the overarching heading of immigration. Section 2 of GSICA mandates that all public employers, their contractors and subcontractors with 500 or more employees register and participate in the Federal Work Authorization Program by July 1, 2007.⁵ Smaller employers are phased in over the next two years.⁶ GSICA also has two tax provisions that are applicable to all employers. First, GSICA prohibits employers from deducting annual wages or remuneration of \$600 or more paid for labor services as allowable business expenses for state income tax purposes unless the employee is authorized to work under federal law.⁷ This tax provision applies only to employees hired on or after Jan. 1, 2008. Notably, the law does not apply to any Georgia business

exempt from compliance with federal employment verification procedures, any person not directly compensated or employed by the tax-paying employer, and any individual who presents a valid Georgia driver's license or identification card issued by the Georgia Department of Driver Services. Although federal work authorization requires an I-9 Employment Eligibility Verification Form, this driver's license "loop-hole" may allow a single fraudulent identification form to circumvent the tax deduction requirement. Second, Section 8 requires employers to withhold a 6 percent state income tax from the amount reported on IRS Form 1099 for compensation paid to workers who are unable to provide a valid taxpayer identification number or who have provided an incorrect taxpayer identification number or one issued to a nonresident alien.⁸ This provision took effect on July 1, 2007. Failure to withhold taxes in these circumstances renders an employer liable for the taxes unless exempt from federal withholding relative to that employee pursuant to a properly filed IRS Form 8233.⁹

With regard to public safety and law enforcement, GSICA Section 3 establishes penalties for human trafficking for labor and sexual servitude.¹⁰ Section 4 allows for appropriately trained Georgia peace officers to enforce immigration and customs laws.¹¹ For the requisite training, GSICA provides that the state of Georgia and the U.S. Department of Justice or Department of Homeland Security coordinate through a Memorandum of Understanding.¹² In a similar vein, Section 5 requires that all county, municipal, and regional jails determine the nationality of prisoners charged with a felony or DUI.¹³ Jail officials must then make a reasonable effort to verify the lawful presence of foreign nationals and shall report to the Department of Homeland Security those who have not been lawfully admitted into the United States.¹⁴

GSICA also addresses immigration assistance services and public

benefits. Section 6, referred to as the Registration of Immigration Assistance Act, establishes ethical standards for immigration assistance provided by private individuals who are not licensed attorneys, not-for-profit organizations recognized by the Board of Immigration Appeals and other organizations providing assistance without compensation.¹⁵ GSICA also limits the services that these organizations may provide and requires a license from the Secretary of State. Concerning public benefits, Section 9 of GSICA requires that state agencies and local governments verify the legal status of all applicants 18 or older before providing any state and local benefits.¹⁶ The bill does provide certain exemptions for emergency medical care and disaster relief, immunizations, prenatal care, treatment of communicable diseases and other assistance specified by the U.S. Attorney General as necessary for life and safety.¹⁷ GSICA excludes, however, organ transplants from emergency medical care. Consequently, immigration status verification will become a prerequisite for an organ transplant.¹⁸ To receive these public benefits, applicants must submit an affidavit that they are either a U.S. citizen or a legal alien; and eligibility of benefits for legal aliens must be confirmed through the Systematic Alien Verification of Entitlement (SAVE) program of the Department of Homeland Security (DHS).¹⁹

Aside from the tax provisions previously mentioned, GSICA's requirements for public employers and government contractors' participation in a Federal Work Authorization Program will have the greatest impact on employers in Georgia. Pursuant to GSICA, the Georgia Department of Labor (GADOL) has issued a set of rules requiring participation in the E-VERIFY program.²⁰ This requirement will additionally burden a government verification system already known to have a high rate of verification errors.

First, GSICA specifically requires all public employers to participate in the E-VERIFY program. GSICA defines a public employer inclusively as “every department, agency or instrumentality of the state or a political subdivision of the state.”²¹ Additionally, GSICA requires that contractors enroll in the E-VERIFY program before a public employer may enter into a contract with that contractor for the *physical performance of services* within Georgia:

No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with *the physical performance of services* within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.²²

It is important to note that this E-VERIFY program requirement also applies to any subsequent contractor's or subcontractor's entering into contracts related to an original contract with a public employer. For example, if ABC Co. contracts with the Department of Aviation, a public employer, to provide services at Hartsfield-Jackson Airport and also contracts with SUBK Co. to provide services related to that contract, then SUBK Co. will be required to participate in the E-VERIFY program. This requirement would also extend to any additional contracts related to the original contract that ABC or SUBK enter into with other subcontractors.

The timing of registration and participation in the E-VERIFY program is scheduled under GSICA according to a phased calendar that affects employers depending on their overall size.²³ Public employers and their contractors of 500 or more employees are subject to the law as of July 1, 2007, while those employers of 100 or more employees will be subject on July 1, 2008. Finally, the law will apply to all

such employers regardless of size on July 1, 2009. It is unclear from the text of the law, however, whether a smaller contractor or subcontractor would be subject to the earlier dates by virtue of a contract with a larger public employer or contractor. For example, if ABC Co., with 600 employees, contracts to perform services for a public employer, and XYZ Co., with 200 employees, contracts with ABC to work on that public employer contract, it is uncertain whether XYZ Co. must comply by 2007 or 2008. Similarly, it is unclear to which date a subcontractor with more than 500 employees would be subject if that company contracted to perform services for a contractor with only 200 employees that was not yet subject to GSICA. Also, the law does not provide any guidance for determining who counts as an employee or whether employees outside of Georgia count towards the total figure.

To satisfy the requirements of GSICA and the GADOL's rules, public employers and their contractors and subcontractors must participate in the E-VERIFY program. Operated by the U.S. Citizenship and Immigration Services Bureau of DHS and the Social Security Administration (SSA), the E-VERIFY program was established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and is an electronic verification system that compares Employment Eligibility I-9 forms with SSA and DHS databases to verify employment eligibility. The GADOL rules require the inclusion of certain provisions in the contracts between public employers and contractors, including the following: (1) provisions stating that compliance with GSICA and the rules are conditions of the contract and a provision outlining the phased employee number categories of GSICA for the contractor to indicate its applicable status; (2) a provision stating that the contractor will secure a subcontractor's

status for any contracts in connection with the primary contract; and (3) a provision stating that compliance with GSICA will be attested to by an affidavit, a sample of which is provided.²⁴ Further, the GADOL rules state that the contractor “will secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. 13-10-91 [GSICA] and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit” provided in the rules.²⁵

The GADOL's rules have not clarified uncertainties about the extent of an original contractor's responsibility to oversee its subcontractors' compliance with GSICA. Because the original contractor only has to secure an affidavit from the subcontractor attesting to compliance, it is unclear whether the contractor would have to take further steps to ensure the subcontractor's compliance with GSICA.


To participate in the E-VERIFY program, an employer must enter into a Memorandum of Understanding (MOU) with the SSA and DHS stating that the employer will comply with all of the rules and requirements of the E-VERIFY program. As an alternative to actively participating in the registration and verification process, employers may also utilize a third party or designated agent to conduct the E-VERIFY program on the employer's behalf. The DHS maintains a list of authorized designated agents, but does not endorse any of these agents. When using a designated agent, the employer signs a combined MOU with both the government and the designated agent, and the designated agent executes the E-VERIFY program registration and verification process. Two important considerations about the E-VERIFY program are that *registration in the E-VERIFY program is done on a state-by-state basis and that registration is worksite-specific*. Consequently, employers required to participate in the E-VERIFY program in Georgia will not be required to participate in other

states merely because of their participation in Georgia. Further, E-VERIFY program worksite specificity allows an employer to “opt out” of particular work sites that are not subject to GSICA’s requirements. For example, ABC Co. has two worksites in Georgia: one site involves a contract with a GSICA “public employer,” while the other site is covered by a contract with a private company. ABC Co. may opt out of participating at the private worksite while submitting to the employment verification process only at the public employer site. GSICA only requires employers to verify the status of “new employees.”²⁶ Therefore, employers with multiple worksites may be able to shift existing employees to a work site subject to GSICA and hire new employees for sites not subject to GSICA. The E-VERIFY program is only available to verify the status of new employees.

According to its published rules, the GADOL intends to implement a Random Audit Program to enforce compliance with GSICA.²⁷ Although the plan allows the GADOL to conduct investigations and inspections to determine an employer’s compliance, the program lacks the force of substantial penalties and it awaits funding from the General Assembly.²⁸

Employers also need to remain alert to the federal government’s increased enforcement efforts. As part of its Secure Border Initiative, ICE has begun conducting worksite raids that focus not only on identifying illegal immigrants but also on employers who knowingly continue to hire them. These raids and inspections could substantially affect labor supplies at worksites subject to the new Georgia law.

The full impact of GSICA remains uncertain. Several states have similar laws, including Colorado, where participation in the E-VERIFY program became mandatory at the beginning of this year; substantial data is not yet available. Arizona and Arkansas are the latest states to join the immi-

gration bandwagon. In addition, municipalities are joining the parade. In metro Atlanta, Gwinnett County has passed a far-reaching immigration ordinance covering all those who contract with the county—it covers goods and services and requires E-VERIFY compliance for all employees. Because E-VERIFY is only available for new hires, employers are in a catch-22. This ordinance also contains serious financial sanctions, including damages for breach of contract. Between DHS heightened enforcement and the one-two punch of new state and local immigration laws, employers are faced with a daunting compliance task and some difficult business decisions. 



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Endnotes

1. Georgia Security and Immigration Compliance Act, 2006 Ga. Laws 105 (codified as amended in scattered sections of O.C.G.A.).
2. *Id.*
3. O.C.G.A. §§ 13-10-90, 13-10-91 (Supp. 2006).
4. See <http://www.ncsl.org/programs/press/2007/pr070517santos.htm>.
5. O.C.G.A. § 13-10-91(b) (Supp. 2006).
6. *Id.* § 13-10-91(b)(3).
7. *Id.* § 48-7-21.1 (Supp. 2007).
8. *Id.* § 48-7-101(i) (Supp. 2007).
9. *Id.* § 48-7-101(i)(2). The deduction and withholding provisions in SB529 are similarly codified in the recently enacted O.C.G.A. § 48-7-21.1 (Supp. 2007), amending the state’s tax laws.
10. *Id.* § 16-5-46 (2007).
11. *Id.* § 35-2-14 (2006).
12. *Id.*
13. *Id.* § 42-4-14 (Supp. 2006).
14. *Id.*
15. *Id.* §§ 43-20A-1 to -20A-4 (Supp. 2006).
16. *Id.* § 50-36-1 (2006).
17. *Id.* § 50-36-1(c).
18. *Id.* § 50-36-1(c)(2).
19. *Id.* § 50-36-1(d), (e).
20. GA. COMP. R. & REGS. § 300-10-1 (2007). The Georgia Department of Transportation has also posted a notice on its website requiring contractor compliance with the DHS Image Program. See Special Notice to Contractors (Apr. 20, 2007) at N-7, available at http://tomcat2.dot.state.ga.us/ContractsAdministration/uploads/07May_NTC.pdf.
21. O.C.G.A. § 13-10-90(3) (Supp. 2006).
22. *Id.* § 13-10-91(b)(2) (Supp. 2006). GSICA does not appear to apply to contractors who only provide goods.
23. *Id.* § 13-10-91(b)(3).
24. GA. COMP. R. & REGS. § 300-10-1-.03(1) (2007).
25. *Id.* § 300-10-1-.03(2).
26. O.C.G.A. § 13-10-91(b)(1) (Supp. 2006).
27. GA. COMP. R. & REGS. § 300-10-1-.09 (2007).
28. *Id.* § 300-10-1-.09(1).

U.S. Immigration Alternatives for International Businesspersons, Employees and Investors Who Wish to Enter the United States

by Robert E. Banta

This article provides general information about U.S. immigration alternatives for persons who wish to enter the United States for business, investment or employment, on a temporary or permanent basis.

General Information About the U.S. Immigration Laws

Several branches of the U.S. federal government, including the Departments of Homeland Security,¹ State and Labor, administer U.S. immigration laws and policies. Normally, U.S. immigration laws are administered by the Department of Homeland Security (DHS), acting through three separate divisions.²

U.S. immigration laws classify persons who want to come to the United States either as immigrants or non-immigrants. A person who, at the time of entering the United States, intends to remain permanently in the United States, is classified as an immigrant, while a person who, at the time of entering the United States, intends to remain in the United States only for a temporary period of time, is classified as a non-immigrant. Persons who want to come to the United States are generally presumed to be immigrants unless they can

establish that they are entitled to non-immigrant visas.³ It is generally faster for a person to obtain a non-immigrant visa than an immigrant visa.

Entry Into the United States

A person seeking initial entry into the United States generally must first obtain a visa from a U.S. consulate. Certain persons entering the United States as tourists or business visitors can enter without visas under the Visa Waiver Program described on page 18. Moreover, Canadian citizens are exempt from this visa requirement.⁴

Obtaining a visa from a U.S. consulate does not guarantee a person's admission into the United States. When a person with a visa arrives at a U.S. port of entry, a DHS officer must decide that the person is admissible before he or she will be allowed to enter the United States. These officers have the authority to exclude from the United States persons whom they deem ineligible for entry. (DHS officers at U.S. ports of entry also determine the admissibility of applicants for entry under the Visa Waiver Program and Canadians applying for entry without visas.)

A DHS officer who admits a person with a non-immigrant visa annotates the person's Arrival-Departure Record (Form I-94) with the date of arrival and the date of required departure. Persons admitted as non-immigrants must leave the United States by the date of required departure noted on the I-94 card

unless they are able to extend the authorized stay, change to another non-immigrant status or obtain permanent resident status through the adjustment of status procedure described on page 17.

Lawful Permanent Residence in the United States

General Information About Lawful Permanent Residence

Except for “immediate relatives,” i.e., spouses, parents or unmarried children under 21 years of age, of U.S. citizens and certain other exemptions, persons who wish to become lawful permanent residents of the United States are subject to a quota system.⁵ A person who is a lawful permanent resident is referred to in this article as a “permanent resident.” A permanent resident is given a Permanent Resident Card, commonly known as a “green card,” to evidence his or her lawful permanent residence.

The U.S. immigration laws administer the annual quota for lawful permanent residents by making available each year several hundred thousand green cards (exclusive of certain exempt categories). The number of green cards available in a given year is calculated according to a mathematical formula.⁶ A maximum of 25,620 green cards can be allocated to natives of any one independent country in a given year,⁷ while a maximum of 7,320 green cards can be allocated to natives of any dependent area in a given year.⁸

Before persons subject to the quota can apply for green cards, they must first qualify for one of the family-based or employment-based quota categories, and a green card must be available through the applicable quota category. Green cards are granted through the quota categories on a first-come, first-served basis. If in any year the number of persons who qualify for a particular quota category exceeds the number of green cards allocat-



ed to that category, the persons for whom green cards are not available are placed on a waiting list. Those on the waiting list must wait until additional visa numbers are allocated to their preference category in subsequent years before they can obtain visa numbers.

Family reunification is a priority of the U.S. immigration laws. As stated earlier, “immediate relatives” of U.S. citizens are exempted from the annual quota. Persons who do not qualify as “immediate relatives,” but who are close relatives of U.S. citizens or permanent residents, may qualify under one of four family-based quota categories.⁹

In addition to the four family-based quota categories, five quota categories¹⁰ are available to persons coming to the United States for employment, to investors who create employment through their investments, and to persons who qualify as “special immigrants.” At least 140,000 immigrant visa numbers are allocated among these five categories annually.¹¹

Most persons seeking green cards based on job offers from U.S.

employers in the United States must first complete the “labor certification” process, sponsored through the U.S. Department of Labor (DOL) by their employers.¹² The DOL issues a labor certification after it has determined that a qualified, available U.S. worker in the relevant location of the United States is not available to perform the particular job and that the offered wages and working conditions will not adversely affect similarly employed U.S. workers.

The spouse and unmarried children under 21 years of age of a person who obtains a green card automatically obtain green cards as well, based on their relationship to the principal applicant. Spouses and children who obtain green cards on this “derivative” basis can enjoy all rights available to any permanent resident, including the right to work.

Overview of the Employment-Based Quota Categories

The first employment-based category is available to “priority

workers.”¹³ A labor certification is not required for “priority workers.” A person can qualify as a “priority worker” through one of three subcategories. To qualify for the first subcategory (persons with “extraordinary ability” in arts, sciences, education, business or athletics), the applicant must show sustained national or international acclaim. The second subcategory is available to outstanding professors and researchers who can establish international recognition or acclaim. The third subcategory is available to certain multinational executives and managers who have worked as executives or managers for at least one of the three years preceding their admission to the United States and who will work in the United States as an executive or manager with the same employer or an affiliate or subsidiary thereof.

The second employment-based category is available to persons who are members of the professions holding advanced degrees (or the equivalent) or persons with exceptional ability.¹⁴ Employers sponsoring employees for this second preference category are generally required to obtain a labor certification. “Exceptional ability” can be in the sciences, the arts or in business and requires proof that the applicant will substantially benefit the U.S. economy, culture, educational interests or welfare. Professionals with bachelor’s degrees and at least five years of progressive experience in the profession are deemed to hold the equivalent of an advanced degree. To sponsor an advanced degree professional under this category, an employer must show that the position requires an advanced degree (or the equivalent). Individuals who qualify for this quota category can obtain an exemption from the labor certification requirement by showing the DHS that their proposed services will benefit the “national interest” of the United States.¹⁵

The third employment-based category is available to skilled

workers, professionals with bachelor’s degrees and unskilled workers.¹⁶ A labor certification is a prerequisite for eligibility for this category. Skilled workers must be offered employment requiring at least two years of education, training or experience. Workers offered employment requiring less than two years of education, training or experience are deemed “unskilled workers” and are placed in a special subcategory in which the delays may be substantially longer than the delays for other applicants in the third preference category.

The fourth employment-based category is set aside for certain “special immigrants,” a category that includes certain ministers and religious workers, certain employees of the U. S. government abroad, family members of employees of international organizations and retired employees of such organizations.¹⁷ A labor certification is not required for applicants qualifying under this category.

The fifth employment-based category is available to investors who create employment for U.S. workers (otherwise referred to as “employment-creation immigrants”).¹⁸ Investors qualifying under this category are not required to obtain a labor certification. Eligibility for this category generally requires an investment of at least \$1,000,000 in a new business that will create employment for at least ten U.S. workers. At least 3,000 of the 10,000 immigrant visas available under this category are reserved for investors investing in rural areas or areas of high unemployment. The amount of investment required for these areas is \$500,000. An investor seeking permanent residence under this category initially obtains a conditional grant of residence, which is valid for two years. Prior to the expiration of the two-year grant of conditional residence, investors must submit evidence to the DHS, proving that they sustained the investment in question throughout the two-year period. Upon DHS’s

approval of such evidence, an investor is then granted permanent residence.

Obtaining a Labor Certification

Individual Labor Certifications

Employers sponsoring applicants who fall into the second or third employment-based quota categories are generally required to obtain a labor certification before filing a petition to have an applicant classified in one of those categories.¹⁹ Obtaining a labor certification can be a cumbersome process. The applicant’s U.S. employer must sponsor an application for a labor certification. The prospective employer must document that it has made the job in question available to U.S. workers by advertising the job opening in a newspaper, by posting a notice of the job’s availability at the worksite and by announcing the job’s availability in the job bank for the state in which the job is located. Professional and other higher level positions require additional recruitment efforts by the sponsoring employer. The prospective employer must interview qualified applicants for the job in question. In case of a DOL audit, the employer must be prepared to document its reasons for rejecting applicants for the job, its job requirements and its recruitment efforts.

The goal of the labor certification process is to require an employer sponsoring a green card applicant to make a good-faith effort to fill the offered position with an available U.S. worker.

“Precertified” Labor Certifications

The DOL has promulgated a list of several “precertified” occupations. These are occupations for which the DOL has determined that qualified, available U.S. workers are in short supply. A green card applicant in a precertified occupation qualifies automatically for a labor certification. The list of precertified applicants is limited to

physical therapists, professional nurses and certain persons of exceptional ability in the sciences and arts.²⁰

Qualifying for a Quota Category with the DHS

Once an applicant's prospective employer in the United States has obtained a labor certification, the employer must then qualify the applicant for a quota category. The employer must file a petition with the DHS, which decides whether an applicant qualifies for a desired category. If employment sponsorship is not required, which is the case under the fourth and fifth employment-based categories, and for persons of extraordinary ability under the first employment-based category, the applicant may file a petition on his or her own behalf.

After qualifying for a quota category, an applicant must wait until a green card is available through the quota category before completing the green card application.²¹ The number of green cards allocat-

ed annually to the first, second and third employment-based categories is approximately 40,000 for each category. No more than 10,000 green cards can go to unskilled workers under the third category. The number of green cards allocated to the fourth and fifth employment-based categories is approximately 10,000 for each category.

Application for a Green Card

Once an applicant's prospective U.S. employer has obtained a labor certification (if necessary), the applicant has qualified for a preference classification and a green card is available, the applicant can then apply for a green card. The applicant has two options in applying for a green card: (1) applying at a U.S. Consulate in the country of citizenship or last country of residence abroad;²² or (2) if the applicant is in the United States and can satisfy the necessary requirements, applying for a green card through the adjustment of status procedure (discussed below).²³

Annual Diversity Visa Lottery

An annual lottery makes available 50,000 green cards to individuals selected from among several million applicants.²⁴ Only persons born in certain designated countries are eligible for this lottery. Furthermore, applicants must have completed the educational equivalent of a U.S. high school degree or have at least two years of qualifying work experience to be eligible. Those selected in the lottery are exempt from the labor certification and employer sponsorship requirements, which makes this lottery a relatively easy way to obtain a green card, assuming that one is fortunate enough to be selected.

Adjustment of Status to Permanent Residence

Persons entering the United States on one of the non-immigrant visas discussed below and who later decide to obtain a green card may apply to the DHS in the



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United States for adjustment of their non-immigrant status to permanent residence. Adjustment of status is a special procedure made available to persons lawfully admitted into the United States and who wish to become permanent residents. The advantage of the adjustment procedure is that a non-immigrant who is employed in the United States may be able to apply for and obtain a green card without having to leave the United States. A non-immigrant who does not qualify for the adjustment procedure is required to apply at a U.S. Consulate in the country of citizenship or last country of residence abroad.

Non-Immigrant Visas Available to Businesspersons, Professionals and Investors

General Information About Non-immigrant Visas

U.S. Consulates issue non-immigrant visas.²⁵ As a general rule, the law does not limit the number of non-immigrant visas that U.S. Consulates can issue to persons each year. Obtaining a non-immigrant visa is generally a faster procedure than obtaining a green card, but a non-immigrant visa only permits its holder to remain in the United States for a temporary stay.²⁶ Persons who enter the United States on a non-immigrant visa must leave the United States at the end of the authorized stay, unless they are able to extend their stay, change to another non-immigrant status or obtain a green card.

The spouse and unmarried children under 21 years of age of a person who obtains a non-immigrant visa generally obtain “derivative” non-immigrant status from the principal applicant’s visa. Except for spouses of E-1, E-2, E-3, J-1 and L-1 visa holders, described below, a spouse having “derivative” non-immigrant status is gen-

erally not authorized to work in the United States.

Temporary Visitor Visas: B-1 and B-2 (Visitor for Business and Visitor for Pleasure)

To obtain a temporary visitor visa from a U.S. Consulate or to enter the United States on a temporary visitor visa or under the Visa Waiver Program, persons must prove that they have a residence abroad that they do not intend to abandon. U.S. Consulates are authorized to issue to citizens of some countries B-1 and B-2 visitor visas that are valid for up to ten years and for an unlimited number of entries. Although B-1 and B-2 visas may be valid for up to ten years, DHS officers at U.S. ports of entry usually restrict temporary visitors to stays of six months or less. After entering the United States, a visitor may be able to obtain from the DHS one or more extensions of authorized stay.

The B-1 Visa (Temporary Visitor for Business)²⁷

The B-1 “temporary visitor for business” visa is appropriate for persons coming temporarily to the United States for “business.” Examples of appropriate B-1 “business” activities include negotiating contracts, consulting with business associates, participating in business conferences and investigating the marketing possibilities for products, provided that the person does not receive compensation from a U.S. source. A B-1 visa holder generally cannot perform gainful employment in the United States.

The B-2 Visa (Temporary Visitor for Pleasure)²⁸

The B-2 “temporary visitor for pleasure” visa is appropriate for a person coming temporarily to the United States for vacation or pleasure travel. A B-2 visa holder cannot perform gainful employment in the United States, even if paid by an employer outside the United States.

The Visa Waiver Program for Visitors from Certain Countries²⁹

Citizens of certain countries³⁰ coming to the United States for temporary business or pleasure visits are eligible to enter under the Visa Waiver Program (the “VWP”). The VWP allows visitors to enter the United States for business or pleasure visits of up to 90 days without first obtaining a B-1 visa.

To qualify for the VWP, a visitor must satisfy several requirements, including possessing a specific type of round-trip transportation ticket, possessing a passport valid for a specified minimum amount of time and signing a form that waives certain procedural rights. The advantage of the VWP is that it allows a visitor to avoid having to obtain a B-1 visa or a B-2 visa (or a combined B-1/B-2 visa, which may be issued to citizens of some countries) for purposes of visiting the United States. Visiting the United States under the VWP, however, has disadvantages as well. For example, a visitor who enters under the VWP is generally limited to a maximum stay of 90 days and cannot change to another non-immigrant status. Another significant disadvantage of the VWP is that it requires visitors to give up certain procedural rights, which can be important in case a person encounters difficulties with the DHS.

Treaty Visas: E-1 and E-2 (Treaty Trader and Treaty Investor); E-3 Specialty Occupation Visas for Australians

For a person to obtain a treaty visa, the United States must have a treaty authorizing the issuance of such visas with the person’s country of nationality. The United States has entered into treaties allowing the nationals of certain countries to obtain E-1 “treaty trader” visas and E-2 “treaty investor” visas.³¹ The United States has entered into a treaty with Australia to allow Australian citizens to enter the United States on E-3 visas to per-

form services in a “specialty occupation” (as that term is defined for H-1B visa purposes).

Applicants for an E-1 or E-2 treaty visa may be self-employed or may be employed by another person or organization. E-1 and E-2 treaty visas are very popular because they generally allow a person to remain in the United States longer than any other type of non-immigrant visa. The U.S. immigration laws do not set a limit on the number of years that an E-1 or E-2 treaty visa holder can remain in the United States. Instead, an E-1 or E-2 treaty visa holder may maintain such a visa as long as the holder can establish an intent to leave the United States when the E-1 or E-2 activities cease. Some persons have been able to remain in the United States for more than 20 years on E-1 or E-2 treaty visas. A person should not, however, rely on an E-1 or E-2 treaty visa to remain permanently in the United States.

The E-1 Visa (Treaty Trader)³²

An E-1 “treaty trader” visa is for persons coming to the United States solely to carry on substantial trade, principally between the United States and the foreign country of which the person is a national. For an applicant to qualify for an E-1 visa, more than fifty percent of the total volume of trade conducted by the person or the U.S. employer must be between the United States and the person’s country of nationality. “Trade” means the exchange, purchase or sale of goods or services and includes, among other things, import and export of goods, international banking, insurance, transportation, tourism and communication activities, data processing, accounting, technology transfers, and design and engineering.

The E-2 Visa (Treaty Investor)³³

An E-2 “treaty investor” visa is for persons coming to the United States solely to develop and direct the operations of an enterprise in which the applicant or his or her

employer has made, or is in the process of making, a substantial investment. The investor must make a commitment of funds to an actual, active investment.

The term “substantial investment” is not clearly defined. Whether an investment qualifies as “substantial” depends to a large degree on the type of business in which the investment is made. The larger a person’s investment is, however, the better his or her chances of qualifying for an E-2 visa generally will be.

The E-3 Visa (Specialty Occupation Visa for Australian Citizens)³⁴

E-3 visas are issued only to Australian citizens and are usually issued in two-year increments. An E-3 visa applicant must intend to work in the United States in a “specialty occupation.” The accompanying spouse and unmarried children under age 21 of an E-3 visa holder need not be Australian citizens to receive derivative visas, known as E-3D visas. Spouses holding E-3D visas are authorized to apply for work authorization in the United States.

The H-1B Non-immigrant Visa (Temporary Worker in a Specialty Occupation)³⁵

An H-1B non-immigrant visa is granted to employees in “specialty occupations.” A “specialty occupation” is one that normally requires at least a U.S. bachelor’s degree (or its equivalent in experience or education) as an entry-level requirement. (H-1B visas are also granted to fashion models of “distinguished merit and ability.”) Unlike most non-immigrant categories, the H-1B category has an annual cap of 85,000 visas; 20,000 of the 85,000 annual H-1B visas are reserved for candidates who have obtained a master’s degree or higher degree from a U.S. educational institution.

Employers seeking H-1B visas for employees are first required to obtain approval of a labor condition application from the DOL. The

purpose of a labor condition application is to confirm that an H-1B employee will be offered a salary and working conditions at least as favorable as those offered to similarly situated U.S. workers. Unlike a labor certification application for permanent residence, a labor condition application does not require an employer to prove the unavailability of qualified U.S. workers for the job in question. After obtaining a labor condition approval from the DOL, employers then must file a petition with the DHS.

Once the petition filed with the DHS has been approved, the prospective employee must generally obtain an H-1B visa from the appropriate U.S. Consulate. An H-1B non-immigrant may be granted an initial stay in the United States of up to three years, which can be extended for a total stay of six years. (Certain H-1B visa holders in the process of applying for green cards and who have experienced lengthy delays in the processing of their permanent residence applications, or for whom green cards are



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not immediately available, may be able to extend their H-1B stays beyond the six-year limit.)

The H-2B Non-immigrant Visa (Other Temporary Worker Who Will Not Displace U.S. Workers)³⁶

An H-2B non-immigrant visa is granted to a person who is coming temporarily to the United States to perform temporary, non-agricultural services or labor. The H-2B visa is the only non-immigrant visa that requires both that the person be coming temporarily to the United States and that the employer's need for the person's services in the United States be temporary. Before a person can obtain an H-2B visa from a U.S. Consulate, a U.S. employer must obtain a labor certification from the Department of Labor as well as obtain approval of a petition from the DHS. Because a labor certification is required for H-2B visa applicants, and because of an annual quota of 66,000 for H-2B visas, H-2B visas are cumbersome to obtain. An H-2B non-immigrant is generally granted an initial stay in the United States of one year. An H-2B non-immigrant may not, however, be granted extensions that would permit him or her to remain in the United States for a total stay of more than three years.

The H-3 Non-immigrant Visa (Temporary Trainee)³⁷

H-3 non-immigrant visas are for persons coming temporarily to the United States to receive training. Before a person can obtain an H-3 visa from a U.S. Consulate, the individual or organization that will provide the training in question must obtain approval of a petition from the DHS. An H-3 trainee cannot perform productive employment that would displace a U.S. worker. The training offered to an H-3 trainee must be unavailable in the trainee's home country, and it must be contemplated that the trainee will use the benefits of the training outside of the United States. An H-3 trainee's total stay in

the United States may not exceed two years.

The J-1 Non-immigrant Visa (Business Trainee)³⁸

The J-1 exchange visitor visa may be used by persons coming temporarily to the United States to receive training through an authorized J program sponsor. Obtaining a J-1 visa for a trainee is often a less complicated procedure than obtaining an H-3 visa. A J-1 business trainee is limited to a maximum stay in the United States of eighteen months.

Citizens of certain countries who obtain J-1 visas for training purposes may be subject to a two-year foreign residence requirement; that is, the trainee may be required to return to the home country for two years before applying for a green card or certain types of temporary visas. For this reason, a person considering a J-1 visa should first determine whether this foreign residence requirement would apply.

The L-1 Non-immigrant Visa (Intracompany Transferee)³⁹

L-1 "intracompany transferee" visas are for persons who have been continuously employed abroad for one of the three years immediately preceding their entry into the United States by a company in an executive or managerial capacity, or in a capacity that involves specialized knowledge, and who seek to enter the United States to work in a similar position for the same employer, a subsidiary or an affiliated company. For L-1 visa eligibility, a U.S. employer must first obtain DHS's approval of a petition. L-1 managers and executives can remain in the United States up to seven years; L-1 specialized knowledge employees are limited to stays of five years.

The TN Non-immigrant Classification (Business Professional for Canadians and Mexicans)⁴⁰

The NAFTA-created non-immigrant classification, known as

Trade NAFTA or TN, exists for Canadians and Mexicans coming to the United States to engage in business activities at a professional level. Only Canadians and Mexicans who will work in one of a specified list of occupations can qualify for TN classification. In general, applicants for TN classification must have at least a university degree. TN classification may be obtained in increments of one year, and there is no limit on the number of years that a qualifying candidate can hold this classification. A TN non-immigrant's spouse and unmarried children under age 21 may qualify as dependents under TD classification and may receive extensions of their stay as long as the TN non-immigrant is maintaining status.

The O Non-immigrant Visa (Person of Extraordinary Ability)⁴¹

O non-immigrant visas are available to individuals with extraordinary ability in the sciences, arts, education, business or athletics. Extraordinary ability for artists and entertainers (the arts) requires distinction supported by extensive documentation. Extraordinary ability for the other fields requires proof of sustained national or international acclaim. O-2 visas are available to individuals entering for the sole purpose of assisting in the artistic or athletic performance of an O-1 non-immigrant. O visas are valid for an initial stay of up to three years and may be extended thereafter in one-year increments.

The P Non-immigrant Visa (Artists and Entertainers)⁴²

The P non-immigrant visa category is available to artists, athletes and entertainers. It includes athletes and entertainers recognized at an international level; artists and entertainers entering under a reciprocal exchange program; and artists and entertainers entering to perform under a program that is culturally unique.


The Q Non-immigrant Visa (Cultural Exchange Participant)⁴³

The Q non-immigrant visa classification permits individuals to come to the United States for up to fifteen months to participate in designated international cultural exchange programs. Such programs must be for the purpose of providing practical training, employment and sharing of culture. To obtain this visa, a foreign national must receive the same wages and the same work conditions as U.S. workers.

Penalties for Employers of Unauthorized Workers

Since 1987, the federal immigration law has imposed penalties on employers in the United States that knowingly hire, or continue to employ, individuals who are not authorized to accept employment.⁴⁴ In recent years, a number of states, including Georgia,⁴⁵ have enacted state laws sanctioning employers of undocumented workers. Employers must be certain that they comply with all federal, state and local laws regarding the verification and documentation of their employees.

U.S. Tax Planning Considerations

Because of pitfalls such as possible increased or double taxation, immigration planning for a person should be coupled with planning under the tax laws of both the United States and the person's home country. 



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He is listed in *The Best Lawyers in America*, *The International Who's Who of Business Lawyers*, *Atlanta* magazine's list of "The Best Lawyers in Atlanta," and *Georgia Super Lawyers* for his immigration expertise.

Endnotes

1. Effective March 1, 2003, the enforcement and services functions previously exercised by the Immigration and Naturalization Service were transferred to the Department of Homeland Security.
2. Customs and Border Protection polices the U.S. borders and inspects individuals applying for entry into this country. Immigration and Customs Enforcement is responsible for enforcing the federal immigration laws, including deporting individuals deemed "removable" under the law and imposing sanctions on employers that violate the law by knowingly hiring undocumented workers. Citizenship and Immigration Services processes applications for immigration benefits, including applications and petitions for temporary visas and permanent residence.
3. 8 U.S.C. § 1184(b).
4. 8 C.F.R. § 212.1(a) (2007).
5. 8 U.S.C. § 1151.
6. *Id.*
7. *Id.* § 1152(a)(2).
8. *Id.*
9. *Id.* § 1153(a). The first category is available to unmarried children 21 years of age or older of U.S. citizens. The second category is available to spouses and unmarried children of permanent residents. The third category is for married children of U.S. citizens, and the fourth category is for brothers and sisters of U.S. citizens 21 years of age or older.
10. *Id.* § 1153(b).
11. *Id.* § 1151(d).
12. *Id.* § 1182(a)(5)(A)(i); 20 C.F.R. pt. 656 (2007).
13. 8 U.S.C. § 1153(b)(1).
14. *Id.* § 1153(b)(2).
15. *Id.* § 1153(b)(2)(B)(i).
16. *Id.* § 1153(b)(3).
17. *Id.* § 1153(b)(4).
18. *Id.* § 1153(b)(5).
19. *Id.* § 1182(n).
20. 20 C.F.R. § 656.15(d) (2007).
21. Individuals for whom green cards are available when employers peti-

tion for them and who are eligible for the adjustment of status procedure may file their adjustment of status applications concurrently with the employer's petition. Such concurrent filing generally reduces processing delays.

22. 8 U.S.C. § 1202(a).
23. See 8 C.F.R. pt. 245 (2007).
24. 8 U.S.C. § 1153(c).
25. *Id.* § 1201(a)(1).
26. *Id.* § 1201(c).
27. *Id.* § 1101(a)(15)(B).
28. *Id.*
29. *Id.* § 1187.
30. Citizens of the following countries are eligible for the visa waiver program: Andorra; Australia; Austria; Belgium; Brunei; Denmark; Finland; France; Germany; Iceland; Ireland; Italy; Japan; Liechtenstein; Luxembourg; Monaco; Netherlands; New Zealand; Norway; Portugal; San Marino; Singapore; Slovenia; Spain; Sweden; Switzerland; United Kingdom.
31. A table of the countries whose citizens are eligible for E-1 or E-2 visas is located online at http://www.travel.state.gov/visa/frvi/ reciprocity/reciprocity_3726.html#.
32. 8 U.S.C. § 1101(a)(15)(E)(i).
33. *Id.* § 1101(a)(15)(E)(ii).
34. *Id.* § 1101(a)(15)(E)(iii).
35. *Id.* § 1101(a)(15)(H)(i)(b)(1).
36. *Id.* § 1101(a)(15)(H)(ii)(b)(1).
37. *Id.* § 1101(a)(15)(H)(iii).
38. *Id.* § 1101(a)(15)(J).
39. *Id.* § 1101(a)(15)(L).
40. *Id.* § 1184(e).
41. *Id.* § 1101(a)(15)(O).
42. *Id.* § 1101(a)(15)(P).
43. *Id.* § 1101(a)(15)(Q).
44. *Id.* § 1324A.
45. Georgia Security and Immigration Compliance Act of 2006, 2006 Ga. Laws 105.

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DEPORTED

No Second Chances: Immigration Consequences of Criminal Charges

Many practitioners do not realize how harsh and drastic the immigration consequences of criminal convictions are, nor how limited the relief is from those consequences. Immigration consequences of criminal charges “may seem unbelievable to lawyers and judges accustomed to dealing with U.S. citizens, who have greater protection under the U.S. Constitution.”¹

Criminal defense attorneys should always ascertain the immigration status of their clients at the beginning of a case. This is important because every client who is not a U.S. citizen may be subject to removal/deportation if he or she is convicted of a criminal offense. Criminal defense attorneys must know the immigration status of their clients to determine: (1) the strategy in handling the case; (2) whether they have an ethical duty to inform the client of the immigration consequences of a criminal conviction; and/or (3) the potential legal liability for failure to inform the client of those consequences.

In 2004, the Georgia legislature recognized the importance of informing defendants of the consequences of guilty pleas and amended the Georgia Code, instructing courts to “determine whether the defendant is freely entering the plea with an understanding that if he or she is not a citizen of the United States, then the plea may have an impact on his or her immigration status.”² Failure to assess the defendant’s knowledge of the possible immigration consequences of a guilty plea may open the door for the defendant to set aside the plea at a later date through a habeas corpus petition on the ground that the plea was not entered freely and voluntarily.

Georgia precedent establishes that the affirmative misrepresentation by counsel of immigration consequences can support a claim of ineffective assistance of

counsel and may even lead to a malpractice claim.³ Although there is no constitutional requirement that the defendant be advised of all possible consequences of a guilty plea, the Georgia courts do distinguish between a failure to inform the client of the possible immigration consequences and affirmative misrepresentations. It is essential that an attorney carefully investigate the impact of the plea on the non-citizen defendant and perhaps seek the advice of an immigration attorney with in-depth knowledge of deportation issues.⁴ It is also important that clients with existing criminal records be advised to consult with an experienced immigration attorney before applying for any immigration benefit.

What Consequences Can Criminal Convictions Have?

Once a guilty plea has been entered, a non-citizen defendant faces significant consequences due to his immigration status. Under the Immigration and Nationality Act (INA),⁵ a non-citizen could be deported after being convicted of crimes involving “moral turpitude,” e.g., drug or firearm violations, aggravated felonies, crimes of domestic violence, stalking, violating a protective order, high-speed flight from an immigration checkpoint, and a few other miscellaneous crimes.⁶

Deportability

The grounds of deportation include criminal and non-criminal reasons.⁷ The criminal grounds of deportation apply to a person who has been admitted to the United States and is physically present in the United States. A person charged with deportability is placed in removal proceedings before an immigration judge or even placed in expedited removal proceedings.⁸ Expedited removal applies to certain individuals who have been convicted of aggravated felonies and are not eligible for an immigration hearing in front of a judge.⁹ Once an alien convicted of an aggravated felony has been physically removed, he or she becomes permanently inadmissible.¹⁰

An alien is also deportable if he or she is convicted of two or more crimes involving moral turpitude (not arising out of a single scheme of criminal misconduct) at any time after admission to the United States.¹¹ The phrase, “single scheme of criminal misconduct,” usually means that the crimes are performed in furtherance of a “single criminal episode” or that the two crimes flow from and are the natural consequences of a single act of criminal misconduct.¹² The grounds of deportability do not apply to persons adjusting status, whereas the grounds for inadmissibility do.¹³

Inadmissibility

In addition to possible deportation, a non-citizen who has been convicted of a crime can be subject to inadmissibility into the United States. Section 212(a)(2) of the INA covers the criminal grounds of inadmissibility.¹⁴ The concept of inadmissibility generally refers to non-citizens who are not in the United States but seek to come in, but it may also refer to persons who are already physically within the United States but seek to improve their status, by, for example, adjusting to permanent resident status.¹⁵ In addition, a non-citizen returning from a trip outside

the United States is subject to the grounds of inadmissibility, as is someone entering the country for the first time.¹⁶ Therefore, it is important that a non-citizen defendant be informed of this possible consequence of a criminal conviction before being allowed to enter a guilty plea.

When a Criminal Charge is a Conviction for Immigration Purposes

In most instances, only those criminal charges that result in convictions trigger immigration consequences. The INA broadly defines convictions for immigration purposes. The INA defines a conviction as:

[A] formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt and,

the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.¹⁷

In determining whether the judge sentenced the immigrant to a specific term of imprisonment, the INA considers the entire time ordered in confinement and does not subtract any probated or suspended time or consider whether the immigrant actually spent any time incarcerated.¹⁸ The INA defines even those convictions entered under state rehabilitative programs, such as deferred adjudications, as “convictions” for immigration purposes.¹⁹ Adjudication is deferred when a judge allows a criminal defendant to enter a plea of nolo contendere or guilty. The immigrant is sentenced at that time but the sentence is not enforced, in

order to give the defendant time to complete a series of requirements. Those requirements generally include probation, community service and a fine. Adjudication is deferred until the defendant finishes the requirements ordered by the court. If the defendant completes the requirements, the charges are dismissed. Should the defendant fail to complete the requirements, the defendant will be adjudicated “guilty,” and the state will enforce the sentence. The only instance when a deferred adjudication is not considered a conviction is when the sentencing court merely orders the defendant to pay court costs.²⁰

An adjudication is considered a conviction for immigration purposes if it meets a three-prong test: (1) there has been a judicial finding of guilt; (2) the court takes action that removes the case from those which are pending for consideration by the court, orders the defendant fined or incarcerated, or suspends the imposition of the sentence; and (3) the action of the court is considered a conviction by the state for at least some purpose.²¹ Therefore, if the court merely orders the defendant to pay court costs, the conviction is not a conviction for immigration purposes.²² Georgia's First Offender Statute is a deferred adjudication program.²³ Thus, the INA considers a “guilty” plea entered under the First Offender Program to be a conviction.

Criminal charges that are resolved through pre-trial diversion programs, however, are not considered convictions.²⁴ In pre-trial diversion programs, criminal charges are not formally instituted until and unless the defendant fails to complete the recommended programs. These programs typically include classes and some sort of probation. In contrast to a diversion program, where the defendant admits sufficient facts to find him or her guilty, pre-trial intervention programs allow the defendant to avoid any formal declaration of guilt. Thus, by completing a pre-trial diversion program, the defen-

dant is not making an admission of guilt, the first prong of the test will not be met, and the completion of the pre-trial diversion program will not be considered a "conviction" for immigration purposes.

A crime committed by a juvenile that is adjudicated in juvenile court is not a "conviction" for immigration purposes.²⁵ If, however, a juvenile commits a crime that, if committed by an adult, would be considered a felony with a possible 10-year sentence of incarceration, life in prison or the death penalty, then the conviction is also considered a "conviction" for immigration purposes.²⁶

Criminal Charges That Have Immigration Consequences

Crimes of Moral Turpitude


The INA provides that an alien is deportable if he "(1) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent status under [8 U.S.C. § 1255(j)]) after the date of admission, and (2) is convicted of a crime for which a sentence of one year or longer may be imposed."²⁷ Although the INA does not define the term "moral turpitude," courts interpret it to involve "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."²⁸ The Board of Immigration Appeals held that moral turpitude refers to acts that are inherently vile, base, or depraved and go against accepted rules of morality.²⁹

Whether a crime contains the requisite depravity or fraud necessary to be one of moral turpitude depends on the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct.³⁰ When analyzing each statute, it is important to look at the elements necessary to obtain a conviction and determine whether those elements render the offense a crime of moral turpitude.³¹ It is also important to look at whether the offense includes the elements of specific intent or knowledge. A crime of moral turpitude will usually include specific intent to do harm or knowledge of the act's illegality.³²

Crimes of moral turpitude include both felonies and misdemeanors. The seriousness of the criminal offense and the severity of the sentence imposed are not factors that determine whether the crime involves moral turpitude.³³ Generally, for a crime to be considered to involve moral turpitude, it must involve dishonesty or false statement.³⁴

Theft & Burglary Offenses

Offenses involving theft are considered crimes of moral turpitude only when a permanent taking is intended. Therefore, when the offense involves a taking with the intent to permanently deprive the owner of the property, that offense is a crime of moral turpitude. Attention should be paid to the language of the theft



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statute at hand. Theft statutes may encompass both temporary takings and permanent takings. In situations when something less than the intent to permanently deprive is involved, the court may or may not find that moral turpitude exists.³⁵

Robbery, knowingly receiving stolen property, or possession of property with the belief that it was stolen, all involve moral turpitude.³⁶ Theft by deception has also been found to be a crime involving moral turpitude.³⁷ Shoplifting is considered a crime involving moral turpitude regardless of whether the offense is a misdemeanor or a felony.³⁸

Fraud

Fraud generally involves moral turpitude, especially where a specific intent to defraud is an element of the fraud charge.³⁹ Criminal charges involving fraud should be negotiated to or substituted with another offense that does not involve specific intent to defraud.

Aggravated Felonies

An aggravated felony conviction results in the most serious of immigration consequences, which include deportation and a ban from ever entering the United States.⁴⁰ The following federal crimes are considered aggravated felonies: (i) murder; (ii) rape; (iii) sexual abuse of a minor; (iv) drug trafficking; (v) trafficking in firearms or destructive devices; (vi) money laundering; (vii) engaging in unlawful monetary transactions in property derived from unlawful activity if the funds exceed \$10,000; (viii) firearm offenses; (ix) crimes of violence or theft offenses where the term of imprisonment is at least one year; (x) demands for ransom; (xi) RICO violations; (xii) involvement with child pornography; (xiii) running/ownership of a prostitution business; (xiv) transporting prostitutes across state lines; (xv) sabotage or disclosing confidential information; (xvi) revealing the identity of foreign undercover

agents; (xvii) fraud or deceit where the loss to victim exceeds \$10,000; (xviii) tax fraud where the amount of tax fraud exceeds \$10,000; (xix) alien smuggling (unless it is a first offense and the alien did it to assist the alien's child, spouse, or parent and no other individual); (xx) counterfeiting or forging a passport where the term of imprisonment is at least 12 months; (xxi) failure to appear by a defendant for service of a sentence if the underlying offense is punishable by a two-year or more prison sentence; (xxii) bribery, counterfeiting or trafficking in vehicles the identification numbers of which have been altered when the term of imprisonment is at least a year; and (xxiii) an attempt of conspiracy to commit any of the above.⁴¹

Although aggravated felonies are defined in terms of federal crimes, state crimes may also be considered aggravated felonies for immigration purposes. A violation of state law is an aggravated felony if it meets the same statutory burden of proof required by the federal crimes listed above and if "the term of imprisonment was completed within the last 15 years."⁴²

This article limits its discussion of aggravated felonies to those that are most frequently committed, those whose requirements are likely to cause confusion, and those that are less likely to be thought of as aggravated felonies.

Crimes of Violence

Crimes of violence, punishable by a year or more in prison, are considered aggravated felonies.⁴³ Crimes of violence are defined as (1) those crimes that require the use of violence, attempted use of violence, or threatened use of violence against the person or property of another; or (2) any felony that "by its nature, involves a substantial risk of physical force against" a person or against the property of another.⁴⁴ A crime of violence is an aggravated felony only if the required mens rea of the underlying felony is at least recklessness,

or requires a specific intent to cause harm.⁴⁵ That is, for a crime to be considered an aggravated felony, the predicate felony must require intentional, not accidental, behavior.⁴⁶ For example, Georgia's DUI statute⁴⁷ does not require a specific mens rea of recklessness nor a specific intent to cause harm and is therefore not considered a crime of violence for immigration purposes.

Firearm Offenses

State firearm offenses that have a federal criminal law code counterpart are aggravated felonies.⁴⁸ Even Georgia's misdemeanor firearm statute, "Possession of a Concealed Weapon,"⁴⁹ is an aggravated felony for immigration purposes.⁵⁰

In *Adefemi v. Ashcroft*, Albert Adefemi, a Nigerian national and a U.S. legal permanent resident, was pulled over by a City of Atlanta police officer for running a red light. The officer asked Adefemi whether he had a gun in the car, and Adefemi replied that he did. The officer cited Adefemi for running a red light and for possessing a concealed weapon.⁵¹ Without being represented by counsel, Adefemi pled guilty to the charges and paid a \$330 fine.⁵² Because Adefemi pled guilty to carrying a concealed weapon, the Department of Homeland Security removed Adefemi to Nigeria. Adefemi is now forever banned from entering the United States.⁵³

Controlled Substance Violations

Convictions for simple possession of a controlled substance (with the exception of simple possession of marijuana) are considered felonies in Georgia but are not always considered aggravated felonies under federal immigration law.⁵⁴ Georgia's controlled substance offenses that have a federal counterpart in the Controlled Substances Act (CSA)⁵⁵ are considered aggravated felonies.⁵⁶ A crime is a "felony" under federal law if the conviction is punishable by

more than one year in prison.⁵⁷ The CSA defines all convictions for possession of a controlled substance as felonies, with one exception. First-time convictions for possessing a controlled substance (other than simple possession of "crack" or flunitrazepam) are considered misdemeanors.⁵⁸ Under the CSA, the first conviction for possessing a controlled substance (other than "crack" or flunitrazepam) is punishable by "not more than one year in prison."⁵⁹ Therefore, a state conviction for a first-time possession of a controlled substance (other than "crack" or flunitrazepam) is not considered an aggravated felony. The CSA defines all other convictions for controlled substances as felonies. Thus, all state convictions are considered aggravated felonies for immigration purposes, with the exception of most first-time offenses. A first-time offense for possession of "crack" or flunitrazepam, however, is considered an aggravated felony.⁶⁰

Convictions for drug trafficking are aggravated felonies.⁶¹ Violations of Georgia drug laws that involve any element of trafficking are drug trafficking crimes and are therefore considered aggravated felonies.⁶²

Domestic Violence/Stalking/ Violating a Protective Order

Crimes of domestic violence are considered aggravated felonies for immigration purposes.⁶³ Certain federal crimes and Georgia misdemeanors that involve crimes committed by a spouse, partner, former spouse or former partner against the other or against a child are considered aggravated felonies.⁶⁴ Stalking, child abuse, child neglect and child abandonment are crimes of domestic violence and are deportable offenses.⁶⁵ In addition, the violation of a protective order issued by a judge for "protection against credible threats of violence, repeated harassment, or bodily injury" is a deportable offense.⁶⁶ These crimes are deportable offenses without regard to the sentence imposed.

Minimizing the Consequences of a Criminal Conviction

By negotiating specific pleas, it is possible at least to lessen the immigration consequences of criminal charges. Sentence sheets from convictions, if worded correctly, often can ensure that the criminal conviction will not result in negative immigration consequences. Practitioners should be sure, however, that the final sentence is one allowed by law.⁶⁷ By far, the best way to avoid immigration consequences of criminal charges is to negotiate a pre-trial diversion program and dispose of the charges. As discussed previously, charges resolved through pre-trial diversion programs are not considered criminal convictions for immigration purposes. Also, protect your client's immigration status by limiting, as much as possible, any multiple counts. Because being convicted of two or more crimes of moral turpitude renders a defendant deportable, counsel should negotiate a plea agreement whereby the client only pleads to one crime. Convictions for crimes of violence, theft offenses, forging documents, and obstruction of justice, will not be considered aggravated felonies if the defendant is sentenced to less than a year of confinement.⁶⁸ In these types of cases, creatively wording the sentence sheet to read the time to serve as anything less than a year precludes an aggravated felony definition.⁶⁹ In these instances counsel needs to make

sure that the sentence sheet only uses the term "confinement" in reference to the actual time to be served in confinement, if at all.

In some instances, whether a crime is considered an aggravated felony depends on the amount of loss to the victim. For example, in order for the crime of fraud to be considered an aggravated felony, the loss to the victim must exceed \$10,000. A way to minimize the immigration consequences in such a case is to negotiate a plea whereby the client pleads guilty to a loss of less than \$10,000.

When Immigration Advice Comes Too Late; Post-Conviction Relief from Immigration Consequences

In most instances, little may be done to lessen the immigration consequences of a conviction. Convictions discharged under Georgia's First Offender Act, where the intent is to render the defendant without a criminal record, are still considered "convictions" for immigration purposes, and will not help the defendant avoid immigration consequences.⁷⁰ Any post-conviction relief that is given in an effort to prevent immigration consequences will be ineffective, and the conviction will stand for immigration purposes.⁷¹

Any post-conviction relief granted on the merits, however, and not

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for the purpose of avoiding immigration consequences, will not be considered a conviction for immigration purposes and will thus save the client from immigration problems later on. When appealing a conviction, counsel should ensure that the reason given by the court for vacating or overturning the conviction is based on either the unconstitutionality of the conviction, ineffective assistance of counsel, or another merit-based ground.⁷²

Relief from Removal

There are various possible forms of relief available to persons convicted of criminal activity, such as asylum and withholding of removal, cancellation of removal, withholding and deferral under the Convention Against Torture (CAT),⁷³ adjustment of status, INA §212(h) waivers, voluntary departure, and others. Only asylum, withholding of removal, withholding and deferral under the CAT and cancellation of removal are discussed below.

Asylum/Withholding of Removal

An individual who has been convicted of a crime and fears returning to a country because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, may seek asylum, thereby defeating removal if he or she is in removal proceedings.⁷⁴ However, the INA states that if an individual has been convicted of a “particularly serious crime” and “constitutes a danger to the community of the United States” as a result of that crime, that individual is barred from claiming asylum.⁷⁵ An aggravated felony offense is considered to be a particularly serious offense under the INA. For a non-aggravated felony offense, case precedent will determine whether relief is barred.⁷⁶

Withholding of removal is an option in cases where asylum is denied. Withholding of removal is not discretionary. As long as an individual establishes persecution,

withholding must be granted.⁷⁷ Even though an individual who has been convicted of a “particularly serious crime” cannot receive withholding, the “particularly serious crime” prohibition is different in this case, and an aggravated felony offense is not a per se bar to withholding.⁷⁸


If both asylum and withholding of removal are denied, an individual with a serious criminal conviction who fears harm upon return to his or her country may still remain in the United States by seeking deferral or withholding of removal under the CAT. CAT (1) provides protection to persons who face torture by their government or by a government actor in the proposed country of removal; (2) requires that the applicant establish that he or she would be tortured if returned to the country of removal; and (3) is mandatory, regardless of the person’s criminal record.⁷⁹

Cancellation of Removal

Cancellation of removal is a waiver for lawful permanent residents facing removal proceedings for a criminal conviction or convictions. It is only available to individuals lawfully admitted for permanent residence. It states that removal may be canceled in the case of an alien who is inadmissible to or deportable from the United States, as long as the alien (1) has been lawfully admitted for permanent residence for not less than five years; (2) has resided in the United States continuously for seven years after having been admitted in any status; and (3) has not been convicted of any aggravated felony.⁸⁰ Certain individuals, however, are not eligible for cancellation of removal, even if they meet the above-mentioned requirements. These include: (1) individuals who are inadmissible or deportable on security grounds, including export violations; (2) individuals who have ordered, incited, or assisted in the persecution of others; and (3) individuals who have previously received relief from deportation or removal in the form

of suspension of deportation, cancellation of removal, or a waiver under §212(c).⁸¹

Conclusion

The immigration consequences of conviction of a crime are harsh, definite and guaranteed. Defendants convicted of certain crimes face possible removal and, in some cases, complete banishment from the United States. Upon removal, these defendants are separated from their families and may face persecution upon return to their countries. Non-citizen defendants facing criminal charges in the United States are guaranteed certain constitutional rights, such as the right to enter a knowing and voluntary guilty plea and the right to effective assistance of counsel. To a non-citizen, a knowing and voluntary plea should encompass the knowledge that, by entering a guilty plea, he or she may be accepting life-altering immigration consequences. Attorneys have an ethical duty to inform their non-citizen clients of these consequences prior to allowing them to plead guilty. The failure to advise a client of such severe results is neither ethical nor effective assistance. 



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Understanding the Effects of Consular Relations on the Representation of Foreign Nationals

by Carine L. Rosalia-Marion

Recent debate regarding immigration reform serves as a reminder that many foreign nationals are now in the United States, whether permanently or temporarily, legally or not. Regardless of their immigration status, however, most foreign nationals who find their way into a courtroom are affected by the Vienna Convention on Consular Relations (“Vienna Convention”)¹ or a bilateral consular convention between their country of nationality and the United States. The rights granted under these conventions are of significant importance, but few attorneys and courts fully understand the implications of the Vienna Convention and other similar agreements for their foreign clients and for their representation.

The U.S. Department of State’s website² provides comments to the provisions of the Vienna Convention and offers guidance on consular relations. A free copy

of “Consular Immunity: Guidance for Law Enforcement and Judicial Authorities” is available from the State Department upon request.³ The first part of this article presents an overview of the role of consular officials in the trial of a foreign national, and the second part offers recommendations for the attorney representing a foreign national.

Recognizing the Interest of Consular Officials in a Foreign National’s Trial

Under the Vienna Convention, a consular officer is entitled to protect the interests of the nationals of his state. The Vienna Convention specifically provides that “consular functions consist in . . . representing or arranging representation for nationals of the sending State before the tribunals and other authority of the receiving State”⁴ and sets out the right of a consular officer to communicate with and visit the nationals of the sending state. Hence, consular functions are not merely limited to legalizing documents and assisting the estate of a citizen who dies abroad. Representation of the detained foreign national or the foreign minor is an integral part of the consular functions expressly protected by the Vienna Convention. Accordingly, a consular officer’s involvement in the trial of a foreign national should not be interpreted as interfering with the jurisdiction of an American court.

The Vienna Convention was the result of immense efforts to codify international common-law consular relationships.⁵ It was largely intended to “contribute to



the development of friendly relations among nations.”⁶ The Vienna Convention defines the obligations of signatory States with respect to the treatment of foreign nationals, and lays out the rights and functions of consular officials, as well as the privileges and immunities attached to their posts. The United States Senate approved the Vienna Convention in October 1969,⁷ and it came into force on Dec. 24, 1969.⁸ The Vienna Convention has been almost universally adopted: As of June 1997, 165 countries are party to the agreement.⁹ In addition, bilateral consular conventions predating the Vienna Convention are still in effect between the United States and several countries that are not party to the Vienna Convention.¹⁰ Zambia, for example, is not a party to the Vienna Convention, but consular relations between Zambia and the United States are governed by a consular convention signed by the two countries in Washington, D.C., in 1951.¹¹

Provisions relating to the notification of consular officials¹² are

designed to protect individuals in dire circumstances by providing them with consular assistance. The language barrier, the difference in culture and an unfamiliar judicial system may expose the foreign national to higher risks than his American counterpart and lead him to make decisions based on fear and manipulation from authorities. The foreign national’s lack of knowledge of his fundamental constitutional rights and a lack of familiarity with certain common legal concepts, such as the right to counsel or the right to remain silent, may render *Miranda*¹³ warnings alone ineffective or insufficient.¹⁴ The consular officer of the foreign national’s country is in a unique position to explain how the American judicial system works in relation to the foreign national’s judicial system¹⁵ and to minimize interpretation problems and cultural differences, which should help the foreign national to gain awareness of his situation and rights.

The provisions of the Vienna Convention are binding on state

officials according to the Supremacy Clause of Article VI of the U.S. Constitution.¹⁶ Thus, a consular officer may exercise his consular prerogatives without interfering with the jurisdiction of American courts.

Although the Vienna Convention only expressly imposes obligations on law enforcement authorities, in a case in which a foreign national is a party, attorneys and judges should be prepared to work with consular officials to ensure that the United States complies with consular agreements.

What This Means for the Attorney of a Foreign National

Although courts have established that the right to consular notification is not considered a fundamental right,¹⁷ attorneys representing foreign nationals should ensure that state authorities comply with the Vienna Convention. The attorney should inquire whether the client has been made aware of his right to contact

the nearest consul of the client's country of nationality and seek consular assistance.¹⁸ If the client has not been properly informed, the attorney should then advise him of the benefits of seeking consular assistance.¹⁹

Ensuring That Consular Officials are Notified

Arrest/Detention

If the foreign client is arrested or detained, consular officials should be notified.²⁰ Notification may be optional or mandatory, depending on circumstances.

Under the Vienna Convention, the foreign national may request that consular officials be notified. Notification is made optional on the part of the foreign national.

The foreign national should be offered, without delay, an opportunity to notify consular officials. The Department of State suggests that the following statement accompany the offer to notify the foreign national's consular officials:

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?²¹

If the foreign national chooses to notify consular officials, state authorities must notify the nearest consular post of the sending state without delay.²²

Although optional notification is sufficient to comply with the Vienna Convention, some bilateral agree-

ments between the foreign national's country and the United States may impose a mandatory notification.²³

In that case, state authorities should immediately notify the foreign national's consular officials nearest to the place of the arrest or detention.²⁴ The Department of State suggests that the following statement accompany the offer to notify the foreign national's consular officials:

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested/detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.²⁵

State authorities are then obligated to forward any communication that is addressed to the consular post from the foreign national who is arrested or is in prison, custody or detention.²⁶ The consular officer shall also have the right to meet, converse or correspond with the foreign national who is in prison, custody or detention, and arrange for his legal representation.²⁷


Guardianship/Trusteeship

In the case of a minor or an incompetent adult, and where a guardianship or trusteeship is considered, state officials must notify consular officials.²⁸ Hence, attorneys representing children in deprivation cases should verify that the consul of the minor's country of nationality is aware of the status of that child so that the child can benefit from consular assistance. Where a child is in proceedings, a guardian ad litem should be made aware of the availability of consular assistance.

Ensuring the Opportunity For Consular Officials To Provide Assistance To the Foreign National

Once consular officials have been notified, the attorney for the foreign national should verify that the consul is given access to the judicial and extra-judicial documents pertaining to the foreign national.²⁹ The attorney should also make sure that consular officials are able to communicate freely with the foreign national.³⁰

In the event that state authorities are interfering with consular functions and are therefore in violation of the Vienna Convention, the attorney for the foreign national may file a motion for relief.³¹ The availability of any remedy for violation of an individual's right to consular notification is very limited, however, because the foreign national must demonstrate that he has suffered prejudice as a result of the violation of his right. The foreign national bears the burden of proof and must produce evidence that (1) the foreign national did not know of his right; (2) the foreign national would have availed himself of the right had he known of it; and (3) there was a likelihood that contact with the consul would have resulted in assistance to the foreign national.³² Moreover, courts have not recognized the right to consular notification as a fundamental constitutional right³³ and have rejected the arguments that the failure to inform a foreign national of his right to consular notification should amount to a jurisdictional defect.³⁴ Nevertheless, scholars have suggested that the violation of the right to consular notification may be effectively used to achieve executive clemency.³⁵

Because it is so difficult to satisfy the burden of proving that the foreign national suffered prejudice as a result of the violation of consular relations, attorneys must learn about the rights granted by the Vienna Convention and other bilateral consular conventions and aim at *preventing* any potential violation of their clients' rights to consular assistance. 



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3. A copy of the pamphlet CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES may be obtained by writing to the following address: Protective Liaison Division - Bureau of Diplomatic Security - U.S. Department of State - SA-33 - Washington, DC 20522.
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8. Vienna Convention on Consular Relations, *supra* note 1.
9. U.S. DEPARTMENT OF STATE, CONSULAR NOTIFICATION AND ACCESS, PART 5: LEGAL MATERIAL, available at http://travel.state.gov/law/consular/consular_744.html.
10. A list of states party to a bilateral consular convention with the United States is available at http://travel.state.gov/law/consular/consular_744.html.
11. Consular Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland, signed June 6, 1951, U.S.-U.K., 3 U.S.T. 3426.
12. E.g., Vienna Convention on Consular Relations, *supra* note 1, arts. 5, 36 & 37.
13. See *Miranda v. Arizona*, 384 U.S. 436 (1966).
14. Mark J. Kadish & Charles C. Olson, *Sanchez-Llamas v. Oregon and Article 36 of the Vienna Convention on Consular Relations: The Supreme Court, the Right to Consul and Remediation*, 27 MICH. J. INT'L L. 1185, 1188 (2006).
15. Linda Jane Springrose, *Strangers in a Strange Land: The Rights of Non-Citizens Under Article 36 of the Vienna Convention on Consular Relations*, 14 GEO. IMMIGR. L.J. 185, 195 (1999).
16. *United States v. County of Arlington*, 669 F.2d 925, 931-32 (4th Cir. 1982).
17. Ann K. Wooster, Annotation, *Construction and Application of Vienna Convention on Consular Relations (VCCR), Requiring that Foreign Consulate be Notified When One of its Nationals is Arrested*, 175 A.L.R. FED. 243 § 3 (2007).
18. Springrose, *supra* note 15, at 188-89.
19. *Id.*
20. U.S. DEPARTMENT OF STATE, CONSULAR NOTIFICATION AND ACCESS, PART 1: BASIC INSTRUCTIONS, available at http://travel.state.gov/law/consular/consular_737.html.
21. *Id.*
22. Vienna Convention on Consular Relations, *supra* note 1, art. 36.
23. A list of states requiring mandatory notification is available at http://travel.state.gov/law/consular/consular_744.html.
24. U.S. DEPARTMENT OF STATE, CONSULAR NOTIFICATION AND ACCESS, PART 1: BASIC INSTRUCTIONS, available at http://travel.state.gov/law/consular/consular_737.html.
25. *Id.*
26. Vienna Convention on Consular Relations, *supra* note 1, art. 36.
27. *Id.* art. 36(1)(c).
28. *Id.* art. 37(b).
29. *Id.* art. 5(j).
30. *Id.* art. 36(1)(a).
31. Leading Cases, *Enforceability of Treaties in Domestic Courts - Vienna Convention on Consular Relations*, 120 HARV. L. REV. 303 (2006).
32. See *United States v. Briscoe*, 69 F. Supp. 2d 738 (D.V.I. 1999), *rev'd without opinion*, 234 F.3d 1266 (3d Cir. 2000).
33. See *Murphy v. Netherland*, 116 F.3d 97 (4th Cir. 1997); *United States v. Bin Laden*, 132 F. Supp. 2d 168 (S.D.N.Y. 2001); *Polanco v. United States*, No. 99 Civ. 5739, 2000 WL 1072303 (S.D.N.Y. Aug. 3, 2000) ("[A] violation of the Vienna Convention's consular notice provision does not constitute a constitutional violation or a fundamental defect in the conduct of [defendant's] trial."); *United States v. Rodrigues*, 68 F. Supp. 2d 178 (E.D.N.Y. 1999).
34. See *United States v. Flores-Garcia*, 230 F.3d 1364 (8th Cir. 2000) (unpublished Table disposition); *United States v. Guzman-Landeros*, 207 F.3d 1034 (8th Cir. 2000). See also *Ex parte Medellin*, 223 S.W.3d 315 (Tex. Crim. App. 2006), *cert. granted sub nom. Medellin v. Texas*, 127 S. Ct. 2129 (2007), in which the Texas Court of Criminal Appeals rejected Medellin's argument that it should enforce an International Court of Justice's ruling (and President Bush's subsequent memo asking state courts to enforce the ICJ's ruling) that nationals of signatory states must be given notice of the right of consular notice. The Texas court ruled, among other things, that allowing Medellin to raise the Vienna Convention issue after his trial would violate state procedural rules, and that those rules were not supplanted by the Vienna Convention. The Supreme Court granted certiorari and heard arguments in October 2007, but as of the date that this article goes to press, has not issued its opinion on the matter.
35. Michael Candela, Case Note, *Judicial Notification: A Simple Solution to Ensure Compliance with the Vienna Convention on Consular Relations*, 18 PACE INT'L L. REV. 343, 361 (2006).

Immigration Policy and the Local Housing Ordinance Explosion:

Are Local Communities Running Afoul of the Preemption Doctrine?

by Anne E. Andrews

As comprehensive immigration reform faltered in 2006 and again in 2007, local communities took immigration policy into their own hands by enacting housing ordinances aimed at excluding undocumented aliens from their communities. In courts across the United States, parties are fighting over whether these communities overstepped their constitutional boundaries by enacting these ordinances. By way of comparison, this article discusses one such Georgia community's attempt to exclude undocumented aliens.¹

When Cherokee County commissioners approved an ordinance in December 2006, requiring landlords to verify their tenants' citizenship status, Georgia became the most recent in a rash of states to have governments enact measures aimed at preventing undocumented aliens from living in their communities.² Cherokee County Ordinance No. 2006-003 ("Cherokee

Ordinance"), made it unlawful for any landlord in the county to "let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law," or to "suffer or permit the occupancy" of such a person.³ A landlord renting to an alien who is "not lawfully present in the United States" is deemed under the Cherokee Ordinance to be harboring an illegal alien, and is subject to having his business license suspended.⁴ The Cherokee Ordinance also directs Cherokee County to pass on identifying information about such tenant(s) alleged to be the subject of the landlord's violation "to the appropriate state or federal enforcement agency."⁵

The consequences of the Cherokee Ordinance were short lived. Although the Cherokee Ordinance took effect on Jan. 1, 2007,⁶ Cherokee County agreed to suspend it three days later, after the ACLU filed suit in the U.S. District Court for the Northern District of Georgia, alleging that the law represented an impermissible attempt by a local government to legislate in an area of law reserved solely to the federal government.⁷ By agreeing to suspend the ordinance, at least temporarily, Cherokee County seemed to indicate that it would prefer to allow other communities with similar ordinances to test the constitutional issues presented and bear the cost of such litigation.⁸ At the same time as the Cherokee County controversy, communities in Pennsylvania, Missouri, California, Texas and New

Jersey were embroiled in litigation involving similar controversies.⁹

One such community was Hazleton, Penn., which was among the first to enact an immigrant housing ordinance.¹⁰ The Hazleton ordinance (“Hazleton Ordinance”) required tenants of residential properties to provide proof of citizenship or legal residency status in order to be granted a mandatory “occupancy permit.”¹¹ A landlord found in violation of this requirement would be deemed to be housing an illegal alien and sanctioned accordingly.

Shortly after Hazleton passed its ordinance, opponents thereof sued Hazleton in response.¹² The plaintiffs in the action were composed of a group of documented and undocumented aliens and several nonprofit organizations.¹³ Opponents of the Hazleton Ordinance argued that it would cause landlords to discriminate against potential tenants on the basis of ethnicity or national origin, something specifically prohibited by the Fair Housing Act.¹⁴ Proponents of the Hazleton Ordinance responded that it made good sense, because their community was overburdened with “illegals,” who, they believed, were disproportionately responsible for drugs and violent crime in the area. They contended that the Hazleton Ordinance would stem the flow of “illegals” to their town, thus curbing the influx of drugs and occurrence of violent crime.¹⁵

Both locally and nationally, debates involving immigration policy and legislation are highly polarized. Lawsuits challenging local housing ordinances affecting immigrants, like the litigation against Hazleton, appear fueled by the same deeply-felt attitudes toward immigration, immigrants and their impact on the economy

that underlie national debates involving immigration reform. In addition to those underlying attitudes, however, these lawsuits also promise to expose the underlying constitutional issues that arise when a local government legislates on a matter explicitly reserved to the federal government.

Despite local governments’ attempts to legislate in areas involving immigrants, such legislation is often deemed ineffective as preempted by federal law. Under the Supremacy Clause of the U.S. Constitution, state laws that inter-

the United States, and the authority to prescribe the conditions under which foreigners will be allowed to enter, rests with the federal government.¹⁷ The states may not prescribe the conditions under which foreigners may immigrate to the United States; of course, no local community has attempted to go that far.¹⁸ Since 1892, Congress has enacted a comprehensive body of laws governing immigration, the Immigration and Nationality Act (INA).¹⁹ The enactment of the INA seems to underscore the federal government’s primacy in this area.

Not every local law, however, that refers to a person’s citizenship status is preempted by federal law. For example, in 1976, the Supreme Court upheld a California statute that prohibited employers in that state from hiring “an alien who is not entitled to lawful residence in the United States” when doing so would harm local workers.²⁰ As the Court explained, “standing alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration.”²¹ Such a conclusion, however, only begs the question: When will federal immigration law preempt state or local regulations governing the treatment of noncitizens, and what, if anything, can local communities do to respond to what they see as a growing immigration

crisis when Congress fails to do so?

As housing ordinances targeting immigrants continue to face constitutional challenges, federal courts continue to explore this question. On July 26, 2007, Judge Munley of the U.S. District Court for the Middle District of Pennsylvania issued the first major decision on the constitutionality of immigrant housing ordinances in *Lozano v. City of Hazleton*.²² After examining




fere with, or are contrary to, federal law may be deemed invalid under the doctrine of preemption.¹⁶ Under that doctrine, certain areas of law are specifically reserved to the federal government.

The power to admit or exclude foreigners from the United States has always belonged to the federal government. As early as 1892, the Supreme Court held that the power to admit or exclude foreigners from

the Hazleton Ordinance and related ordinances, Judge Munley held that local governments may not prohibit an individual from living in a community on the basis of citizenship status. In that case, the court concluded that such ordinances directly conflict with the “carefully drawn federal statutory scheme” governing federal immigration law, and were thus preempted.²³ In reaching its decision, the court reasoned that ordinances requiring officials to classify a resident’s citizenship status as “legal” or “illegal” were invalid, because under federal law this determination can be made only after formal removal proceedings before an immigration judge.²⁴ Judge Munley pointed out that even when an individual is determined to be present in the United States in violation of U.S. immigration laws, that individual may be eligible to adjust immigration status to remain in the country legally.²⁵ Judge Munley concluded his opinion by stating that “Hazleton, in its zeal to control the presence of a group deemed undesirable, violated the rights of such people, as well as others within the community,” and admonished the city for attempting to circumvent the Constitution, emphasizing that “the United States Constitution protects even the disfavored.”²⁶

Despite the *Lozano* decision and the attention it received, local governments continue their attempts to exclude undocumented aliens from their communities. The mayor of Hazleton vowed to appeal the case to the Supreme Court.²⁷ Moreover, other communities with plans to enact similar housing ordinances have indicated that they plan to “reword” their legislation before introducing it in the hopes of withstanding constitutional challenges.²⁸ Yet other communities across the United States, including several in Georgia, appear to be attempting to circumvent court rulings altogether by drafting legislation that indirectly achieves the same result as housing

ordinances that specifically exclude certain individuals from inhabiting dwellings or sanctioning landlords for providing housing to such individuals.²⁹

Although *Lozano* suggests that preemption might prevent local communities from restricting undocumented aliens’ access to housing, local communities appear to be forging ahead in their attempts to keep out undocumented aliens. This persistence may indicate that local communities are frustrated with the national government’s failure to address what many see as a broken system. 



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Endnotes

1. Although most ordinances discussed in this article refer to “illegal aliens,” that term is not specifically defined under the Immigration and Nationality Act (INA). The INA defines the term “alien” as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101(3) (2006). Aliens may be present in the United States lawfully as immigrants or non-immigrants, or may be undocumented or present unlawfully (e.g., remaining beyond a permissible date or not entering the United States at a designated port of entry). Even if an alien is present in the United States in violation of applicable law, such alien may be declared lawfully present by an immigration judge and allowed to remain in the United States. Thus, since the term “illegal alien” means different things to different people, and immigration

judges are the only individuals authorized to determine whether an alien is lawfully present, this article uses the term “undocumented alien” when not discussing individual ordinances that use other terms.

2. Alex Kotlowitz, *Our Town*, N.Y. TIMES, Aug. 5, 2007, at § 6 (stating that over 40 communities have enacted similar housing ordinances in the past two years).
3. CHEROKEE COUNTY, GA., ORDINANCE 2006-03, § 18-503(a) (Dec. 5, 2006).
4. *Id.* § 18-504(d).
5. *Id.* § 18-504(g).
6. *Id.* § 18-505.
7. Order granting TRO, *Stewart v. Cherokee County*, No. 1:07-CV-0015 (N.D. Ga. Jan. 4, 2007).
8. Christopher Quinn, *Illegal Immigration: Cherokee to Learn from Fate of Laws Elsewhere*, ATLANTA J. CONST., Jan. 13, 2007, at B3.
9. The town of Valley Park, Mo., enacted a law imposing a \$500 fine upon a landlord who “knowingly allow[ed] an illegal alien to use, rent or lease their property.” VALLEY PARK, MO., ORDINANCE 1708, § 3(A) (July 17, 2006); see also Janet Shamlian, *Town’s Mayor Tackles Illegal Immigration*, MSNBC Interactive, Aug. 23, 2006, available at <http://www.msnbc.msn.com/id/14487620>. In response, a group of local landlords filed suit, arguing that the ordinance encouraged racial profiling and was not based on evidence indicating that immigrants were a threat or burden to the community. See *Reynolds v. City of Valley Park*, No. 06-CC-3802 (St. Louis County Cir. Ct.) (filed July 17, 2006).

The city of Escondido, Calif., adopted a similar ordinance, entitled, “An Ordinance of the City of Escondido, California Establishing Penalties for the Harboring of Illegal Aliens in the City of Escondido,” requiring landlords to verify their tenants’ lawful citizenship status and affirmatively prove that none of their tenants are unlawfully present in the United States. ESCONDIDO, CAL., ORDINANCE 2006-38R (Oct. 18, 2006). One month later, the city was sued in the United States District Court for the Southern District of California by plaintiffs, alleging that the ordinance infringed upon their consti-

tutional rights. *See* Garrett v. Escondido, 06-CV-2434 (S.D. Cal.) (filed Nov. 3, 2006).

In Texas, the city of Farmers Branch enacted an ordinance sanctioning apartment owners with fines of up to \$500 per day for failure to obtain proof of legal United States residency from all tenants prior to either entering into a new lease or renewing an existing lease. FARMERS BRANCH, TEX., ORDINANCE 2892 (Nov. 11, 2006); *see also* Stephanie Sandoval, *Apartments Sue Over FB Ordinance*, DALLAS MORNING NEWS, Dec. 23, 2006, at 1B. Residents and landlords sued the city over the law, which they argued imposed "severe burdens" on both landlords and tenants. *See* Vasquez v. City of Farmers Branch, No. 3:06-CV-2376 (N.D. Tex.) (filed Dec. 26, 2006).

Likewise, an ordinance passed in the town of Riverside, N.J., prohibited "illegal aliens" from "leasing or renting property." RIVERSIDE, N.J. ORDINANCE 2006-16 (July 26, 2006). Riverside repealed its ordinance after a group of plaintiffs filed suit to have the law declared unconstitutional. *See* Riverside Coalition of Business Persons & Landlords v. Township of Riverside, No. BURL-L-2965-06 (N.J. Super. Ct.) (filed Oct. 18, 2006).

10. *See* HAZLETON, PA., ORDINANCE 2006-13 (Aug. 15, 2006). Ordinance 2006-13 was later replaced by Ordinance 2006-18, which was ultimately amended by Ordinance 2007-6, both of which incorporated the tenant registration requirement. *See* HAZLETON, PA., ORDINANCE 2006-18 (Sept. 21, 2006); HAZLETON, PA., ORDINANCE 2007-6 (Mar. 21, 2007).
11. HAZLETON, PA. ORDINANCES 2006-13, 2006-18, 2007-6; *see also* *Pennsylvania Town Passes Illegal Immigration Law*, Online NewsHour, Sept. 1, 2006, available at http://www.pbs.org/newshour/bb/social_issues/july-ec06/immigration_09-01.html [hereinafter *Pennsylvania Town*].
12. *See* Lozano v. City of Hazelton, 496 F. Supp. 2d 477 (M.D. Pa. 2007).
13. Nonprofit organizations such as the American Civil Liberties Union, the Mexican American Legal Defense and Education Fund and the Puerto Rican Legal Defense and Education

Fund have been involved in challenging housing ordinances across the United States.

14. *See* 42 U.S.C. § 3604(a) (2000) (wherein it is declared unlawful "to any person because of race, color, religion, sex, familial status, or national origin").
15. *See Pennsylvania Town*, *supra* note 11; *see also* Mem. filed with TRO at 7, Lozano v. City of Hazleton, 496 F. Supp. 2d 477 (M.D. Pa. 2007) (wherein the court responded to supporters' arguments while granting a TRO to the plaintiffs, noting that the city had "offered no evidence to connect this increase to the presence of illegal immigrants"); *see also id.* (citing Ellen Barry, *City Vents Anger at Illegal Immigrants*, LOS ANGELES TIMES, July 14, 2006, at A1 (noting that the number violent crimes committed in Hazleton had actually decreased commensurate with the surge in immigrant population)).
16. *See* U.S. CONST. art. VI, § 2.
17. *See* Ekiu v. United States, 142 U.S. 651, 659 (1892).
18. *See, e.g., id.*
19. *See* 8 U.S.C. §§ 1101-1537 (2006).
20. *See* DeCanas v. Bica, 424 U.S. 351, 353-55 (1976).
21. *Id.* at 355.
22. *See* Lozano v. City of Hazleton, 496 F. Supp. 2d 477 (M.D. Pa. 2007).
23. *Id.* at 555.
24. *Id.* at 532.
25. *Id.* at 531-32.
26. *Id.* at 555.
27. Jane Roh, *After Hazleton Ruling, What Would SCOTUS Do?*, NAT'L J., July 27, 2007, available at http://thegate.nationaljournal.com/2007/07/after_hazleton_ruling_what_wou.php.
28. *See* Kotlowitz, *supra* note 2.
29. In August 2007, Georgia's Cobb, Gwinnett and Forsyth counties proposed occupancy ordinances that would restrict the number of people living in one household, a provision that critics say strikes at undocumented immigrants sharing housing, because they cannot afford to do otherwise. *See* Nancy Badertscher, FORSYTH CONSIDERS OCCUPANCY RULES, ATLANTA J. CONST., Aug. 15, 2007, at B3; George Chidi & Mary Lou Pickel, GWINNETT COMMISSIONER LOOKS TO LIMIT RESIDENTS IN HOUSEHOLD, ATLANTA J. CONST., Aug. 8, 2007, at D3.



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The Fellows Program of the Lawyers Foundation of Georgia

by Lauren Larmer Barrett

In 1982, two friends sat down to lunch and by the time they had paid their tab, the Fellows Program was born. Those two friends, Frank Love Jr. and Kirk McAlpin, were both active in the State Bar of Georgia, and were both Fellows of the American Bar Foundation. The American Bar Foundation is affiliated with the American Bar Association, and the American Bar Fellows is an honorary organization made up of lawyers, judges and law professors whose public and private careers have demonstrated outstanding dedication to the welfare of their community and the highest principles of their profession. They support and encourage the programs of the American Bar Foundation.

Over lunch that day, Love and McAlpin realized that Georgia's lawyers and the legal profession in Georgia would benefit from the dedication and vision that such a group would bring. Quite often, these wonderful

ideas die a quick death, buried in someone's to do pile. That wasn't the case this time. They spoke with other Bar leaders, McAlpin agreed to chair a committee, and together they recruited the first group of Fellows. At that time, the Fellows Program was part of the Georgia Bar Foundation. As the 25th anniversary of the program nears, it is a good time to reflect on whom the Fellows are and what their dedication and contributions have accomplished.

Attorneys and judges are handpicked every year to join the program. Every individual who receives an invitation does so because of their outstanding contributions to the community and the profession, as well as their professional accomplishments. According to Love, State Bar of Georgia past president, 1982-83, one of the original intents behind the Fellows Program was "to honor the best of our profession and provide a forum for social and professional dialog among those so honored."

The Fellows Program grew steadily for the first few years. The donations pledged by the Fellows were used to fund a variety of projects and programs that could not be funded by the State Bar of Georgia. The State Bar is often approached for funding for many different projects, but it is not a charitable organization and has no funds which it can use to support even the most worthy of these causes. The donations from the Fellows allowed the leaders of the profession to assist with a number of worthwhile projects. When IOLTA (Interest On Lawyers Trust Accounts) came along, the program languished, as funds were readily available from that source to fund the projects selected by the Georgia Bar Foundation.

“Being part of the Fellows makes you proud of your profession. You are part of a group of lawyers who are dedicated to all that makes America strong: the rule of law, the independence of the judiciary and the importance of access to justice for all.” –Linda Klein

In 1998, the Lawyers Foundation of Georgia (LFG) was created with the vision of outstanding legal professionals administering a fund to enhance the system of justice, supporting the lawyers who serve it, and assisting the community it serves. The Fellows Program was transferred to LFG, and became its premier program, providing a variety of resources: time, expertise, talent, and of course, funds. Since 1998, the Fellows Program has more than doubled in size. When the program was first established, there was a cap of 3 percent of the active membership of the State Bar. This ensured that each application for Fellowship would be treated with all due respect and consideration. That cap was reached several years ago, and the cap has now increased to 4 percent, with other factors taken into consideration when calculating the total number of active Fellows. There are now 1,062 Fellows, and there is room in the program for about 300 more.

Fellows come from throughout the state. There are judges, law professors, solo practitioners, in house counsel, and partners and associates from every size firm. Please visit the website at www.gabar.org/related_organizations/lawyers_foundation, and you will find a complete list of all Fellows. The list is incredibly impressive. If you looked at the resume of any of those individuals, you would find a very accomplished and dedicated lawyer. These are all lawyers who stand for what is best about the profession of law. As Linda Klein, State Bar past president, 1997-98, said, “Being part of the Fellows makes you proud of your profession. You are part of a group of lawyers who

are dedicated to all that makes America strong: the rule of law, the independence of the judiciary and the importance of access to justice for all.”

Fellows are given opportunities to serve the profession through LFG in at least two ways. First, their charitable contributions are used to help our community and our profession by funding important projects that impact attorneys and the community around the state. Second, their efforts on behalf of the LFG through committee service, contribution facilitation and project participation enhance everything the LFG accomplishes. “Being a Fellow allows you to work with a select group of other lawyers from across the state who are committed to improving the justice system and the community at large. Programs like Service Juris help to show that lawyers do care about and give back to their communities in a variety of ways. Programs like the Challenge Grant help to provide needed funding to a wide variety of law-related justice initiatives, including necessary but sometimes unpopular legal work,” said Board of Governors member Karlise Y. Grier.

The events and meetings of the Fellows Program give every Fellow an opportunity they may not otherwise have to meet, and talk with, a tremendous variety of lawyers from around the state. There are few other opportunities for such a cross section of lawyers to talk with about the profession, the community, their golf game or their children. It’s not unusual to see attorneys from big Atlanta firms, small towns in Southwest Georgia and a corporate counsel from a Fortune 500 company with a retired State of Georgia

Supreme Court justice all at one table at the annual Fellows Dinner.

“The Lawyers Foundation was created to fund programs and projects that the State Bar cannot fund with its mandatory dues. The Foundation does two very important things: first, it carefully examines requests for financial assistance from bar associations and other organizations that ask for funding. Then, if the Foundation, after investigation, determines that the proposal is sound and that it has a nexus with the legal profession, the Foundation can serve as a vehicle for funding the project with donations from its fellows, grants and other sources,” said Hal Daniel, 1994-95 State Bar president.

One of the ways the LFG funds programs is through the Challenge Grant program. Established in 2000, the Challenge Grant Program serves two purposes: one, as a method to encourage new initiatives by law-related organizations, and two, to support public service by bar associations. The program offers small grants, most of which have been less than \$10,000, which must be matched within a certain period of time. The grants offer an opportunity to

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the local and voluntary bar associations as well as other law related organizations to engage the legal community in public service, outreach and philanthropy.

While many challenge grant programs exist, the Lawyers Foundation of Georgia Challenge Grant Program is the only one in Georgia that focuses funds and efforts on the legal community.

In the seven years the program has been in place, it has awarded 43 grants. These grants totaled more than \$217,000. The grants were matched, dollar-for-dollar or more, by fundraising efforts by the grant recipients, thus generating more than \$434,000 in charitable contributions for the benefit of the community by and through bar associations, bar foundations and attorneys.

The grants went to associations and organizations around the state of Georgia and benefited many different communities. Some of the grants went to statewide programs such as the Georgia Legal Services Program and High School Mock Trial and some went to community and minority bar associations such as the Western Circuit Bar and Georgia Association of Black Women Attorneys. The grants have touched countless lives in different ways. Attorneys were pulled into public service to complete the projects and raise the funds, community volunteers worked with attorneys on projects and community members benefited from the projects. Some examples of recipients of these grants included:

- The High School Mock Trial Program to fund a training video for coaches, allowing dozens of teachers and attorneys to volunteer at their local high schools.
- Georgia Association of Black Women Attorneys for a Civil Pro Bono Project to provide direct legal services to incarcerated women with family issues that effect the relationship between a mother and her children.


- A Business Commitment Committee to train business attorneys to provide assistance to non-profits with their start-up issues.
- The Georgia Innocence Project for their pro bono initiative.

Thirty-nine other grants were awarded to equally strong and worthwhile programs. The program will be repeated again this year, and the awards will be announced shortly.

Since 1998, LFG has supported many other efforts. Other programs funded by LFG include:

- *Service Juris*—For the past six years, LFG worked with Hands On Atlanta and Atlanta area attorneys to put together Service Juris, a service day for Atlanta area lawyers. More than 700 attorneys participated this year and the program will be repeated next year.
- *Wills Project*—The Wills Project of Atlanta Volunteer Lawyers Foundation provided the expertise and materials to allow firefighters in the Atlanta area to obtain a will.
- *Restricted Gifts*—Through a number of restricted gifts, the Foundation has been able to provide the funding to build a mock trial courtroom in the new Bar Center building, as well as establish a legal history museum and a re-creation of Woodrow Wilson's law office.

- *BASICS* (Bar Association Support to Improve Correctional Services)—BASICS assists program participants in being able to stay out of jail, by legitimate means, once they are released by providing effective instruction, guidance and employability counseling.

Of course, it is not only through contributions and other assistance to LFG that the Fellows enhance the community and the profession. It would not be possible to measure the impact of the collective hours put into the community and the profession by the Fellows. The members of the program have been able to leverage their hours and funds through the relationships they have developed as a result of their involvement in the LFG and the Fellows program. They have seen the programs supported by the Fellows in one community, and duplicated it in other communities. The Fellows have, individually and collectively, exemplified the ideals and mission of the Lawyers Foundation of Georgia: to enhance the system of justice, to assist the community served by it, and to support the lawyers who serve it. 



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



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

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

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

Georgia Bar Foundation Awards \$6.6 Million

by Len Horton

The Georgia Bar Foundation awarded 69 organizations \$6.6 million in grants at its annual grant decisions meeting at the Bar Center in September. Records were set in both the number of organizations receiving awards and the total amount of the grants awarded.

"The near doubling of applications and the more than doubling last year's total amount requested made this meeting challenging," said Joe Brannen, president of the Georgia Bar Foundation. "We met the challenge and funded a large number of vital organizations working to help solve many of Georgia's most pressing problems."

Seventeen organizations received grant awards totaling \$3,882,300 to provide civil legal assistance to the poor. Atlanta Legal Aid Society and Georgia Legal Services Program together received \$3 million. This was 100 percent of their request and the largest amount ever awarded by the Georgia Bar Foundation.

A number of other organizations that benefit from grants focus on civil legal assistance to women and children in domestic shelters throughout the state. The Georgia Coalition Against Domestic Violence received \$150,000 to handle divorce, custody, visitation, support, and some temporary protective orders not handled by Atlanta Legal Aid and Georgia Legal Services.



Also, the Northeast Georgia Council on Domestic Violence, which supports five different domestic shelters in northeast Georgia, received \$45,000. Additional grantees providing domestic violence assistance included the Columbus Alliance for Battered Women (\$15,000), Savannah Family Emergency Shelter (\$30,000), the Liberty House of Albany (\$22,000), Halcyon Home in Thomasville (\$10,000), Safe Haven in Statesboro (\$10,000) and Flint Circuit Council on Family Violence (\$15,000).

To increase the number of lawyers volunteering to provide assistance, the Pro Bono Project co-sponsored by the Georgia Legal Services Program and the State Bar of Georgia received \$100,000. The Georgia Law Center for the Homeless, which has become a major force dealing with a statewide problem, received

\$60,000. The Law and Public Service Program of Mercer University School of Law received \$38,300 to fund a practitioner in residence to work with law students assisting clients. Under the able supervision of Professor Tim Floyd, this new program has already created a fine reputation for itself.

Diakonia Christian Legal Services received \$10,000 to support non-litigation civil legal services to low-income Georgians near Athens.

GreenLaw, the new name of the Georgia Center for Law in the Public Interest, received \$75,000 for operating support of their legal services to low-income, minority citizens needing protection from inequitable and often illegal siting and operating industrial facilities. This organization is spearheaded by Justine Thompson.

Several organizations received awards for their civil legal work to assist immigrants, some of whom are seeking asylum in the United States. The Refugee Resettlement and Immigration Services of Atlanta received \$50,000 to support two positions to handle immigration and asylum cases but also to train volunteer attorneys to be able to handle immigrant cases.

The Latin American Association received \$50,000 to provide civil legal assistance to low-income Latino immigrants. The Detention Project of Catholic Social Services received \$45,000 to assist Latino detainees and to train volunteer lawyers. Caminar Latino received \$5,000.

The Cherokee County Sheriff's Foundation received \$5,000 to fund an advocate for Latinos detained and incarcerated for non-violent offenses.

The Southern Center for Human Rights under the leadership of Steve Bright and Lisa Kung has had a major impact on Georgia's prison system and the meaning of justice. SCHR received \$40,000.

Inspired by the leadership of then President Rudolph Patterson,

Georgia Banking Executive Elected President of the Georgia Bar Foundation

by Len Horton



J. Joseph Brannen, president and CEO of the Georgia Bankers Association (GBA), was elected president of the Georgia Bar Foundation at the annual grants meeting Sept. 28. Brannen became only the second banking industry executive to lead the foundation in its history.

"I am humbled by the trust of the many lawyers who asked me to lead the Georgia Bar Foundation," said Brannen. "This foundation is having a significant impact on thousands of Georgia's disadvantaged families. We

plan to spend the next two years letting more people know about the diversity of the organizations the Georgia Bar Foundation supports and their work to help Georgia's most vulnerable individuals."

Steve Melton, president and CEO of Columbus Bank & Trust, was the first full-time banker to be president of the Georgia Bar Foundation and of any bar foundation in the nation.

Commenting on Brannen's election, Melton said, "Joe has proven himself to be a great leader of Georgia's banking industry. He will provide the same leadership to the Georgia Bar Foundation."

GBA, which Brannen has led since 1980, is the trade and professional association representing Georgia's 375 banks and thrift institutions. In 2004 GBA was recognized as the most politically influential business association in the state of Georgia. Before coming to GBA, Brannen worked eight years for Sen. Sam Nunn.

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

He is the recipient of the Golden Pigeon Award, the top recognition bestowed upon a lobbyist at the state Capitol by his colleagues in the lobbying community. He has been a member of the Committee of 100 of Emory University's Candler School of Theology.

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

2007-2008 Grant Awards Georgia Bar Foundation

Adopt-A-Role Model Program	25,000	Ga. LRE Consortium, Inst. of Govt., U. Ga.	90,600
Ash Tree Organization, Inc.	35,000	Ga. Office of Dispute Resolution	250,000
Athens Justice Project	58,000	GF&C Mentoring	15,000
Atlanta Bar Asylum Project (Ga. Asylum & Immig. Net.)	10,000	Golden Isles Children's Center	15,000
Atlanta Legal Aid Society	840,000	GreenLaw	75,000
Atlanta Volunteer Lawyers Foundation (AVLF) . .	162,400	Halcyon Home for Battered Women, Inc.	10,000
BASICS Program of State Bar of Ga.	175,000	Hall County Family Treatment Court	18,000
Big Brothers Big Sisters NW GA Mountains, Forsyth Office	31,800	Hall County Mental Health Court	22,200
Boys & Girls Clubs of Middle Ga. Region	36,000	Jefferson County SHIPS FOR YOUTH— PROS Project	50,000
Caminar Latino	5,000	Justice Served, Inc.	35,000
Catholic Social Services, Detention Project . . .	45,000	Latin American Association, Inc.	50,000
Chatham Co. Family Dependency Treatment Ct. .	10,000	Liberty House of Albany	22,000
Chatham County Domestic Relations Initiative .	40,000	Liberty House of Albany	11,200
Cherokee County Sheriff's Foundation	5,000	Mercer School of Law—Law and Public Service Program	38,300
Children's Tree House	20,000	Metro Savannah Baptist Church	8,000
Citizens Against Violence, Inc., dba Safe Haven .	10,000	Muscogee County Juvenile Drug Court	50,000
Civil Pro Bono Family Law Project	100,000	NE Ga. Council on Domestic Violence	45,000
Columbus Alliance for Battered Women	15,000	Nsoromma School, Inc.	37,800
Columbus Truancy Intervention Project	20,000	Odyssey Family Counseling Center	50,000
Com. Court/Restorative Justice Center	5,000	Our House (Methodist Home for Children campus)	15,000
Computer Aided Instruction Institute	10,000	Paulding County Juvenile Court	8,500
Diakonia Christian Legal Services	10,000	Pro Bono Project of SBG and GLSP	100,000
Disability Law and Policy Center of Ga.	50,000	Recording for the Blind & Dyslexic Ga. Unit . . .	20,000
Emory Law School—Barton Child Law & Policy Clinic	30,000	Refugee Resettlement and Immigration Services of Atlanta	50,000
Exchange Club Family Resource Center of Rome	22,500	Savannah Family Emergency Shelter (S.A.F.E) .	30,000
Flint Circuit Council on Family Violence	15,000	Southern Center for Human Rights	40,000
Ga. Advocacy Office, Inc.	25,000	State Bar of Ga. Communications Dept.	125,000
Ga. App. Practice & Ed. Resource Center	572,700	State YMCA of Ga., Inc.	20,000
Ga. Appleseed Center for Law and Justice	50,000	Supreme Court of Ga. Committee on Civil Justice	150,000
Ga. Association of Black Women Attorneys . . .	20,000	The Extension, Inc.	20,000
Ga. Coalition Against Domestic Violence	150,000	Truancy Intervention Project Georgia	100,000
Ga. First Amendment Foundation, Inc.	12,000	YLD High School Mock Trial	70,000
Ga. Innocence Project	38,000	YLD Juvenile Law Committee	40,000
Ga. Justice Project	45,000		
Ga. Law Center for the Homeless	60,000		
Ga. Legal Services Program	2,160,000		
		TOTALS	\$6,600,000

the Georgia Bar Foundation in fiscal year 2006-07 expanded its efforts to help children who are at risk of getting in trouble with the legal system. A total of 25 different organizations received \$2,591,700. Many of these grantees are first time applicants who were responding to the Georgia Bar Foundation's initiative.

The Atlanta Volunteer Lawyers Foundation (AVLF) under the dynamic leadership of Marty Ellin is well known for its guardian ad litem program, which at the Georgia Bar Foundation's request has now sprouted wings and flown to several other places in the state. Focusing on disputed custody cases, this program has become too important and too effective to be in only a few jurisdictions, and it has become one of the foundation's signature programs.

Recently, AVLF expanded its efforts to include several programs to assist children at risk. Managed by Dawn Smith, AVLF's efforts in this new area also received significant support from the Georgia Bar Foundation. All together, AVLF received \$162,400.

Savannah's guardian ad litem program, which was inspired by AVLF's program, received \$40,000. It was begun under the encouragement of Hon. Louisa Abbot, Superior Court judge in Chatham County and former president of the Georgia Bar Foundation.

The Truancy Intervention Project guided by Terry Walsh continues to grow beyond metro Atlanta. Supported by an industrious right arm named Jessica Pennington and a fresh new grant of \$100,000, Walsh is an undeniable force that opens doors, convinces doubters and rescues children. Judging from the interest the Truancy Intervention Project is creating statewide, it might not be too long before people realize that it belongs everywhere and needs greater funding than even the largest legal foundation in Georgia can muster.

Several programs providing counseling and more to children at

risk received funding. Jefferson County SHIPS for Youth in Louisville received \$50,000, and Odyssey Family Counseling Center in the Atlanta area received \$50,000.

A number of programs associated with family and drug courts received funding including Muscogee County Juvenile Drug Court. They received \$50,000 for substance abuse treatment, anger management counseling, individual/family counseling and crisis intervention. It amounts to a significant rehabilitation program for juveniles with a drug problem.

Hall County Family Treatment Court was awarded \$18,000 to provide legal representation and counsel to parents eligible for Family Treatment Court. The Paulding County Juvenile Court received \$8,500 to provide emergency assistance to families involved in the juvenile justice/family reunification process. Chatham County Family Dependency Treatment Court received \$10,000 to provide assistance to the children of drug-addicted parents.

Directly responsive to the Georgia Bar Foundation's three children at risk symposia, several organizations applied for and received grant awards. The Computer Aided Instruction Institute, based in LaGrange and also serving Columbus, received \$10,000 to assist children in foster homes as a result of parental incarceration. The Nsoromma School is using the same model that the Georgia Bar Foundation introduced to scores of people in these symposia. In the Atlanta area it teaches entrepreneurship, motivation, and job readiness as exemplified in the SouthWest Atlanta Youth Business Organization created by Ed Menifee. Menifee was the moderator at all three symposia, and he is the director of the BASICS program, which prepares prisoners for a responsible life once released from prison.

The Boys and Girls Clubs of Middle Georgia, based in Eastman, received \$36,000 to take the entre-

preneurial concept from the children at risk symposia and create an online Internet business via eBay to teach finance, entrepreneurial skills, computers and digital photography to disadvantaged youth.

Big Brothers Big Sisters Northwest Georgia Mountains will be using its \$31,800 grant award to expand its mentoring program into Hall and Dawson counties. The Liberty House of Albany received \$11,200 to fund summer camps for children of Liberty House clients.

GF&C Mentoring requested and received \$15,000 to implement an Ed Menifee-type, children-at-risk program in the city of Forsyth. This will serve as a model program to prove the value of involving children in entrepreneurship. Another implementation of this idea was funded in Savannah through the Metro Savannah Baptist Church. They received \$8,000 to combine the entrepreneurial teachings of Ed Menifee with the leadership of Morris Brown, one of the most respected public servants in Savannah.

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Additional programs designed to assist children at risk also were funded. The Barton Child Law and Policy Clinic at Emory Law School was awarded a grant of \$30,000 to develop a manual for judges, attorneys and others trying to promote and protect the well-being of neglected, abused and court-involved children.

The Georgia Advocacy Office received \$25,000 to assist parents and community advocates to obtain educational opportunities for children with disabilities.

Several organizations, which in previous years received awards to assist children at risk, continued to receive support: Adopt-A-Role Model in Macon (\$25,000); Ash Tree in Savannah (\$35,000); the Exchange Club for the Prevention of Family Violence in Rome (\$22,500); Children's Tree House in Columbus (\$20,000); the Columbus Truancy Intervention Project (\$20,000); Our House in Columbus (\$15,000); and Golden Isles Children Center in Brunswick (\$15,000).

The Georgia Association of Black Women Attorneys received \$20,000

to support activities for at-risk girls in several places in Georgia. Ultimately the program is designed to increase self-esteem and encourage participation in events incompatible with getting into trouble with the law.

The Georgia Bar Foundation also funded several programs seeking to provide legal assistance to people charged with crimes. The Georgia Appellate Practice and Educational Resource Center received \$572,700 to provide staffing for post-conviction, death penalty representation for inmates who have received death sentences. This represented a significant increase in support versus last year's \$300,400.

The Athens Justice Project received \$58,000, embracing the holistic model of Atlanta's Georgia Justice Project, which also received \$45,000. The Georgia Innocence Project received \$38,000 to support DNA testing of convicted felons where eyewitness or other mistakes may have led to a wrongful conviction. A total of \$6,000 of those funds will be used to assist

freed prisoners in their adjustment to life after exoneration.

The BASICS program has become famous for its success in preparing prisoners for their return to civilian life. The Georgia Bar Foundation awarded \$175,000 to this award-winning program, which boasts a recidivism rate of only 16 percent. Under the leadership of Ed Menifee, BASICS is offered in 16 of the Georgia Department of Corrections diversion and transition centers.

The Extension, covering Cobb County, received \$20,000 to support its addiction services in a residential setting for adults. \$2,500 was earmarked for drug testing.

Hall County Mental Health Court was awarded \$22,200 to provide treatment rather than just punishment to defendants whose mental health problems contributed to the offenses they committed.

Educational programs have always received support from the Georgia Bar Foundation. The Georgia Law-Related Education Consortium received \$90,600 to continue its programs supporting



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legal education programs at the local level. Since 1987 this important program has received more than \$1.4 million in IOLTA funds.

Is there a more popular program funded by the Georgia Bar Foundation than high school mock trial? Once again, this worthy program received full funding (\$70,000) as it prepares to host the National Tournament in 2009 under the capable leadership of Stacy Rieke.

The Recording for the Blind and Dyslexic Georgia Unit received \$20,000 to sponsor the recording of 10 law books for students with print disabilities. This program is under the steady and effective leadership of Lenora Martin.

The State YMCA youth judicial program (\$20,000) is another popular program funded by the Georgia Bar Foundation. Participants in this program write briefs and deliver oral argument as they learn about the judicial system. While this program demands a great deal of its participants, the rewards to the youth and to our state greatly exceed the money awarded.

Being Georgia's expert on any subject is not a trivial accomplishment. Being that expert at this point in the history of our state and our nation is demanding and explains why Hollie Manheimer's Georgia First Amendment Foundation again received full funding at \$12,000.

A number of organizations received funding to improve the justice system. One of the most important initiatives undertaken to improve our civil justice system is spearheaded by the Supreme Court of Georgia's Committee on Civil Justice. This group received \$150,000 to fund a large portion of a legal needs study for the state of Georgia. In addition to the obvious support of the Supreme Court of Georgia, many law firms are donating support to make this project a success. Coordinating this law firm support is Charlie Lester of Sutherland Asbill & Brennan.

The Georgia Appleseed Center for Law and Justice, under the

indefatigable leadership of former juvenile judge Sharon Hill, is working with the YLD Juvenile Law Committee to rewrite the entire juvenile code of Georgia. Appleseed received \$50,000 and the committee \$40,000.

The Georgia Office of Dispute Resolution received an urgent, one-time infusion of \$250,000 to lessen the impact of lost state funding. Under the talented leadership of its new executive director, Shinji Morokuma, this organization is focused on avoiding litigation while promoting justice for all parties. Established under the creative leadership of former Supreme Court of Georgia Chief Justice Harold Clarke and Ansley Barton, the Georgia Office of Dispute Resolution is a vital part of Georgia's justice system.

Justice Served received \$35,000 to promote the importance of an independent judiciary, and the Restorative Justice Center received \$5,000 to support developing an alternative sentencing program for the Municipal Court of Atlanta.


Several organizations that received support are sometimes difficult to categorize. The Civil Pro Bono Family Law Project (\$100,000) works with several partners to provide legal and other assistance to incarcerated mothers. This year they are expanding their support to Guardian Watch, which seeks to prevent domestic violence. Beverly Iseghohi manages these efforts.

The Disability Law and Policy Center (DLPC) of Georgia has a

new leader, Debra Joyner. She will be working under the capable direction of Pat Puckett, who has guided DLPC to become a major force in representing the interests of people with disabilities in Georgia. DLPC received \$50,000 to support its Access Project.

The State Bar of Georgia Communications Department received \$125,000 to fund radio and television spots to educate citizens about the vital role of lawyers and judges in our society. This ongoing effort is a part of the Foundations of Freedom program and has been recognized for the high quality of its production and the effectiveness of its message.

The Georgia Asylum and Immigration Network received \$10,000 to create a website to help provide pro bono services to asylum seekers.

In the history of the Georgia Bar Foundation, never have so many worthy organizations received so much support. Once again, the partnership of bankers and lawyers under the direction of the Supreme Court of Georgia has produced this record grants meeting to assist needy citizens throughout the state. 



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

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Fueling the Pipeline:

State Bar of Georgia Diversity Program's 15th Annual CLE and Luncheon

by Marian Cover Dockery

Law professors, general counsels, attorneys and educators who are working to diversify the profession and enhance educational opportunities for at-risk youth convened at the Bar Center in September to discuss the importance of fueling the pipeline in law schools, firms and corporations with minorities and women and how communications may negatively impact employees in the workplace.

Law School Deans Panel

Robin Rone, director of the American Bar Association Office of Diversity Initiatives, moderated the first panel, which included Dean Daisy Hurst Floyd of Mercer University School of Law, Dean Rebecca White of the University of Georgia School of Law, Assistant Dean Katherine Brokaw of Emory Law School, Dean Richardson Lynn of John Marshall Law School and Dean Steven Kaminshine of Georgia State University College of Law.

Despite the national statistics reporting more than a 10 percent decline in minorities (African-Americans and Hispanics) enrolled in law schools, according to White, Georgia's law schools have one of the largest concentrations of African-American law students in the country.

Mercer, UGA and GSU all rely heavily on their Black American Law Student Association (BALSA) chapters to attract future students. Floyd reported that



Photos by Don Morgan

Marian Dockery, Charles Huddleston, vice-chair and partner, Arnall Golden Gregory, present Justice Robert Benham with an appreciation gift following his keynote luncheon address compliments of Macy's, Inc.

Mercer's BALSA chapter has won national awards for sponsoring mentoring programs and UGA's BALSA chapter is, according to White, "...the most effective recruiting device for the school." These law schools dig deep into the pipeline by whetting the appetites of high school students for a career in law.

Mercer has a modest pipeline effort where high school students meet faculty and law students. GSU has joined other organizations to present a new pipeline project, "Justice Benham's Boot Camp," a three-week program that offers instruction to minority high school students who are taught by GSU's law professors. The objective is to get students excited about the law and encourage them to pursue law school in the future. (A full description of the program is detailed later in this article.)

Percentages of Minorities and Women at Georgia Law Schools For the Year 2007-08

Law School	Percent Minorities	Percent African-American	Percent Women
Emory	40	13	50
GSU	25	n/a	50
John Marshall	29.9	18.9	50.8
Mercer+	17	11	48
UGA+	22	14.1	46
+Mercer is located in Macon and UGA is located in Athens.			

In law schools where early exits are not an exception, retaining students is of paramount importance. Minority orientation programs, early mentoring, summer academic enrichment programs for any student who may be “at risk,” diversity training for all students and ongoing academic support programs are among the programs offered by these schools to lower attrition rates of students. To promote retention of all students, including minorities, UGA offers an “Early Start Program” to expose students to the law school experience and to provide instruction on writing, briefing cases and Constitutional Law. Mercer took a novel approach by recruiting and enrolling a critical mass of five talented Hampton University minority graduates. The relationship with the school goes beyond recruiting Hampton students. Mercer annually funds the Hampton Deans Scholarship, a full scholarship for one graduate of this historically black college.

According to Brokaw, Emory Law School has long enjoyed a high percentage of minority enrollment. Students come from all over the United States because Atlanta is a huge draw. Brokaw also reported that the percentage of minority enrollment has increased from 18 percent in 1995 to 40 percent in 2007. The traditional 90 percent bar exam passage rate of Emory students has actually increased to 96 percent with the rise in minority enrollment.

Among the challenges the law schools face despite their success in recruiting diverse student populations are:

- Recruiting more minority and women faculty
- Creating a more inviting environment for minority and women students
- Securing funds to create valuable academic assistance programs
- Changing a widely publicized ranking system that does not take into account diversity in the student body (*U.S. News & World Report*)
- Addressing issues of accreditation by the American Bar Association (ABA) which pressure law schools to select students with higher LSAT scores that adversely impact the number of minority students enrolled

Lynn, who has in the past served on accreditation teams, reported how the ABA accreditation rules impacted John Marshall’s minority enrollment. According to Lynn, although the number of minority students at his law school increased, the percentage of minorities actually declined from 52 percent (44 percent African-American) to 46.5 percent (18.9 percent African-American) since 2000 because the ABA accreditation process includes reviewing the admission figures, namely LSAT

scores of applicants. Admitting students with low LSAT scores, e.g. the low 140s, hurts the accreditation chances of law schools. When the ABA inspects law schools every seven years, numbers of minority students in many cases decline. John Marshall, a provisional law school and now ABA accredited, has traditionally recruited minorities with lower scores because the first tier schools successfully recruit from the same limited pool of minorities with the higher LSAT scores. Lynn also stated that law schools must walk a fine line between satisfying the ABA and recruiting a diverse population of students.

Decline of Women Applicants

Despite the schools’ success recruiting minority students and their past success recruiting women, the majority of the deans on the panel reported an alarming trend—the decline of female applicants. Although the percentage of women at Georgia’s law schools is almost half of the total law student population, these numbers still reflect a slight decline from previous years.

Continued Push for Diversity

Emory will continue to push for diversity through its recruitment fairs, diverse admissions staff and its Office of Diversity and Community Initiatives.

An effective diversity program requires money, and a recent \$1 million gift to Emory University School of Law will fund scholarships aimed at increasing and sustaining diversity at the law school.

In response to the declining numbers of women applicants, Emory’s Spring 2007 conference “No More Early Exits” created a forum for female law students, practicing attorneys and Emory law professors to address the exodus of women from the profession and strategies to preserve the talent pool.

Georgia law schools’ commitment to fueling the pipeline pro-

vides the state's law firms with a diverse recruitment pool from which to draw first year associates. The law school deans emphasized that the next step is for the law firms to recruit, hire, develop and retain their talent in order to successfully diversify the workforce.

The Solution Starts Here

The second panel at the annual diversity CLE program consisted of State Bar of Georgia members in private practice and an Atlanta middle school principal. These panelists generously volunteer their time, talent and resources to support the academic preparation of middle, high school and college students. Glen Fagan, associate with Constangy, Brooks & Smith, LLC, and a volunteer with the Truancy Intervention Project, moderated.

South Atlanta School for Law and Social Justice

Peter McKnight, principal of the South Atlanta School for Law and Social Justice, began his career with Teach for America. McKnight said that the mission of his school is to prepare students for college and to develop leaders for positive change. Students have a core curriculum of math, English, science and social studies and are instructed in critical reading, logical reasoning, persuasive writing and public speaking. Each neighborhood school has at least 100 students and any student can apply. Although many of these students are behind academically, through quality instruction, high expectations and relationships with community organizations, committed teachers work to accomplish the school's mission. Before becoming principal, McKnight taught geometry, calculus and advanced placement (AP) calculus. In his first year teaching AP calculus, McKnight



Dean Steven Kaminshine, Robin Rone, Dean Daisy Hurst Floyd, Marian Cover Dockery, Dean Rebecca White, Dean Richardson Lynn and Assistant Dean Katherine Brokaw pose after the dean's roundtable.

led his students to achieve the highest scores in school history, including two students who achieved the highest score possible.

The school's teaching philosophy is to:

- Teach students to solve complex, multi-step problems that require students to draw from multiple disciplines
- Use research-based engaging instructional strategies
- Hire a dynamic faculty and staff
- Offer themed elective courses supported by partnerships with local law schools and social justice organizations

In the future, McKnight hopes that these theme schools will increase academic performance for all students, promote greater community involvement and provide more authentic experiences for students.

Justice Benham's Law Camp

Justice Robert Benham's Law Camp was created in 2007 to address the low percentage of law degrees conferred to minority students. Harold Franklin Jr., partner at King & Spalding and president

of the Gate City Bar, reported that less than 7 percent of law degrees conferred are to African-Americans. Further, the percentage of African-Americans enrolled in law school has reached a 13-year low.

Justice Benham, who has worked with law school students for many years, launched this three-week program in cooperation with the Gate City Bar, Clark Atlanta University and Georgia State University School of Law, which provided space for the camp's program as well as instructors.

The program's curriculum was intense. Daily classes included "Lawyer for the Day;" critical thinking taught by law instructors and trial attorneys; the Socratic method; trial technique; and legal research. Every afternoon, students attended more classes, visited courts and law firms and spoke with judges, partners and public defenders. The third week of the program, law firms hosted paid internships for further exposure to a career in law. According to Franklin, students who completed the program want to return next year and are excited about becoming lawyers.

The Boys & Girls Club of Metro Atlanta

The Boys & Girls Club College Bound Program of Metro Atlanta is designed to help participants graduate from high school and pursue college. Seventy percent of these children are "at risk" and more than 80 percent are minorities. According to Brent Wilson, partner at Elarbee, Thompson, Sapp & Wilson and member of the Metro Atlanta Board of Directors, the key to the program's success is parental involvement. The program requires parents to sign a contract where they agree to get their children to the program on time and bring

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them to scheduled interviews. The program also offers mentoring and assistance for parents by connecting them to other resources to help improve their quality of life and providing advice on securing financial aid for their college-bound students. The more than 80 percent high school graduation rate of participants underscores the success of this program.

Programs for Future Law Students

College students who aspire to attend law school may require extra help to reach that goal. Law school boot camps popping up all over the country satisfy that need. St. John's Pipeline Project in Jamaica, N.Y., serves college minority and majority students of the City University of New York system who are first generation college attendees, financially challenged and have at least a 3.0 GPA. Professors from St. John's Law School teach students writing, critical thinking, test-taking techniques, LSAT preparation and oral advocacy to prepare them for the rigors of law school.

Members of the State Bar of Georgia who are not committed to a mentoring program are encouraged to volunteer and support these programs in any way they can.

Corporate General Counsel

A diverse panel of general counsels spoke about their companies' commitment to diversity. The panel included Teri Plummer McClure, senior vice president of compliance, general counsel and secretary, UPS; Robin Sangston, vice-president and general counsel, Cox Communications; Meredith Mays, vice-president and general counsel, AT&T-Georgia; Douglas Gaston, senior vice-president, Comcast Cable; and John Lewis Jr., senior managing counsel-litigation of Coca-Cola's Global Legal Center. William Hawthorne, vice-president of diversity strategies and legal affairs, Macy's, Inc., moderated the panel.

Why is diversity critical for these corporations? One factor is that the companies serve diverse customers.

For example, Macy's general customer base is located in the most diverse major cities in the United States according to Hawthorne. Likewise, Gaston reported that Comcast's operations are located in 20 of the biggest urban areas and its customer base is diversified; and Lewis of Coca-Cola, the largest distributor of nonalcoholic beverages, and a company where 70 percent of its revenues are derived outside of the United States, said that its customers represent every ethnicity, nationality and race. Given the diversity of the customers they serve, these companies must be concerned about diversity.

Policies to hire and retain diverse employees by tying compensation directly to a manager's diversity efforts have proven successful for Coke. According to Lewis, 20 percent of management compensation is impacted by diversity efforts. Lewis quipped, "That which gets measured, gets done." The results of such policies are impressive. In 2003, 18 percent of Coke employees were people of color but today, 34 percent are



(Top left) Glenn Fagan, Constangy, Brooks & Smith, moderator of the panel, "The Solution Starts Here" and panelists Harold E. Franklin Jr., partner, King & Spalding, and Peter McKnight, principal of The South Atlanta School for Law & Social Justice listen to Brent Wilson, partner at Elarbee, Thompson Hines & Sapp. (Top right) Charles Forlidas, Bryan Cavan, Katherine Drolett, David Eldridge, Tamika Nordstrom and Luke Curtis are from the firm of Miller & Martin PLLC, which continually supports the Georgia Diversity Program. (Bottom left) John Lewis Jr., Meredith Mays, Robin Sangston, Teri Plummer McClure, Douglas Gaston and William Hawthorne pose after the presentation of the Corporate Initiatives Panel. (Bottom right) John Latham (far right) responds to an audience question as (left to right) Kwame Benjamin, Allegra Lawrence-Hardy and Gerry Williams looks on.

minorities. The company's minority representation in the management ranks has also increased from 8.3 percent in 2003 to 21 percent in 2007. And although a discrimination lawsuit filed years ago against the company served as a catalyst for change, the continued commitment from top management fuels a diverse culture.

Pipeline recruitment efforts at Cox Communications include the hiring of 11 minority summer interns in its law department. Sangston reported that three interns secured permanent positions with the company's outside counsel as a result of Cox's referral calls and recommendations. During their internships, students met the chief executive officer, vice presidents and human resources; found role models and received valuable mentoring that will benefit them in the future.

Companies in the last 10 years have encouraged their outside counsel to diversify. According to Hawthorne, a mere 4 percent of partners working at major law firms are minorities. But the companies still expect firms to make the effort and Mays said AT&T-GA will give firms a stern talk if diverse attorneys are not given these opportunities. McClure reported that she sees a lot of "window dressing" but Gaston said the bottom-line is: "Who shows up to handle the lawsuit?"

Another important component for corporations' diversity initiatives includes working with minority-owned businesses. According to Gaston, Comcast committed a 70 percent increase in spending with these entities, but McClure added that women and minority firms should not expect to automatically get work because they are minority and woman owned, but need to learn the company's business and build a relationship with in-house counsel. According to Mays, AT&T-GA looks for specific skill sets and expertise from its outside firms. She advised small minority and women owned firms to consider partnering

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with big firms to break into the business. When asked how do minorities and women-owned firms get work, Mays responded, "It's a marathon not a sprint!"

Law Firm Partners

Although Georgia law schools are successfully graduating diverse lawyers, not all of those attorneys necessarily wish to stay in Georgia. Allegra Lawrence-Hardy, partner at Sutherland Asbill & Brennan, John Latham, partner at Alston & Bird, and Gerry Williams, partner at Hunton & Williams, were members of this panel.

Moderator Kwame Benjamin, senior associate of Seyfarth Shaw opened the panel with the question, "What is the business case for diversity?" Lawrence-Hardy responded that Sutherland's clients are asking for diversity, but that is not the biggest reason. The goal of having the best talent, the best brain power and maximizing the firm's business development opportunities are among Sutherland's reasons for diversifying its firm.

Latham said his firm is committed to diversity because "it's simply the right thing to do."

Since the issue of diversity is with the white males and not the diverse partners, Latham stated that it makes good sense for a white male to be in charge of the diversity program.

The commitment for diversity must start from the top in any firm or company and at all the firms represented at the Diversity Program's CLE seminar, diversity is promoted by the managing partner and the executive committee.

Components of Alston's diversity initiatives include a steering committee comprised of senior attorneys and staff, a coordinator, a newsletter and a substantial budget for diversity. Alston's diverse partners are "home grown," that is the firm has successfully recruited and retained women and minorities who have advanced to partnership, which is a major achievement. Having role models in a major firm

is a critical component to retaining new diverse attorneys because the success of those diverse partners encourages future success for new associates.

Initiatives in place to help retain minorities at Sutherland include diversity training for the firm's partners, a four-person diversity staff and a firm-wide diversity committee. More importantly, a partner's performance regarding diversity is a key part of the compensation process according to Lawrence-Hardy. To help retain attorneys, every Sutherland lawyer

attorneys. Williams explained that many of their women and minority partners succeed because they had pre-existing relationships with clients when they joined the firm, a formula for success. Also, Hunton is not experiencing a high attrition rate of minorities and women, another testament to a supportive work environment for diverse attorneys.

In the case of Sutherland, fueling the pipeline has become a major firm initiative.

The Sutherland Boot Camp, founded by Lawrence-Hardy, pro-



Anita Wallace Thomas, Debra Schwartz, Judge Janis Gordon, Julie Seaman, Lisa Chang and Jay Cook pose after their participation on the Communications in the Workplace panel.

has a career plan advisor, a diversity committee mentor and a mentor from his/her affinity group. Recruitment efforts start early at Sutherland where first-year law students are targeted for internships and, this past summer 28 associates were hired, 10 of whom were women or minorities.

Historically Hunton & Williams hired female lawyers when no other firm in Richmond, Va., would do so, and the firm has a reputation in the legal community for creating a culture that is conducive to the success of diverse

vides scholarships and instruction for students who seek legal education. Partners volunteer to teach oral advocacy skills, writing skills and other subjects to prepare students for law school.

The Imus Factor: Communications in the Workplace

The final panel, moderated by Anita Wallace Thomas, member, Nelson Mullins Riley Scarborough, addressed the issue of communications in the workplace: what is con-

sidered appropriate and why the law still has not changed behavior at work. Answering these questions were panelists Lisa Chang, employment discrimination expert and solo practitioner; Judge Janis Gordon, DeKalb County Court; Debra Schwartz, partner, Thompson, Rollins & Schwartz; Julie Seaman, assistant professor, Emory School of Law; and Jay Cook, partner, Cook, Noell, Tolley & Bates.

Speech is not always illegal, and Chang, an expert in employment discrimination, presented several unreported court cases where judges ruled on whether a violation of the law had occurred. Chang outlined that courts consider the context, the tone and the historical context in which the defendant's comments are made. Chang reported that in one 11th Circuit court case, the plaintiff's supervisor told her she looked like Dolly and "she would bust out of her blouse." (*Henderson v. Waffle House*) Although the court did not find sex discrimination, this was certainly offensive and inappropriate speech. And where African-Americans were called "boy" by their supervisors in another case, no violation of the law was found. Thus, offensive speech is not always considered illegal speech, no matter how outrageous. However, employees do often deal with subtle unconscious comments that are equally offensive. Schwartz added that employees also often contend with subtle nonverbal communications. Giving the Asian associate a back office job "number crunching" or simply being condescending to a peer who is a woman or minority can be just as devastating.

What steps should a manager take when an employee engages in inappropriate behavior or uses inappropriate speech? Gordan advised not to embarrass the employee, but first to educate them and give a warning. If an employee continues the behavior, more serious disciplinary action should follow. Behavior outside the workplace is not always acceptable on

the job and anything that causes embarrassment is off limits.

Through powerful images from the media, our society is bombarded with racism and sexism, and all of these "isms" are institutionalized, powerfully affecting our thought patterns. We subconsciously, or consciously, buy into opinions, ideas and beliefs, no matter how discriminatory or inappropriate. Seaman, who teaches a seminar on hate speech, explained how an "implicit bias test" confirmed that regardless of one's race or sex, we all unconsciously make certain biased conclusions. Further, brain research proves that biased speech and inappropriate communications does affect the performance and behavior of people.

Thomas did not take lightly to a partner calling her "girlfriend." Her question for the panel was, "What does one do to discourage employees from communicating this way?" An attorney in the audience had an even tougher question: "How do you address inappropriate comments with a colleague without jeopardizing your career?" Cook, immediate past president of the State Bar of Georgia, emphasized that although some incidents are too egregious to overlook and must be litigated, others are not. Cook attributed many insensitive comments to ignorance. Cook said the solution is direct communications with the individual. Consider who the person is and take steps to teach them. Education, training, patience and learning to be gracious with others are critical if we are to get beyond this problem. (GB)



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

State Bar of Georgia Diversity Program. For more information on the Diversity Program, go to www.gabar.org/programs/georgia_diversity_program/.

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Kudos

> **Michael A. Buda** was appointed executive director of human resources and legal affairs at Clayton State University. He was formerly the executive vice president of human resources, corporate ombuds and corporate counsel at Jackson Healthcare Solutions in Alpharetta. As executive director, Buda will serve on the president's cabinet as a senior-level administrator and will provide leadership and oversight in all functions of the department of human resources and legal affairs. He will also serve as counsel to the president and university administration.

> **Douglas D. Selph**, a partner with Morris, Manning & Martin, LLP, was elected to the American College of Real Estate Lawyers. Selph, a former chair of the State Bar's Real Property Law Section, is a member of Morris, Manning & Martin's commercial lending, real estate development and finance, and real estate capital markets groups.

>  **Arnall Golden Gregory** partner **Glenn Hendrix** is the new vicechair of the section of international law of the American Bar Association. Next year he will become chair-elect and will serve as chair of the section in 2009-10.

Hendrix

Bob Rothman, a partner in the firm's Atlanta office, was installed as chair-elect of the American Bar Association's section of litigation during the ABA's annual meeting in San Francisco. He is the first Georgian to hold the position, and will automatically become chair of the 75,000-member section in August 2008.

In addition, partner **Frank N. White** helped client ScreamFree Living negotiate a major publishing deal for its innovative new book on parenting—*ScreamFree Parenting: The Revolutionary Approach to Raising Your Kids by Keeping Your Cool*.

>   **Kilpatrick Stockton LLP** announced that intellectual property partner **Ted Davis** was elected to serve a one-year term as financial officer of the American Bar Association's section of intellectual property law. Davis previously served as a member of the governing council of the section and is a fellow of the American Bar Foundation.

Davis

Reddy


Shyam Reddy, an attorney in the firm's corporate department, was named to the prestigious

University of Georgia College of Public Health Board of Advisors.

Stan Blackburn, **Susan Cahoon** and **Mark Levy** were named to the *Lawdragon 3000 Leading Lawyers in America*. Blackburn is a partner in the firm's corporate department. Cahoon is a partner and Levy is counsel in the firm's litigation department.

The firm also announced that it was ranked 12th among the nation's top law firms for pro bono in the quality of life category according to Vault, Inc., a leading media company for career information.

In addition, the firm announced it collected more than 1,200 backpacks filled with school supplies as a part of their 2007 Backpack Challenge. The backpacks were donated to local schools and non-profit organizations.


>  **Fisher & Phillips LLP** Atlanta attorney **Rhonda Wilcox** was named a Super Lawyer—Georgia Rising Stars 2007 by *Law & Politics* magazine. An associate with the firm, Wilcox practices labor and employment law representing employers.

The firm also announced the formation of a global immigration practice, an expansion of the firm's long-standing business immigration practice. The new specialized practice handles immigration and emigration needs for clients ranging from large multinational corporations to small businesses and individuals. The practice also handles transfers between countries outside the United States.

>  Valdosta trial attorney **Roger J. Dodd** was the featured speaker at the International Academy of Matrimonial Lawyers' annual meeting in St. Petersburg, Russia. Dodd lectured on the topic of cross-examining expert witnesses. Audience members hailed from Europe and 15 other countries, including China, Australia, England, New Zealand, South Africa, and 14 American states.

> **Irene Steffas**, principal with Steffas & Associates, P.C., was nominated as an Angel in Adoption™ by Congressman Tom Price and Sen. Johnny Isakson in recognition of her exceptional contributions to international adoption and children issues. Each year, the Congressional Coalition on Adoption Institute honors the work of people who have enriched the lives of foster children and orphans. Steffas received the award in October at the annual gala in Washington, D.C.

- > **Morris Hardwick Schneider**, one of the largest real estate closing law firms in the nation, now offers **services** specifically to assist homebuyers and sellers who speak Spanish. The firm provides clients with useful information written in Spanish, including closing checklists for buyers and sellers, and a Spanish brochure that answers frequently asked questions.

- >  **Lance J. LoRusso** was designated a **lodge attorney** by the **Fraternal Order of Police (FOP)** Kermit Sanders Lodge 13, which covers Cobb County and the surrounding areas. As a lodge attorney, LoRusso will respond to the needs of

law enforcement officers, including response to the scene of officer-involved shootings. This new role is in addition to his longstanding position as general counsel for the Georgia State Lodge FOP. LoRusso is a partner with the Atlanta law firm of Green, Johnson and Landers, LLP.

- >  Macon attorney **Christopher N. Smith** was **awarded** the **2007 Governor's International Award for Individual Contribution**. Georgia Secretary of State Karen Handel presented Smith with a commendation signed by Gov. Sonny Perdue at the Governor's International Awards Black Tie Gala in Atlanta in September.

- > **Powell Goldstein LLP** announced that **Henry S. Rogers** was named **Title Person of the Year** by Dixie Land Association, an association made up of real estate title insurance professionals from Alabama, Georgia and Mississippi. Rogers received this honor at the Dixie Land Association annual convention in September.

Partner **David S. Baker** was appointed **chairman of the ABA Standing Committee on Professional Discipline**. He has served on this committee since 2003. Baker's broad area of practice with Powell Goldstein includes counseling of clients in the areas of mergers and acquisitions, leveraged buy-outs, joint ventures, asset-based financing, distributorship arrangements, environmental matters, health care law and the formation and operation of cooperatives.

Thomas R. McNeill was appointed to the **committee on corporate laws** of the business law section of the ABA. McNeill chairs Powell Goldstein's business & finance practice group and logistics practice.

In addition, partner **Scott Sorrels** was named **national vice-chair** for the **Venturing Program of the Boy Scouts of America**. Sorrels concentrates in

securities and regulatory litigation, corporate investigations and corporate governance counseling and disputes.

- > **Fish & Richardson P.C.** was named the **top intellectual property law firm in the country** in *Corporate Counsel Magazine's* sixth annual survey of "Who Represents America's Biggest Companies." Fish & Richardson took the top spot for IP litigation and patent prosecution.

- > Atlanta sole practitioner **Bruce L. Whitmer** was **elected chairman of the board** and **president** of the **Atlanta Track Club** in September. The Atlanta Track Club may be best known for its conduct of the *Atlanta Journal & Constitution* Peachtree Road Race, the world's largest 10K road race.

- > **The Kiwanis Club of Atlanta** announced the addition of **Mary Paige Adams** to its **board of directors**. Adams is an attorney with the law firm of Green, Johnson & Landers, LLP, where she specializes in healthcare risk management and medical malpractice defense.

- > **Dale Akins**, of the Akins Law Firm, LLC, was recently **elected** to the **South Carolina Bar House of Delegates**. He has also been certified as a circuit court mediator by the South Carolina Bar following an extensive training program in Columbia, S.C.

- > **Baker Donelson** responded to the subprime mortgage crisis with the **creation** of its **subprime mortgage task force**, a multi-disciplinary practice group of attorneys from across Baker Donelson's five-state southeastern U.S. and Washington, D.C., geographic footprint. **Linda S. Finley**, a shareholder in the Atlanta office, is helping to lead the firm-wide effort.

- > **Hunter Maclean employees** lent a helping hand at the Oatland Island Medieval Festival to help **raise funds** for medical supplies and site improvements for the animal refuge. More than 40 Hunter Maclean employees and family members participated. Nearly 3,000 visitors attended the event, which will help the Friends of Oatland Island pay veterinarian bills, improve animal enclosures, buy medical equipment and build an on-site animal hospital.

- > **The Prosecuting Attorneys' Council of Georgia (PAC)** was **recognized** with a **2007 Best of Web and Digital Government Achievement Award** in the digital government achievement category, winning the **Government to Government Award** for their

work on the Cordele Data Exchange Project. The awards are sponsored by the Center for Digital Government.

Also, PAC received a grant from Gov. Sonny Perdue's Office of Highway Safety that will provide the Council with the opportunity to conduct two training courses developed by the American Prosecutors Research Institute.


- > The Augusta regional office of the Georgia Legal Services Program (GLSP) **honored** its pro bono lawyers and donors during its annual "You Make a Difference" awards luncheon held in October. Among those honored at the event was local attorney **Alice W. Padgett**, who was awarded **Pro Bono Attorney of the Year**. Judge **Pamela Doumar** was **recognized** for her outstanding work as a **former board member** and **past president** of GLSP.

On the Move

In Atlanta

- >  **Gary R. Sheehan Jr.** joined **Kilpatrick Stockton LLP** as **counsel**. Sheehan is a member of the firm's environmental team in the litigation department. The firm also elected five new members to its Atlanta partnership effective January 2008: **John Alden**, labor and employment; **Candice Decaire**, litigation; **David Eaton**, corporate; and **Alex Fonoroff** and **Geoffrey Gavin**, intellectual property. The firm's Atlanta office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.


- > **Powell Goldstein LLP** announced that **Henry S. Rogers** joined its commercial real estate practice as a **senior title attorney**. Rogers' responsibilities will include coordinating and handling title and survey closing matters for the firm's commercial syndicated loan practice. The firm's Atlanta office is located at One Atlantic Center, Fourteenth Floor, 1201 W. Peachtree St. NW, Atlanta, GA 30309; 404-572-6600; Fax 404-572-6999; www.pogolaw.com.

- >  **Tammi L. Doss** joined **The Keenan Law Firm** as an **associate**. The Keenan Law Firm represents the needs of catastrophically injured and deceased children and their families. The firm is located at 148 Nassau St., Atlanta, GA 30303; 404-523-2200; Fax 404-524-1662; www.keenanlawfirm.com.


- >   **Marisa Ugalde Sugarman** and **Mark Y. Thacker** joined **Fisher & Phillips LLP** as **associates**. Both attorneys focus their practices on labor and employment law representing management. The firm's Atlanta office is located at 1500 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; www.laborlawyers.com.


- > **Krevolin Horst LLC** welcomed three new attorneys to their firm. **Daniel J. Hoppe Jr.** engages in commercial litigation, insurance coverage disputes, intellectual property matters, employment and labor disputes, real estate litigation, civil matters, appellate work and entertainment practice. Hoppe was most recently an associate with Greenberg Traurig, LLP. **Hemant M. Piduru** joined as an **associate** practicing in the areas of mergers and acquisitions, general corporate matters and commercial real estate. Prior to joining Krevolin & Horst, Hemant was an associate at Lord, Bissell & Brook LLP. **Orlando P. Ojeda Jr.** is a litigator whose practice includes a variety of business and commercial litigation. Ojeda previously worked as an associate with Morris, Manning & Martin, LLP. The firm is located at Suite 2150, 100 Colony Square, 1175 Peachtree St. NE, Atlanta, GA 30361; 404-888-9700; Fax 404-888-9577; www.khlawfirm.com.

- > **Daniel M. Formby** joined **Arnall Golden Gregory LLP** as **of counsel** in their health care and life sciences practice. Formby brings over 30 years of legal experience with the Georgia attorney general's office. The firm is located at 171 17th St. NW, Suite 2100, Atlanta, GA 30363; 404-873-8500; 404-873-8501; www.agg.com.

- >  **Harvey R. Linder** joined **Chaiken Klorfein, LLC**, as **of counsel**. Linder, previously the general counsel and human resources director of the Marcus Jewish Community Center of Atlanta, and the former vice president, general counsel and secretary of both SED International, Inc., and LaRoche Industries Inc., will represent clients in all business, corporate, transactional, finance and commercial matters, and employment and labor matters. He will also continue his practice as an arbitrator and certified mediator. The firm is located at 1140 Hightower Trail, Atlanta, GA 30350; 770-668-5454; Fax 770-668-1677; www.chaikenklorfein.com.

- > **Locke Lord Bissell & Liddell LLP** is the new name of the combination of Texas-based Locke Liddell & Sapp PLLC and Lord Bissell & Brook LLP, a national firm headquartered in Chicago. Locke Lord Bissell & Liddell is a full-service, national law firm of approximately 700 attorneys with offices in Atlanta, Austin, Chicago, Dallas, Houston, London, Los Angeles, New Orleans, New York, Sacramento and Washington, D.C. The firm's Atlanta office is located at The Proscenium, Suite 1900, 1170 Peachtree St. NE, Atlanta, GA 30309; 404-870-4600; Fax 404-872-5547; www.lockelord.com.

- >  **O.V. Brantley** joined **Henning Mediation and Arbitration Service** as a **neutral**. Brantley recently retired from Fulton County after serving two four-year terms as county attorney. Henning Mediation is located at 3350 Riverwood Parkway, Suite 75, Atlanta, GA 30339; 770-955-2252; Fax 770-955-2494; www.henningmediation.com.

- >  **Parker, Hudson, Rainer & Dobbs LLP** announced that **G. Wayne Hillis Jr.** has been named **managing partner** of the firm effective January 2008. Hillis is a partner on the firm's litigation team. The firm's Atlanta office is located at 285 Peachtree Center Ave., 1500 Marquis Two Tower, Atlanta, GA 30303; 404-523-5300; Fax 404-522-8409; www.phrd.com.

- > **Kilpatrick Stockton LLP** and **Abrams, Davis, Mason & Long LLC** announced the formation of a new law firm specializing in the areas of wills, trusts, estates, family business and tax planning, charitable giving, and tax-exempt entities. Initially, Abrams, Davis, Mason & Long will consist of the existing trusts and estates group at Kilpatrick Stockton's Atlanta office. The four principals in the new firm, **Harold Abrams**, **Kim Davis**, **Suzanne Mason**, and **Mary Balent Long**, will be joined by their experienced associates, **Paige Baker** and **Laura Traylor**. The firm is located at Suite 2860, 1100 Peachtree St., Atlanta, GA 30309; 404-815-6060; Fax 404-815-6090; www.abramsdavis.com.

In Augusta

- > **Kilpatrick Stockton LLP** elected **Brian Epps** as a **partner** in the litigation department effective January 2008. The firm's Augusta office is located at Suite 1400 Wachovia Bank Building, 699 Broad St., Augusta, GA 30901; 706-724-2622; Fax 706-722-0219; www.kilpatrickstockton.com.

In Brunswick

- >  **Hunter Maclean** announced that **Janet A. Shirley** has been named **partner** in the firm's Brunswick office. Shirley concentrates her practice in the areas of estate planning and fiduciary law. The firm's Brunswick office is located at Bank of America Plaza, 777 Gloucester St., Suite 305, Brunswick, GA 31520; 912-262-5996; Fax 912-279-0586; www.huntermaclean.com.




In Marietta

- > **Joe Murphey**, recently a partner with Crim & Bassler, LLP, has formed **Murphey's Law Firm, LLC**. Though Murphey continues to represent businesses and individuals in tort and contract litigation, the primary focus of his practice is now alternative dispute resolution. Murphey is a registered Georgia neutral and is available as a mediator/arbitrator through Miles Mediation & Arbitration Services, LLC. The firm is located at 1650 Bill Murdock Road, Marietta, GA 30062; 770-579-2992.

In Milledgeville

- > **Cansino & Petty, LLC**, formerly The Cansino Law Firm, LLC, announced the addition of **Amanda S. Petty** as a member of the firm. The firm will continue to focus in the areas of criminal defense and domestic relations. The firm is located at 203 E. Hancock St., Milledgeville, GA 31061; 478-451-3060; Fax 478-451-3073.

In Savannah

- >    **Hunter Maclean** announced that **Timothy R. Walmsley** and **Jennifer Dick Sawyer** were named **partners** in the firm's Savannah office and **Liz Calvert** joined the firm's corporate and tax team. Walmsley works primarily in commercial real estate development and litigation. He also assists clients on environmental issues as well as matters associated with the ad valorem taxation of real and personal property. Before joining Hunter Maclean, Walmsley acted as a sole practitioner in the Walmsley Law Firm, P.C. Sawyer concentrates her practice in the areas of commercial real estate, shopping center law, timber law, and business law. An accomplished tax and employee benefits attorney, Calvert has 20 years of corporate law experience. The firm's Savannah office is located at 200 E. Saint

Julian St., Savannah, GA 31401; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

>  **Portman & Raley, LLC**, announced that **Erin Brownfield Raley** joined the firm as **special counsel** for the firm's business litigation practice. Raley is an accomplished trial lawyer with over 10 years experience in the areas of business litigation, transportation law, professional malpractice defense and pharmaceutical and medical device litigation. Prior to joining Portman & Raley, she was a partner at Hunter Maclean. The firm is located at 31 Montgomery St., Savannah, GA 31401; 912-233-4175; Fax 912-234-6430; www.ship-law.com.

In Toccoa

> **Brian C. Ranck** joined **Sanders & Smith, P.C.**, as a **partner**. His practice areas include land use, real estate, litigation, collections, creditor bankruptcy, probate and local government law. Ranck also serves as the county attorney for Stephens County. The firm is located at 311 S. Big A Road, Toccoa, GA 30577; 706-886-7533; Fax 706-886-0617; www.sanderssmith.com.

In Chattanooga, Tenn.

>  **Joseph G. DeGaetano** joined the **Law Offices of Morgan Adams**, a multi-lawyer firm that concentrates its practice on cases involving wrongful death and serious personal injuries, as well as dangerous premises, defective products, and egregious instances of medical malpractice. Before joining the Adams firm, DeGaetano worked as a personal injury and commercial litigator with Boulton, Cummings, Connors & Berry in Nashville and Chattanooga. The firm is located at The Adams Building, 1419 Market St., Chattanooga, TN 37402; 423-933-1060; Fax 423-265-2025; www.chattanoogaainjurylaw.com.

In Munich, Germany

> **Fish & Richardson P.C.** opened its first office outside of the United States in Munich in October. The office opened with five professionals, including two partners from the Bardehle Pagenberg firm, with plans to grow to 12 professionals by the end of 2008. The firm's Munich office is located at Regus Business Center, Landsberger Straße 155, Munich 80687 Germany; +49 (89) 57959 105; Fax +49 (89) 57959 200; www.fr.com.

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

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We'll give you a hint. It's A.**



A



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Attorneys Are More Than Witnesses in Real Estate Transactions

by Paula Fredrick

“Hey Boss,” your paralegal calls as she enters your office. “I won’t need Thursday afternoon off after all. My lender called and says they can do the paperwork on the refinance Saturday. They are sending someone to my house!”

“Whoa!” you exclaim. “You’d better be sure you’re dealing with a real lawyer. That sounds like one of those ‘witness only’ setups, and you know that non-lawyers can’t close real estate transactions in Georgia.”

“I got the name of the lawyer, and I’ve already checked him out with the Bar,” your paralegal replies. “He’s licensed and in good standing, so I ought to be okay, right?”




“That depends,” you respond. “I’ve heard some inexperienced lawyers say that all they do is notarize the signatures. They don’t even check the documents to be sure the numbers add up!”

The Supreme Court of Georgia has confirmed that the execution of a deed of conveyance is the practice of law, as is the preparation of a document that serves to secure a legal right. (UPL Advisory Opinion 2003-2, 277 Ga. 472 (2003)). The ethical obligations for a lawyer who handles real estate transactions in Georgia don’t change whether the transaction takes place in a boardroom or in a minivan.

At a minimum, the Bar Rules require that the lawyer be competent to handle the matter. That means the lawyer should have a basic understanding of the area of law and should review the documents to ensure that they were properly drawn.

The lawyer must control the conveyance by being physically present during the transaction, and may not delegate responsibility for the closing to a nonlawyer.

The obligations outlined in Part IV of the Bar Rules also mean that the lawyer owes a duty of fairness to all of the parties to a transaction. The lawyer must be able to exercise independent professional judgment and render candid advice when warranted.

Of course, when something goes wrong with a real estate transaction the lawyer may be accused of ethical misconduct or malpractice. A lawyer cannot escape liability simply by claiming that he acted only as a witness, not as an attorney in the transaction. 



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



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Discipline Summaries

(Aug. 23 through Oct. 19, 2007)

by Connie P. Henry

Disbarments

Curtis Glen Shoemaker

Danielsville, Ga.

Admitted to Bar in 1987

On Sept. 24, 2007, the Supreme Court of Georgia disbarred Attorney Curtis Glen Shoemaker (State Bar No. 643755). The following facts are deemed admitted by his default: In February 2006, Shoemaker issued four checks from his escrow account that were returned for insufficient funds. He refused to respond to the State Bar's inquiry regarding the insufficient funds notices. Additionally, in March 2006, Shoemaker was retained to represent a client in civil litigation and was paid a retainer fee of \$1,750. Shoemaker failed to do any work on the matter, closed his office, failed to communicate with the client, failed to return the client's file, and failed to refund any of the retainer fee. Shoemaker has a prior disciplinary record, including a two-year suspension and a public reprimand.

Terrill Andrew Turner

Atlanta, Ga.

Admitted to Bar in 1980

On Sept. 24, 2007, the Supreme Court of Georgia disbarred Attorney Terrill Andrew Turner (State Bar No. 719867). The following facts are deemed admitted by his default: Three individuals and three companies hired Turner to represent them in their business of purchasing tax liens. Turner received redemption payments from parties with an interest in the properties but failed to notify his clients and failed to remit the funds to his clients or deposit them in his attorney trust account. Instead, he diverted over \$700,000 of redemption payments to himself and at times issued quitclaim deeds to the property owners, signing them as vice president of one of his corporate clients even though he was not an officer of the company. He also occasionally forged the signature of a corporate officer of his corporate clients on the deeds. When his clients confronted him Turner admitted his misconduct and later provided an invento-

ry of the affected properties. Turner did not, however, make restitution to his clients. In aggravation of discipline the Court found that Turner had multiple offenses and showed indifference to making restitution.

Andrew James McKenna

Averill Park, N.Y.

Admitted to Bar in 1998

On Sept. 24, 2007, the Supreme Court of Georgia disbarred Attorney Andrew James McKenna (State Bar No. 494425). The following facts are deemed admitted by his default: In September 2002, while employed by the U.S. Department of Justice, McKenna assisted the Drug Enforcement Administration (DEA) in a narcotics investigation. Numerous search and arrest warrants were executed at several private residences and businesses throughout Houston, Texas. Among the items seized by law enforcement was a Rolex watch and approximately \$35,300. McKenna left the DEA office with a Rolex watch and \$3,500 of seized currency. After meeting with a DEA special agent regarding the missing watch and currency, McKenna gave the watch to the agent but did not produce the currency. McKenna also submitted numerous travel vouchers with false statements and information to the U.S. government between January and August 2002, made unauthorized charges totaling at least \$1,715 with a government issued credit card, and made numerous false statements to government agents who were investigating his conduct. In aggravation of discipline the Court found that McKenna demonstrated a selfish motive in converting property of the U.S. government for his personal use and that he engaged in a pattern of misconduct in so doing.

Stevens J. White

Baton Rouge, La.

Admitted to Bar in 1973

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney Stevens J. White (State Bar No.

754850). The Supreme Court of Louisiana accepted White's petition for "Voluntary Permanent Resignation from the Practice of Law" in March 2004. In the petition, White stated that he recognized that there existed grounds for discipline against him for violations of several rules of the Louisiana Rules of Professional Conduct and he agreed to never again practice law in Louisiana or in any other jurisdiction. The Court found that White did not meet the requirements for the imposition of a lesser discipline in Georgia.

D. Daniel Kleckley

Duluth, Ga.

Admitted to Bar in 1967

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney D. Daniel Kleckley (State Bar No. 425000). Kleckley failed to respond to notices of discipline. The following facts are deemed admitted by default: Three separate clients retained Kleckley to represent them in civil matters. Kleckley received retainer fees; however, he failed to file the actions (although in one instance he represented to the client that he had) and failed to return the clients' papers and fees. One client obtained a judgment against Kleckley and he failed to pay the judgment. In two of the cases Kleckley failed to respond to the notices of investigation. The Court found that Kleckley's actions demonstrated a pattern of misconduct and disregard for the disciplinary process.

Franklin Whitaker Thomas

Atlanta, Ga.

Admitted to Bar in 1999

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney Franklin Whitaker Thomas (State Bar No. 704899). The following facts are deemed admitted by default: A client hired Thomas to represent her in a child support modification case. Thomas met the client in a restaurant and accepted \$750 toward his \$1,500

fee. Thomas rarely responded to the client's inquiries. After learning that Thomas had not filed the petition, the client fired Thomas and asked him to return her file and fee, both of which he failed to do. Thomas did not respond to the notice of investigation.

In another matter a client hired Thomas to represent him in an attempt to modify the conditions of a bond. Thomas met the client in a restaurant and took \$1,000 toward his \$2,500 fee. The client never heard from Thomas again.

The court found in aggravation of discipline Thomas' failure to respond to disciplinary authorities, his indifference to making restitution to his clients; a pattern of misconduct; and that Thomas was not in good standing with the Bar for failure to pay his Bar dues and failure to complete his continuing legal education requirement.

Moreton Rolleston Jr.

Atlanta, Ga.

Admitted to Bar in 1941

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney Moreton Rolleston Jr. (State Bar No. 613700). Over the past 10 years Rolleston continuously filed on his behalf and on behalf of the Morton Rolleston, Jr., Living Trust, actions arising out of a judgment entered against him in a legal malpractice and fraud action in 1995 and the judgment creditors' efforts to collect on that judgment. The Superior Courts in Fulton and Cobb County entered Bills of Peace and Perpetual Injunctions restraining Rolleston from asserting further claims in this matter and the Supreme Court imposed frivolous appeal penalties against him.

Although Rolleston was personally served with a Notice of Discipline, he did not provide a properly sworn response, nor did he provide an explanation of his conduct. The Court found that Rolleston showed no remorse for his actions and continuously plagued the judicial system with untenable claims for purposes

unbefitting of any member of the Bar. On numerous occasions, the Court personally witnessed Rolleston's recalcitrant behavior, including his open disrespect towards the judiciary and the laws of Georgia and disregard for the ethical standards imposed upon members of the Bar.

Coatsey Ellison

Jonesboro, Ga.

Admitted to Bar in 1988

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney Coatsey Ellison (State Bar No. 246120). A client hired Ellison to represent her in a modification of child custody action in February 2002. Ellison received discovery requests but failed to tell the client. On Sept. 26, 2002, the client received a letter from Ellison stating that it was his third request for her to complete discovery and that he would withdraw if she did not respond that day. The client completed discovery, but Ellison did not serve it until Oct. 31, 2002. The case was tried in April 2003. Ellison told his client that he filed a brief, although he did not do so. The court ruled against the client. Ellison said he told her he filed a notice of appeal in June 2003, but his client said she did not know the court ruled against her until she went to the courthouse in October 2003. Ellison did not return his client's calls and she fired him in October 2003. The client believed Ellison had perfected her appeal as she paid the costs of transmitting the record but he had taken no action. The Court of Appeals dismissed her appeal in January 2004.

In another case Ellison filed a Chapter 7 bankruptcy case on behalf of his clients on May 30, 2003. When the U.S. Trustee moved to dismiss the case, Ellison filed a motion to convert it to a Chapter 13 and forged his clients' names on the verification, notarized the forged signatures and attested to their authenticity. Ellison filed a Chapter 13 but the U.S. Trustee objected and Ellison moved to re-

convert the case back to a Chapter 7, again forging the clients' names without authorization. The clients became so frustrated by their inability to reach Ellison that they informed the U.S. Trustee that Ellison had forged their signatures. The clients retained other counsel. The Bankruptcy Court suspended Ellison from filing any new cases for 180 days.

In a third case, a client hired Ellison on Sept. 14, 1999, to represent her son in a medical malpractice case. The client moved several times, but always advised Ellison of her current address. He did not contact her during 2000 and although she traveled from Florida to meet with him, Ellison did not keep the appointment. In June 2001, Ellison filed the action against the hospital and the doctor but in August dismissed against the hospital without permission. Ellison did not serve the doctor until Dec. 20, 2002. In January 2003, Ellison discovered that the doctor's insurance carrier became insolvent and sent a Proof of Claim to the liquidator without informing the client and which Ellison apparently forged. The liquidator denied coverage but Ellison did not inform his client. Ellison dismissed her lawsuit without prejudice. The insurance carrier valued the client's claim at \$0 based on the dismissal of the lawsuit and the third party claims administrator wrote Ellison and told him that coverage was denied because the statute of limitations had expired. Ellison did not inform his client about the denial of her claim but in April 2005 he told her she could not recover any damages. Ellison failed to provide the client with a copy of her file and did not respond to her telephone calls.

The Court noted in aggravation of discipline that Ellison had a prior disciplinary record; that he had a pattern of misconduct; that he submitted false statements during the disciplinary proceedings; and that he refused to acknowledge the wrongful nature of his

conduct and the vulnerability of his victims.

Paul Walter David

Augusta, Ga.

Admitted to Bar in 1993

On Oct. 9, 2007, the Supreme Court of Georgia disbarred Attorney Paul Walter David (State Bar No. 206501). This disciplinary matter encompasses 15 separate disciplinary offenses. In 10 of the cases David accepted the appointments to represent criminal defense clients but did little or no work on their cases. In many of the cases, he missed filing deadlines. In others, he filed notices of appeal but failed to notify the client of the resolution of their appeal. In some, he refused or failed to respond to inquiries from the client or their families and in others he failed to even notify the client of his appointment. David abandoned three clients in civil matters as well.

On Aug. 26, 2004, David entered a guilty plea in the Superior Court of Richmond County to felony tax evasion and the Court sentenced him as a first offender to five years probation, plus fees, community service and restitution of \$6,248.

The court found in aggravation of discipline multiple offenses showing an extensive pattern of misconduct and neglect over a course of years, and a prior disciplinary record. In further aggravation the Court noted that most of the underlying grievances involved indigent criminal defendants who suffered needless worry and concern. In mitigation of discipline the court found that David lacked a selfish motive, that his conduct may have been caused in part by psychological and personal problems, and that he expressed remorse.

Suspensions

Juan Lopez Morales

Lilburn, Ga.

Admitted to Bar in 2003

On Sept. 24, 2007, the Supreme Court of Georgia suspended Juan Lopez Morales (State Bar No. 521531) indefinitely with condi-

tions for reinstatement. Morales was the plaintiff in a personal injury action and was represented by counsel. After judgment was entered, Morales's lawyer moved to enforce the attorney's lien against the damages awarded. Morales disputed the lien and moved to disqualify the trial judge, which motion was denied. The Court of Appeals denied his application for interlocutory appeal, and both the Supreme Court of Georgia and the Supreme Court of the United States denied certiorari. Morales filed a civil rights action in the United States District Court for the Northern District of Georgia, naming as defendants his former lawyers, the trial judge, a member of the judge's staff, the clerk, deputy clerk and assistant clerk of the Court of Appeals, and the judges on the panel that ruled on his application for appeal. Morales alleged a conspiracy to deprive him of his property. After a grievance was filed with the State Bar, Morales voluntarily dismissed the federal action.

The Court concluded that the federal action was unwarranted and was without a good faith exception because Morales should know that judges acting within their judicial capacity are immune from suit for money damages. His claims of conspiracy by the Court of Appeals judges amount to false statements that the judges did not tell the truth simply because they ruled against him.

Morales is suspended for a period of not less than one year. He must submit to physical and mental examinations by licensed and board-certified physicians, the results of which must be submitted to the Office of the General Counsel and the Lawyer Assistance Program (LAP). Morales must begin any recommended treatment and agree that, after resuming the practice of law, he will continue treatment with a mental health professional, who will report his condition to the LAP until the professional and the LAP agree that he no

longer needs professional consultation. Upon obtaining certification that he has submitted to the examinations and has begun treatment if necessary, Morales may petition the Review Panel for review and recommendation as to whether the Court should lift the suspension.

Shannon Camille Johnson

Orlando, Fla.

Admitted to Bar in 2001

On Sept. 24, 2007, the Supreme Court of Georgia suspended Shannon Camille Johnson (State Bar No. 395440) for a period of two years. In an amended petition for voluntary discipline, Johnson admitted that she violated Rules 1.3 and 1.4 in her handling of legal matters undertaken for three different clients and requested a two-year suspension. Between August 2003 and December 2005 Johnson agreed to represent three separate clients. She either failed to do any substantive work on their legal matters or failed to complete the work. She also failed to adequately communicate with the clients and as a result, each of the clients suffered some form of harm, ranging from needless worry to a lost cause of action. Johnson has subsequently closed her practice and relocated to Florida. In aggravation of discipline the Court found that Johnson has a prior history of discipline, a pattern of misconduct, and multiple offenses. In mitigation, Johnson cooperated with the State Bar, had no dishonest or selfish motive, and is remorseful for inconvenience she may have caused her clients. Justices Hunstein and Melton dissented from the order.

John M.B. Lewis IV

Augusta, Ga.

Admitted to Bar in 1986

On Oct. 9, 2007, the Supreme Court of Georgia suspended Attorney John M.B. Lewis IV (State Bar No. 450890) for 24 months with conditions for reinstatement. Lewis pled guilty to one count of possession of cocaine in the Superior Court of Richmond County. Lewis

was given first offender treatment and sentenced to five years on probation. The Court found that Lewis has been a member of the Bar in good standing for over 20 years; that he had no prior discipline and no criminal record; that his conduct did not relate directly to his work for his clients; and that it did not involve dishonesty. Lewis has been suspended from practicing law since Jan. 5, 2007, as a result of a condition of his guilty plea.

Prior to reinstatement Lewis must obtain certification from the director of the LAP that he successfully completed the program. Upon such certification, Lewis may petition the Review Panel for review and recommendation as to whether the Court should lift the suspension. Justices Hunstein and Thompson dissented from the order.

Review Panel Reprimand

Arleen Evans


Warrenton, Ga.

Admitted to Bar in 1985

On Sept. 25, 2007, the Supreme Court of Georgia accepted the petition for voluntary discipline of Arleen Evans (State Bar No. 283960) and ordered that she be administered a Review Panel reprimand. Evans admitted that she violated Rules 1.3 and 1.4 in three matters and that she violated Rule 1.16 in one matter. Evans represented three separate clients in civil matters without major inci-

dent until the Fall of 2003 when she began suffering from health issues leading to laser surgery on both eyes, various hospitalizations and the ultimate amputation of her right foot and lower leg in the fall of 2004. It appears that her failure to communicate with (and apparent abandonment of) her clients directly coincided with her health problems. In mitigation of discipline the Court found that Evans had no prior discipline record; she was cooperative the State Bar; was remorseful about the frustration and inconvenience she caused her clients; that she did not intentionally mean to cause her clients harm; and that she agreed to reimburse the fees paid to her in one case at a rate of \$150 per month until paid in full.

Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 23, 2007, one lawyer has been suspended for violating this Rule, and none have 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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Five Steps to Effectively Coach and Manage Your Support Team

by Natalie Kelly

Efficient associates and a productive support staff are cornerstones of a successful law practice. Firms that lag behind in focusing on associate and staff development or allow problems to persist without any meaningful form of intervention or solution often find that their businesses are not thriving. All indicators suggest that there is a direct correlation between staff development and firm success.

To ensure success in your firm, follow these five basic steps for coaching and managing staff and associates.

Start With Yourself

Begin by looking in the mirror. It all starts with you—the firm. Your firm’s mission statement should be the focus of what you wish to attain with associates and staff. Keep a copy of the mission statement readily visible and make sure your staff and associates understand it and, where applicable, follow it. A copy of the mission statement should be included in the policies and procedures manual.

Integrating support staff into the firm can be difficult. It is important to have incoming and existing support personnel understand your firm’s needs and goals. For instance, if the firm’s focus is marketing to a new practice



area and developing a substantial client base in that area, it will be important to share this vision with associates coming into the practice. It is equally important that you share this vision with your paralegals, legal assistants and even the receptionist, as they will likely have frequent contact with the client base and potential clients.

Ultimately, your staff's integration into your practice begins with their understanding of your practice.

Follow Up First

Many firms perform evaluations of varying sorts for their staff and associates. For instance, annual performance reviews for associates and staff are highly recommended. While this practice is a critical step in the training and development process, ensuring that you follow up on these sessions is equally critical.

Always schedule meetings to follow up on evaluations. Staff can learn that they need to improve in certain areas, and associates are introduced to appropriate tools and methodology for dealing with firm business. Pay attention to what works, what does not work and why. Use this information for effective management and staff development.

Create a Realistic Training Program

When you create a training program, you do not need to start from scratch; sample resources available from our department are listed at the end of this article.

Using your existing policies and procedures manual as a framework, draft a program that keeps your current needs in mind and that can transition into the future. Some areas to consider are technology usage, practice area support (associate performance and staffing needs), revenue generation, client development and client retention.

For training associates, you should develop a checklist that serves as a roadmap for their initial experiences with your firm. While one way to discern if an associate is a good fit may be how well he or she navigates your practice, a general roadmap ensures that the associate's journey does not create a serious disaster for the firm. A useful associate training program benefits associates by helping them reach the goal of becoming senior associates or partners.

Develop written objectives and measurable requirements for your staff. Where deficiencies exist, remember that staff training can directly benefit the firm's bottom line. You can also develop loyalty as you equip staff with the skills they need to do their jobs.

Train Your Trainers

Adequately training the folks who will impact the direction of those being trained, is another way to successfully coach your support team. You should make sure the information presented is consistently and in line with the firm's needs and wants.

For staff development, make sure that you provide management-level staff, such as administrators, with what they need to evaluate and follow up on your training program goals and requirements. You should also have the managing partner or training partners working from the same playbook as it relates to training associates.

Mentor and Counsel Beyond the Training Program

Often the only feedback that is given to support teams is negative. When certain things go wrong or results are unexpected, you can learn from these experiences. Work with support staff and associates to gain direction from what did not work and also share what did work as you deal with client matters and other office experiences.

Formal mentoring programs, like the State Bar's Transition into Law Practice Program, will outline steps for working on relationships between firm leadership and support staff. It is important that a continuing dialogue and action plan are in place going forward with developing associates and staff. You can refer to your firm's strategic and long range plans for guidance with any mentoring or counseling you will need to do.

These steps are very basic, but their implementation can lead to more successful and productive use of support resources. Our department provides the following additional resources for you, your associates and support staff.

Books/CDs/Videos

- *ABA Guide to Professional Managers in the Law Office* — ABA exposition on the need for and emergence of professional managers in the modern law office
- *Altman Weil Pensa Archive on Human Resources Management for Law Firms and Corporate Law Departments, The* — collection of articles focusing on human resources and personnel management in the law firm
- *Complete Do-It-Yourself Personnel Department, The* — a personnel kit for establishing the basic personnel function in a business through model forms, checklists and sample manuals
- *Complete Personnel Administration Handbook for Law Firms* — provides the resources for keeping up-to-date with changing laws and emerging trends in personnel administration
- *From Law School to Law Practice: The New Associate's Guide (2nd Edition)* — includes coverage of what the expectations are for a new attorney in a corporate legal department
- *Handling Personnel Issues in the Law Office: Your Legal Responsibilities as an Employer* — guide book for law firm management with an overview of laws governing employment relationships and tips for carrying out an employer's legal responsibilities
- *Keeping Good Lawyers: Best Practices to Create Career Satisfaction* — how to maximize your top legal talent, including how to approach retraining your experienced attorneys and an associate development plan

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hands-on workbook is an invaluable tool for lawyers at all stages of their professional life, from law students to high-level professionals transitioning careers

- *Leveraging with Legal Assistants*—learn how to use your para-professionals to the firm's financial advantage
- *Managing Partner 101, A Guide to Successful Law Firm Leadership, 2nd Edition*—a volume that articulates a series of concepts and philosophies for a successful law firm
- *On Training Associates*—how to develop in-house associate training and professional development programs for your firm
- *Your New Lawyer*—a guide to recruitment, development, and management of attorneys; considers ways to maximize their performance after hire
- *Are You Listening?* (CD)
- *Evaluating Associates for Growth and Profit* (Video/CD)

Sample Forms

- Associate Employment Agreement
- Buy-Sell Agreement
- Employment Agreement—Employee and Partnership Employer
- Associate Feedback: Assignments
- Associate Marketing Evaluation Form
- Manager's Self Audit
- New Employee Checklist
- Staff Feedback Regarding Assigned Tasks
- Staff Management Self-Audit

If you need any other assistance with this very important area of practice management, please give us a call. 



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

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Successful and Thriving Programs in Tifton

by Bonne Cella

The Transition Into Law Practice Program (TILPP), which replaced “Bridge the Gap,” is a resounding success! Other bar associations in the United States, Canada and even China are making inquiries on how to replicate this mentoring program to benefit their new bar members. Douglas Ashworth, director of the program, recently shared this good news with the Tifton Judicial Circuit Bar while presenting a one-hour professionalism CLE on mentoring.

Jennifer Dorminey, the youngest member of the Tifton Judicial Circuit Bar, recently completed the mentoring program and acknowledged how valuable it had been for her. Bar members then enjoyed hearing about how it was in the “old days” before CCLC, from their oldest bar member, Gerald (Gerry) Kunes. Admitted in 1949, Kunes reminisced about his days conferring with Anthony Alaimo, Gus Cleveland and other notables as they mentored one another.

Ashworth said that experienced attorneys all over the state have volunteered to be mentors and that there has not been a shortage of these counselors even with approximately 900 new Georgia lawyers each year. At



Photos by Bonne Cella

The YLD High School Mock Trial Committee met in Atlanta as their South and Central Georgia committee members convened at the State Bar Office in Tifton. Committee members enjoyed time together as they waited for the video conference to begin.

the close of the program, seasoned bar member Tommy Pittman quipped, “Now all we need is a Transition *Out of* Law Practice Program!”

Ashworth is available to speak to your local bar association about TILPP. If needed, the South Georgia office can facilitate the event and contact your local bar association members. Please contact the office for more information.

Mock Trial Training

After the excitement of winning the 2007 National Mock Trial Championship, the YLD High School




Douglas Ashworth, director of TILPP; Jennifer Dorminey, Tifton Judicial Bar's youngest member and newly elected president; Gerry Kunes, Tifton Judicial Bar's oldest member; and Bryce Johnson, immediate past president of the Tifton Judicial Bar.

Mock Trial Committee is hard at work planning for the upcoming season. The committee met in Atlanta as their South and Central Georgia committee members convened at the State Bar Office in Tifton to participate through video conferencing. Stacy Rieke, high school mock trial coordinator, presented an overview of the competi-

tion. Other presenters on the program were: Charlton Norah, teacher, North Clayton High School, who spoke about the role of teacher coach; Carl Gebo, attorney, Powell Goldstein, LLP, who reviewed the role of attorney coach; Robert Smith, Georgia State Department of Law, talked about "A View from the Jury Box;" and

Peggy Caldwell, Assistant Mock Trial coordinator, who addressed "Understanding the Power-Match System."

Additionally, the High School Mock Trial Committee now offers an original video, "May It Please the Court," featuring interviews with students, teachers and attorney coaches. This video, along with a valuable resource booklet, is available to help your local High School Mock Trial team and may be ordered from the State Bar of Georgia for \$25. Visit www.georgiamocktrial.org for more information.

The South Georgia office is available to facilitate your meetings and programs, and will work with you to create a positive and professional experience. For more information, contact Bonne Cella at 229-387-0446. 



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.

Update Your Member Information

Keep your information up to date with the Bar's membership department. Please check your information using the Bar's Online Membership Directory. Member information can be updated 24 hours a day by visiting www.gabar.org/member_essentials/address_change/.



Enhancing Pro Bono and Civil Legal Services Delivery

by Mike Monahan

The State Bar of Georgia Pro Bono Project, a joint effort of the State Bar of Georgia and Georgia Legal Services Program (GLSP), has piloted new technology to enhance pro bono and civil legal services delivery. These new tools are housed in the Georgia Online Justice Community at www.GeorgiaAdvocates.org/GOJC—our statewide volunteer lawyer and advocate support website.

With special funding from the federal Legal Services Corporation, the State Bar Pro Bono Project has piloted and implemented our new web-based video project (“webcasting”) with technical support from Probono.net. The online video project is designed to deliver training and support to volunteer lawyers and advocates across the state.

The online video project provides Georgia’s pro bono and legal aid community with the capacity to broadcast live trainings over the Internet that can be viewed from your office desktop PC or from anywhere you have an Internet connection. These trainings are also archived in our online library so that advocates can view them as



necessary. Training materials can accompany these live and archived video presentations. The online video project has many potential uses, including video resources for low-income clients in languages other than English, distance learning potential, program staff training, and brief website messaging.

In addition to the webcasting project, the State Bar Pro Bono Project is set to launch LiveHelp. LiveHelp is an instant messaging tool that allows advocates looking for legal information and resources on


GeorgiaAdvocates.org to ask a remotely located website operator for help in finding that information or resource. The Georgia Advocate is home to more than 6,000 resources, including manuals, forms, calendar events and more, so lawyers who are new to the site need extra support in navigating through the website. In addition to navigation assistance, trained pro bono coordinator “operators” will be able to provide potential volunteers with referrals to legal aid and pro bono organizations, highlight available cases, and “co-browse” with the advocate to demonstrate how to use various tools on the website.

The State Bar Pro Bono Project is also managing a “one-web” approach to integrate the web content found on GeorgiaAdvocates.org with the case management system of Georgia Legal Services Program. By Spring 2008, GLSP advocates will no longer need to leave their Internet-based case management system to find the content they

have created and posted on the statewide advocate site. Through Really Simple Syndication (RSS) and Extensible Markup Language (XML) specific county and case-type coded content found on GLSP’s case management system and the Advocate website will flow back and forth, putting content at the advocate’s fingertips. The content integration project will increase productivity and help ensure that advocates easily find all available content for a specific client matter.

The State Bar of Georgia Pro Bono Project and GLSP, in partnership with the Legal Services Corporation, are also reaching out to law schools by adding a new technology tool to assist law school clinical programs in increasing clinical involvement of students in *pro bono publico* service.

In 2007, GLSP and the Pro Bono Project will launch the LawMatch Project—an interactive web-based software package that will match volunteer and GLSP attorneys

who have research or case assistance needs with law students looking for hands-on work. LawMatch will allow law students to create accounts and post profiles and resumes. Georgia volunteer lawyers and GLSP staff advocates will have the opportunity as well to create accounts and post available projects for law students. The web-based module allows a law school clinical program director or staff person to review and approve student accounts and to review the student’s work as it is uploaded to the web module. Lawyers posting projects will be able to provide online feedback to students and to the clinical program. 



Michael Monahan is the director of the Pro Bono Project for the State Bar of Georgia and can be reached at mike@gabar.org.

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Sections Begin Bar Year with CLE Luncheons, Seminars

by Johanna B. Merrill

The **Technology Law Section**, chaired by John Hutchins, held its first quarterly CLE luncheon of the 2007-08 Bar year on Sept. 25 at the The Buckhead Club in Buckhead. Aaron Danzing, assistant U.S. attorney and Larry Kunin of Morris, Manning and Martin spoke on the topic "Your Computer Has Been Hacked: What Are Your Remedies?" The pair discussed a review of the Computer Fraud and Abuse Act, the Stored Communications Act and the Georgia Computer Systems Protection Act.



J. Martin Lett, Kim Morrise, Gina Henschen, Scott Moran, Michael Quigley and Lisa Moore at the Entertainment & Sports Law CLE luncheon.

The Litigation Committee, chaired by Brad Groff, of the **Intellectual Property Law Section**, chaired by Todd McClelland, presented "Underwater Devices Dries Up? Life After *In re Seagate*," a panel discussion with speakers James Ewing IV, Kilpatrick Stockton LLP; Steve Wigmore, King & Spalding LLP; Bernie Zidar, McKesson Technology Solutions; and Daniel Kent, Fish & Richardson, PC.

On Oct. 5 the **Creditors' Rights Section**, co-chaired by Jan Rosser and Harriett Isenberg, hosted its annual CLE luncheon at Maggiano's Little Italy restaurant in Buckhead. This year's topic was "The Real Scoop on Garnishments and Levies During 2007," with speaker John Swann of Freisem, Macon, Swann & Malone PC. More than 55 attorneys and their guests were in attendance.

On Nov. 14, the **Entertainment & Sports Law Section**, chaired by Lisa Moore, hosted a quarterly CLE luncheon at Shout! restaurant. The program, titled "In Your Home, At Your Desk & On Your Phone: Filmed Content Deals for TV, Internet and Mobile," featured speakers Michael



Miles Alexander, Sandy Evans and Truett Cathy were the first recipients of the Intellectual Property Legends Awards.

Quigley and Scott Moran, both of Turner Broadcasting, and Gina Henschen and Kim Morrise, both of The Weather Channel.


At the November meeting of the Board of Governors, the Bar's 40th section was approved—**Franchise and Distribution Law Section**. The purpose of the section is to promote the education and best practices of franchise and distribution law among Bar members. Perry McGuire of Douglasville will serve as the acting chair for the remainder of the 2007-08 Bar year. To join the section, please contact Section Liaison Johanna Merrill at johanna@gabar.org.

Update From the Sections

Georgia State's College of Law and College of Business Presented First Intellectual Property Legends Awards Oct. 17, submitted by Kathryn Wade

The Georgia State University College of Law and J. Mack

Robinson College of Business hosted the Inaugural Intellectual Property (IP) Legends Awards Luncheon on Oct. 17 at the Four Seasons Hotel in Atlanta, with approximately 225 in attendance. The State Bar of Georgia's **IP Law Section** was a co-sponsor of this year's event. The first recipients of the IP Legends Awards were Miles Alexander, partner at Kilpatrick Stockton LLP; S. Truett Cathy, founder and chief executive officer of Chick-fil-A; and Sandy Evans, former chief IP counsel for BellSouth. The IP Legends Award will be given yearly, recognizing individuals who have made significant contributions in the area of intellectual property, both in the business and legal arenas. In addition, IP Legends Award recipients are individuals who have served as role models for their peers, subordinates, and future members of the intellectual property community, have displayed the highest level of ethics in their careers, and have had a positive impact on their communities.

"In the U.S. and around the world, our rapidly evolving, knowledge-based economy is dependent on intellectual capital and driven by ideas and innovation," explained Scott Frank, president of AT&T Intellectual Property and a founding member and chair of the Georgia State College of Law Intellectual Property Advisory Board and past chair of the Bar's IP Law Section. "Intellectual property is one of the primary components of the intangible, conceptual assets in business, which today account for approximately 75 percent of the value of most publicly traded companies. So naturally, there is a strong connection between IP law and success in business." 



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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Casemaker: Using the Federal Libraries

by Jodi McKenzie

In the last Casemaker article, we asked our members to take a look at the test version of Casemaker 2.0 and provide feedback for the final development stage. Casemaker has completed its testing phase, and based on the feedback they received, are in the final stages of developing Casemaker 2.0. The new features and expanded datasets are scheduled to become effective December 2007.

One of the most significant benefits to 2.0 will be the expansion of the Federal Library content. Let's take a look at what's available now in the Federal Library and what we can look forward to in 2.0. You can access the Federal Library from the main Casemaker content page. Simply put your cursor over the Federal Library link and click on it to open the library (see fig. 1).

The Federal Library content page (see fig. 2) will open to give you access to its contents. The Federal Library gives you access to the U.S. Circuit Courts, the U.S. Supreme Courts, U.S. District Courts and U.S. Bankruptcy Opinions. There is also access to the U.S. Code, Federal Court Rules, the Federal Code of Regulations, the USC Bankruptcy Reform Act, the Federal Code of Regulations, the U.S. Constitution, and Federal Court Forms.

Whenever you are on content page for either an individual state or for the Federal Library, you will find a link for "Current Contents Information" at the bottom of the page (see fig. 3). This is an important link because it will take you to a page that will tell you the timeframe for the contents of each dataset in library in which you are currently searching.

The first column of the current contents page will tell you how far back in time each of the datasets extends. The beginning of the dataset will be indicated either by a specific year or the reporter book being used for that dataset. For example, it is indicated that the U.S. Supreme Court currently begins with cases from 1893. In contrast, the U.S. Circuit courts indicates that it begins with Federal Circuit Reporter 1 F. 3d (see fig. 4). This is an important distinction because the Federal Circuit Reporter 1 F. 3d could include different starting

years for different circuits. It is also important to note here that the complete 11th Circuit dataset is available through the Georgia Library in Casemaker.


The second column will indicate how current each of the datasets are (see fig. 5) Again, this is typically indicated by the most current reporter volume for that dataset. When Slip Opinions are available, an exact date will be provided.

Casemaker 2.0 will include expanded Federal content including all Circuit Court Opinions going back to 1950, and all U.S. Supreme Court Opinions going back to 1790. When this change takes place, it will be indicated on the Current Contents page.

Searching in the Federal Library works the same way as searching in the state libraries. Here, we are in the U.S. Circuit Opinions search mode. Just as in the Georgia Caselaw dataset, there is a basic search option, which allows you to search for keywords within the content of an opinion. There is also an advanced search option, which allows you to do searches by citation number, case name, attorney or judges' names or specific time frames. By clicking on the pull-down button of the "Group to Search" field, you can select to search all circuits at once, or an individual circuit (see fig. 6).

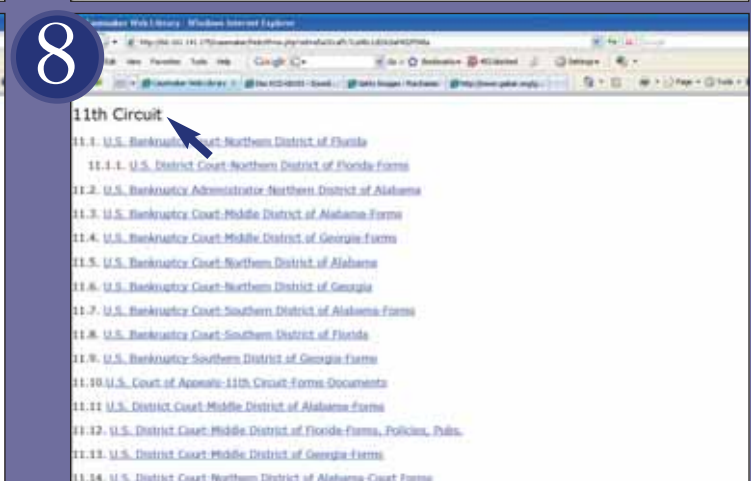
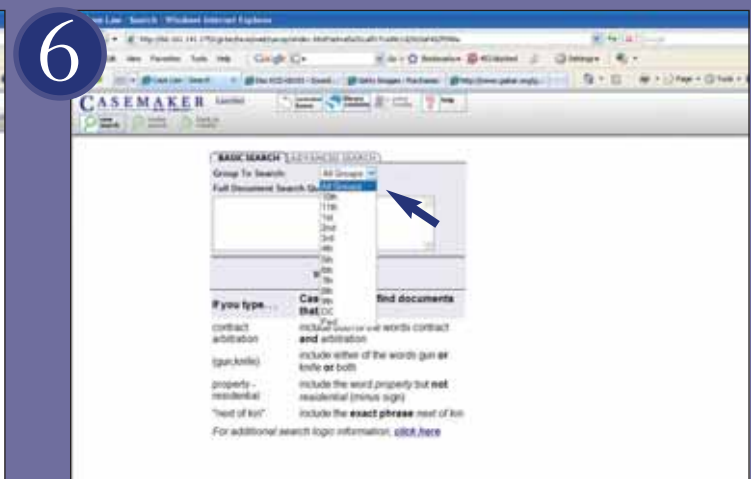
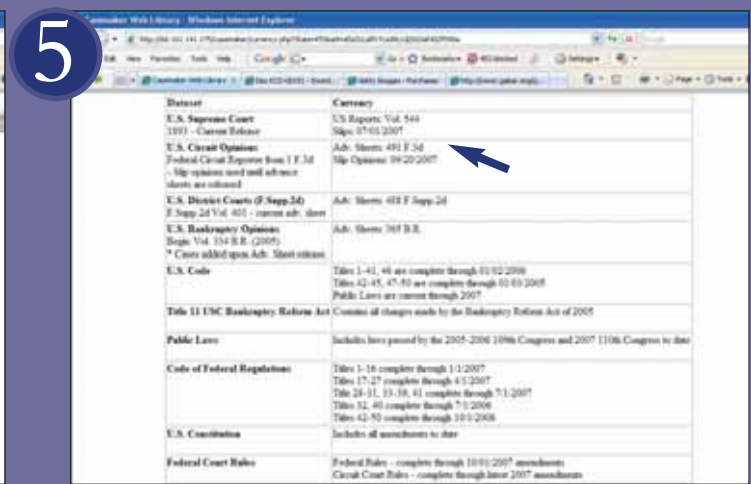
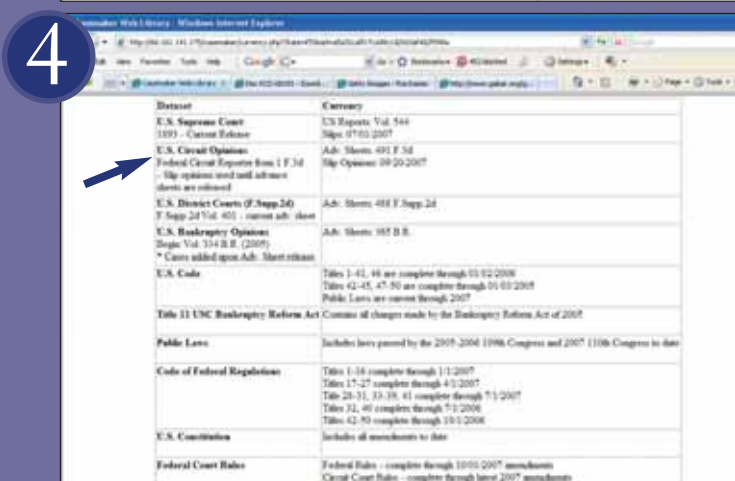
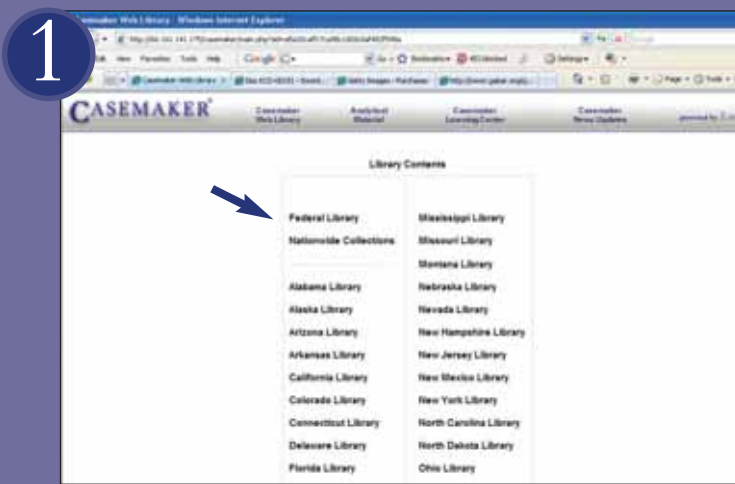
You will notice on the content pages of all libraries in Casemaker that you will have some datasets that offer both a "Search" option and a "Browse" option. Here we have chosen the "Browse" option of the U.S. Code. The "Browse" option takes you to a table of contents format for that particular dataset. Here we can see that the "Browse" option gives us a table of contents for the U.S. Code with chapter titles and subsection titles (see fig. 7).

The "Browse" mode for the Federal Forms link will take you to a list of forms available for the various circuits. You must scroll almost to the bottom of the screen to get to the 11th Circuit forms (see fig. 8). Here you will find U.S. Bankruptcy and U.S. District Court forms for the 11th Circuit.

Casemaker is continually adding new content and features to make it one of the most valuable benefits the Bar offers its members. 



Jodi McKenzie is the member benefits coordinator for the State Bar of Georgia and can be reached at jodi@gabar.org.



Writing Myth Busters

by Karen J. Sneddon and David Hricik

This installment examines six popular writing myths, often expressed as “rules” or marked as “errors” in writing. In fact, although these principles often serve important purposes, treating them as unbreakable rules can hinder effective communication.

Myth 1: Never Split an Infinitive

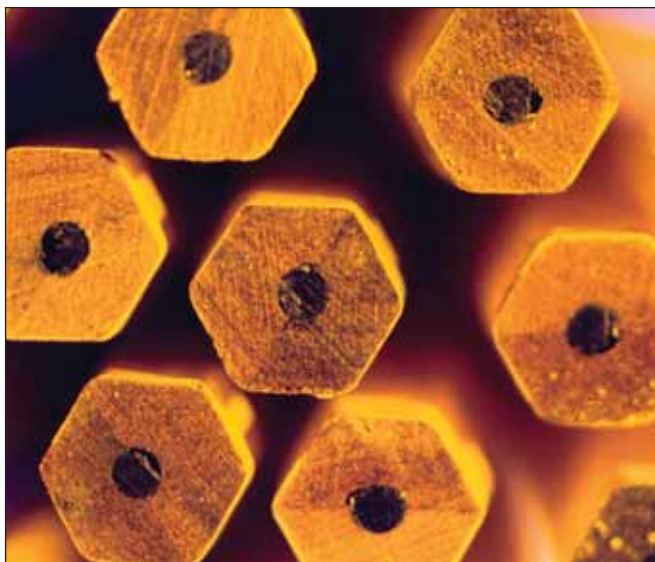
An infinitive is split when a word is placed between the word “to” and the verb stem. Thus, Captain Kirk split an infinitive when he said “to boldly go” rather than “to go boldly.” The “rule” to not split infinitives probably originated from a desire to emulate Latin. In Latin, infinitives are not split because they are one word. For example, *legere* means to read. But English is not Latin. Whether this rule serves any purpose is subject to debate, but it is ingrained in many readers, so care should be taken to avoid splitting infinitives, but they can be split and should be split when necessary to avoid awkward or strained constructions.

Myth 2: Never End a Sentence With a Preposition

Following this supposed rule results in awkward constructions: “This is the type of arrant pedantry up with which I shall not put.”¹ Although this “rule” is widely recognized, it is generally less rigidly followed than Myth 1. Since the days of Chaucer, writers have ended sentences with prepositions, and effective writers can do so when otherwise the construction is awkward or unnatural. You should, too.

Myth 3: Never Start a Sentence With “And,” “But,” “Or,” or “Because”

Unlike the first two myths, this one serves the valuable purpose of avoiding sentence fragments. Students



just learning the rudiments of the English language might write: *Santa brought me a bike. And a soccer ball. And a book.* A “rule” that a sentence cannot start with “and,” “but,” “or,” or “because” helps to prevent sentence fragments. Although a good general rule, rigidly adhering to it could hinder communication. For example, beginning a sentence with “because” can be particularly useful to express cause and effect relationships. On the other hand, even though it is permissible to start a sentence with “and,” “but,” or “or,” doing so can be jolting to some readers. Instead, a stronger transition (like the conjunctive adverbs “however” or “therefore”) often may be better used to help the reader understand how the sentences relate to each other. But, there is no rule against it, and sometimes it is effective to do so.

Myth 4: A Paragraph Must Be Longer Than One Sentence

Many of us were taught in elementary school that a paragraph has three to five sentences. No more, no less. This “rule” probably arose to encourage writers to fully develop an idea. Although the presence of multiple one-

sentence paragraphs can be distracting, a one-sentence paragraph in the midst of a swarm of lengthy paragraphs can: (1) emphasize a key point; (2) function as a transition; or (3) provide the reader with a visual break to absorb the information.


Myth 5: The Serial Comma is Not Needed

The *New York Times* no longer uses the serial comma. So, in a list of three or more items, there need not be a comma between the penultimate item and the conjunction ("A, B and C" rather than "A, B, and C"). With all due respect to the *Times*, in legal writing, omitting the serial comma can create ambiguity. For example, if Dumbledore gives his property "to Harry, Ron and Hermione," should his property be divided into two shares or three shares? Omit the serial comma only when doing so does not change the meaning you intend or create unintended ambiguity.

Myth 6: "Impact" is a Noun Not a Verb

Language is always changing. Nouns turn into verbs. Some readers strongly disprove of such linguistic transformations. For example, some readers strongly object to the use of "impact" as a verb when "affect" and "influence" could easily be used instead. (There is even a website called www.impactisnota-verb.com.) "Contact," "access," and "mainstream" are nouns that have been accepted as and are often used as verbs. So, while "impact" may not be a verb to many now, in 15 years, readers may not even notice that "impact" can be a noun and a verb.

Conclusion

Recognizing and avoiding the mythical rules of writing can be liberating. However, remember the audience. It is better to follow the myth than to distract the reader with an awkward or unexpected construction.² 

Examples

What do you think of the following?

- The law professor permitted the student to briefly consult her notes before answering the question.
- Which department does the client work in?
- Because of the impending filing deadline, the attorney worked through lunch.
- The client contacted the attorney immediately.



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.

Endnotes

1. This pithy statement is one version of the statement popularly attributed to Winston Churchill, although it is unclear whether the attribution is correct. See Churchill on Prepositions, <http://www.wsu.edu/~brians/errors/churchill.html>.
2. We consulted the following resources to assist in formulating and debunking these myths. *The Chicago Manual of Style: The Essential Guide for Writers, Editors, and Publishers* 153-54, 175, 188-89, 193-94, 242-45 (15th ed. 2003); *A Dictionary of Modern Legal Usage* 13, 101, 420, 856-57 (2d ed. 1995); Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* 21-24 (2005); and Suzanne E. Rowe, *The Legal Writer: Six to Nix*, 67 Or. St. B. Bull. 37 (Nov. 2006).

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Take Your Adversary To Lunch:

"An Order of Professionalism, Please, With a Side of Civility..."

by Donald R. Donovan

Carrying a large stack of paper and a large brown envelope, one of the firm's senior partners walked back into his secretary's office.

"Did you see this?" he asked her. His secretary shrugged and nodded. "This is styled 'Defendants' Fifth Continuing

Interrogatories' and there's another Request for Production,"

the partner said. "And I think that's their third one! I looked over some of the interrogatories, and a lot of them are just rephrasings of questions he asked at our client's deposition. There's got to be a way to put a stop to this."

"Maybe," his secretary said, "if he were a local lawyer that we knew and saw more of in the courtroom, he'd know we're more than willing to be cooperative and he wouldn't be inundating us with paper. That file is about eight inches thick now."

The partner laid the file on her desk. "You know, my dad used to say, 'There are darn few problems that can't be settled over the dinner table.' I wonder if that

would work—if I called and ask my learned opposing counsel to have lunch?"

One of the most successful local bar activities in recent years has been the Atlanta Bar Association's "Take Your Adversary to Lunch" program. Adversaries who have never met, as well as lawyers with years of experience with each other, have all benefited from the idea that it's difficult to be hard-headed and contrary over a good steak or pulled-pork sandwich. "Take Your Adversary

to Lunch" is a program that the State Bar's Professionalism Committee—with the consent and permission of the Atlanta Bar Association, crediting the idea to the Atlanta Bar Association's Litigation Committee—would like to take statewide because it promotes professionalism and civility in our everyday endeavors.

A local lawyer with whom I dealt very little, but who I knew, saw in court many times, and with whom I shared a common background, was opposing counsel in a tawdry domestic case. It was our second case together in about a year. It was obvious soon after we exchanged

discovery that he was reacting in an aggressive manner and was apparently not in a cooperative and friendly "pick-up-the-phone-and-let's-talk" mode. I called him, and, knowing of the success of the Atlanta Bar's program, asked if he would like to have lunch. He somewhat reluctantly agreed and we met later that week. After some small talk, I put it to him right over the burrito, enchilada and chalupa-with-beans-and-salsa:



"We're friends. What's the problem?" His answer was simple: he saw himself on the losing side in both of our recent cases, or, as he put it, "In the last two cases, you've been the windshield and I've been the bug." I couldn't exactly disagree, but I did point out that regardless of our respective situations, I stood ready—as counsel for the winner or the loser—to cooperate in discovery and scheduling court dates, and that I was more than willing to accommodate him in any way that wouldn't compromise my commitment to my client. He acknowledged that he was equally ready to do likewise, and we parted, still friends, but—even better—with a solid understanding that we weren't going to let clients spoil our good relationship.

Similarly, about a year ago, a lawyer from a downtown Atlanta firm (one with a laundry-list of names on the letterhead, as opposed to a small-town law firm such as mine, with only three names) filed an answer in a civil action involving real property. I had never heard of either the attorney or his firm, but—based again on my experience and the success of the Atlanta Bar's program—my immediate response on receiving his answer was to call and suggest lunch in Atlanta. First of all, that would give me a chance to get a downtown-lawyer-restaurant lunch, but, more importantly, it would also give us a chance to meet, talk and get to know each other, as well. You can tell a lot about a person by his or her lunch choices, both the choice of venue and choices from the menu.

Civility in our profession has in recent times been less obvious than in the past. Both the Chief Justice's Commission on Professionalism and the State Bar's Professionalism Committee have as their joint mission, promoting the "various facets of professionalism including knowledge, technical skill, commitment to clients, dedication to the law and public good, and ultimately the providing of competent

legal services to the public."¹ These goals are accomplished when lawyers work together toward a common goal: the prompt resolution of their clients' legal matters by lawyers who are civil and act professionally toward one another as well as toward the legal tribunals in which they appear.

Now, that language in the last paragraph sounds stiff and stilted, so let's put it another way: when you and opposing counsel are constantly at each other's throats, and slamming each other with tons of paper when a simple telephone call would do, you aren't providing the "competent legal services" to which the mission statement refers. It stands to reason that lawyers who smile and talk together calmly without being antagonistic are going to get better results for their clients. Lawyers who respond to unnecessary discovery or abusive pleadings by drafting something in like spirit are not serving their clients' best interests, and they do nothing to promote professionalism in the practice of law.

You can get to that stage—the "less-antagonistic, let's see what a friendly approach can do" stage—just by meeting your adversary and having a pleasant lunch. The place doesn't matter, and—unless opposing counsel is a gourmand—neither does the menu. The point is to meet, talk, discuss, and get to know your adversary, and, maybe, incidentally, talk about the case and how you can cooperate better to resolve it or get it ready for trial. It doesn't mean he or she is going to be nicer, that he or she will take your children to raise, or even cut you any slack in the case you have together. But, it makes the chances for civility in the ongoing litigation much more likely, and it shows your positive attitude and that your mind-set is one of being willing to make it easier to do what lawyers should most want to do: *serve their clients*.

So pick up that phone. Or BlackBerry. Call. Send a text mes-

sage or maybe an e-mail. Or just walk across the street. Take your adversary to lunch. Enjoy lawyering the way you know it should be done and encourage your adversary to join you in being professional.

"How was lunch with opposing counsel?"

"Very nice, actually. It was obvious pretty quick that he just didn't know me and felt like he was at a disadvantage since he's never practiced in this court before. And guess what? It turns out we're fraternity brothers!"

"I'm guessing, then, this case will be a little easier now?"

"Easier? Maybe, maybe not. But it will certainly be more pleasant. Taking my adversary to lunch was a really good idea."

"So, where did you go to eat?"

"That was where we really had to work out our differences. I wanted to go to *Chez Henri*, but he wanted to go to Big Momma's Q 'n' Stew."

"Where'd you wind up?"

"We compromised and went to the Krystal." GB



Donald (Dick) R. Donovan practices with Donovan Chambers, P.C. in Hiram and proudly chairs the State Bar

Committee on Professionalism.

Endnotes

1. Excerpted from the Mission Statement of the State Bar Committee on Professionalism.

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John D. Atchison

Pensacola, Fla.
Admitted 1985
Died October 2007

Robert H. Cofer II

Thomson, Ga.
Admitted 1970
Died February 2007

Ronald J. Davis

Stone Mountain, Ga.
Admitted 1975
Died June 2007

William T. Dean Jr.

Atlanta, Ga.
Admitted 1965
Died September 2007

Richard J. Ennis

Smyrna, Ga.
Admitted 1971
Died September 2007

Joseph J. Gaines

Athens, Ga.
Admitted 1952
Died September 2007

Donald J. Goodman

Atlanta, Ga.
Admitted 1973
Died August 2007

Doye E. Green

Macon, Ga.
Admitted 1964
Died August 2007

W. Dan Greer

Covington, Ga.
Admitted 1951
Died September 2007

Jennifer P. Guthas

Hiram, Ga.
Admitted 2004
Died July 2007

Laura Turea Hanson

Atlanta, Ga.
Admitted 1988
Died March 2007

Gresham Hughel Harrison

Lawrenceville, Ga.
Admitted 1955
Died August 2007

Craig Jackson Huffaker

Nashville, Tenn.
Admitted 1981
Died May 2007

Marion P. Jackson

Atlanta, Ga.
Admitted 1976
Died May 2007

Rebecca J. Jakubcin

Atlanta, Ga.
Admitted 2000
Died October 2007

John Perry Lilly

Dallas, Texas
Admitted 1972
Died December 2006

J. Dudley McClain Jr.

Roswell, Ga.
Admitted 1965
Died December 2006

Duard R. McDonald

Marietta, Ga.
Admitted 1965
Died May 2007

J. Cleve Miller

Elberton, Ga.
Admitted 1965
Died September 2007

Joseph Cleon Nalley

Gainesville, Ga.
Admitted 1983
Died July 2007

John L. O'Dell

LaFayette, Ga.
Admitted 1985
Died July 2007

Paul C. Parker

Decatur, Ga.
Admitted 1978
Died September 2007

S. J. Robertson

Savannah, Ga.
Admitted 1948
Died April 2007

Mark Norman Stephen

Savannah, Ga.
Admitted 1948
Died August 2007

John C. Stophel

Chattanooga, Tenn.
Admitted 1953
Died October 2007

George Edward Swanson Jr.

New Orleans, La.
Admitted 1960
Died May 2007

Ronald Wayne Wells

Atlanta, Ga.
Admitted 1981
Died April 2007




Hon. Robert H. Cofer II of Thomson, Ga., passed away February 2007. Cofer was born in Wilkes County, but lived in Thomson since

1946. He was the son of the late Toggie Cofer and the late Elsie Baker Crowe Cofer. Cofer was an attorney in private practice. He served as the chief magistrate judge in McDuffie County for the last 14 years. He was also a member of the First Baptist Church. Survivors include: daughters, Jennifer Cofer Marx and her husband, William Marx, and their son, Daniel, of Huntsville, Ala.; Kimberly Cofer Harris and her daughter, Ava Grace Harris, of Savannah. Additional survivors include: brother, Dr. Tom Cofer of Aiken, S.C.; aunt, Jeanelle Cofer Newsome of Washington, Ga.; Stephanie and Anthony Meyer of Greenville, S.C.; and Dr. Benton and Michelle Cofer of Greenville, S.C.

Senior Judge Joseph J. Gaines passed away September 2007. For more than half a century, Gaines worked to make sure the judicial system in Athens, and Clarke and

Oconee counties worked in the most fair and equitable manner possible. The Elbert County native served as a private and city attorney in Athens for 23 years before Gov. George Busbee appointed him to serve as a Superior Court judge for the Western Judicial Circuit in 1976. After 26 years as a Superior Court judge and then as chief judge of the Western Judicial Circuit, Gaines entered semi-retirement in 2002. However, he retained the role of a senior judge for the circuit and was called to try cases when his expertise was needed.

Among attorneys and judges in Athens, Gaines was known as a mentor whose impeccable knowledge of the law and integrity embodied the way the judicial system was meant to operate.

He oversaw many cases through the years, from sensational murder trials to tense civil lawsuits. He treated each case with the same attention and scrutiny, but his skill as a judge was clearly defined during those most difficult cases. It was that persistence and skill that earned Gaines the admiration of those who came up after him in the legal community. 



**Lawyers Foundation
of Georgia Inc.**

104 Marietta St. NW
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Atlanta, GA 30303

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F: (404) 225-5041

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Information

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

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Deportation Nation: Outsiders in American History

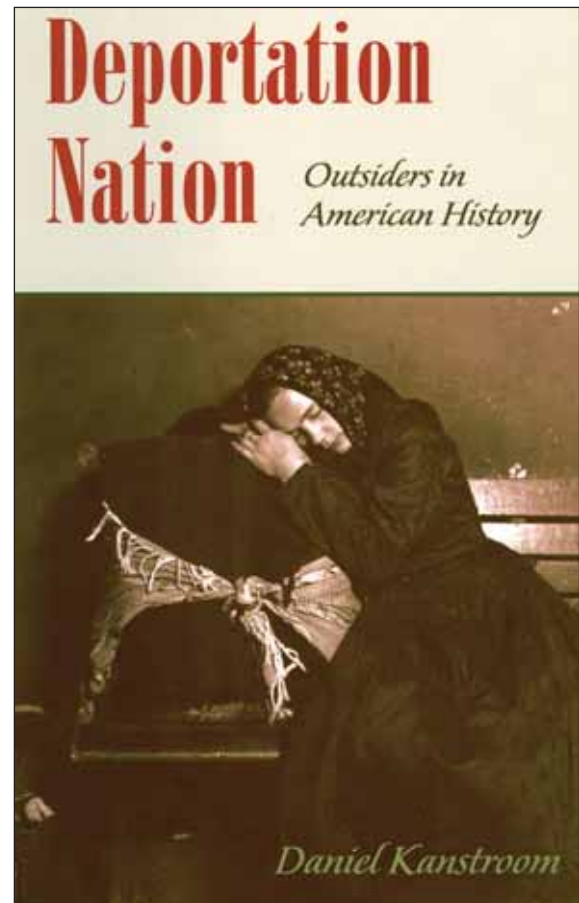
by Daniel Kanstroom, Harvard University Press, 352 pages

reviewed by Bob Beer

The thesis of the author Daniel Kanstroom, a professor and the director of the Human Rights Program at Boston College Law School, is simple: This country's immigration system is and has been a means of both governmental border control and post-entry social control. As the author says in the preface, this book purports to answer a mother's question as to how the United States could impose on her son a lifetime ban from being admitted to this country for violating a minor criminal law.

A secondary purpose of the book is to demonstrate just how much unbridled discretion the American government has had and continues to have over the expulsion of non-citizens from this "nation of immigrants." The author also makes analogies between America's deportation (now called removal) policies and this country's treatment of Native Americans, African-Americans and, now, alleged terrorists. In addition, Kanstroom's book clearly shows how today's debates over immigration are no different from 100 or 200 years ago.

Indeed, the more things change, the more they stay the same.



Kanstroom's analysis starts with pre-colonial British policies that existed before the United States became an independent country in 1776. Even after the United States became a country, debates arose over whether

the federal government or the individual states should control immigration policy. Even after our Constitution stated in Article I, Section 8, that Congress had the power to establish a uniform rule of naturalization, the debate continued. Indeed, Kanstroom tells us what the views of our founding fathers were when it came to immigration. James Madison said that "it cannot be a true inference, that because the admission of an alien is a favor, the favor may be revoked at pleasure." Kanstroom takes us back to the pro and con arguments that eventually resulted in Congress's creation of the Alien and Sedition Act of 1798.


Kanstroom spends a great deal of time focusing on how American immigration policy was, in no small part, formed by the United States Supreme Court's decisions under the "plenary power" doctrine. The plenary power doctrine gives the United States Congress

alone broad and sweeping sovereign authority to regulate all aspects of American immigration. Congress's plenary power has been used to justify federal government action from the Chinese exclusion cases to the recent decisions regarding "enemy combatants" and their incarceration at Guantanamo Bay.

From the Palmer Raids conducted by the United States Department of Justice and Attorney General Mitchell Palmer against alleged left-wing radical subversives in the 1920s to the deportation of self-proclaimed anarchist Emma Goldman to the use of immigration laws in the fight against organized crime and communism and the internment of the Japanese during World War II, this book weaves a fascinating tale of the good, the bad and the ugly of American immigration law. The author illustrates the resulting double standard that immigrants have had to deal with in this coun-

try for the past 231 years, especially during periods of war and national emergencies.

Finally, Kanstroom candidly assesses due process and other legal rights that have and, more importantly, have not been given to America's immigrants over the last two centuries. For example, immigrants are not entitled to *Miranda* warnings and some other protections given to American citizens through our criminal laws, such as the right to appointed counsel or the Eighth Amendment protection against cruel and unusual punishment.

In conclusion, this book is a timely read, and I highly recommend it. 



Bob Beer practices immigration law in Marietta, Ga. He is also a member of the *Georgia Bar Journal* editorial board.

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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, 2006-2007 *State Bar of Georgia Directory and Handbook*, p. H-6 to H-7 (hereinafter referred to as "*Handbook*"). Pursuant to Rule 5-104, *Handbook*, p. 6-7, notice of the consideration of this proposed amendment by the Board of Governors at its November 2, 2007 meeting was provided to the membership on page 109 of the August issue of the *Georgia Bar Journal*, Volume 13, No. 1.

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

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

Cliff Brashier
Executive Director
State Bar of Georgia

IN THE SUPREME COURT STATE OF GEORGIA

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

MOTION TO AMEND 2008-1

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 November 2, 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 1-501 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 1-502. 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.

Pursuant to Rule 5-104, 2006-2007 *State Bar of Georgia Directory and Handbook*, p. 6-7, notice of the consideration of this proposed amendment by the Board of Governors at its November 2, 2007 meeting was provided to the membership on page 109 of the August issue of the *Georgia Bar Journal*, Volume 13, No. 1.

SO MOVED, this ____ day of _____, 2007.

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

Formal Advisory Opinion Issued Pursuant to Rule 4-403(d)

The second publication of this opinion appeared in the August 2007 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about August 7, 2007. The opinion was filed with the Supreme Court of Georgia on August 15, 2007. No review was requested within the 20-day review period, and the Supreme Court of Georgia has not ordered review on its own motion. On September 5, 2007, the Formal Advisory Opinion Board issued Formal Advisory Opinion No. 07-1 pursuant to Rule 4-403(d). Following is the full text of the opinion issued by the Board.

STATE BAR OF GEORGIA ISSUED BY THE FORMAL ADVISORY OPINION BOARD PURSUANT TO RULE 4-403 ON SEPT. 5, 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 provides 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 disclose 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.

The second publication of this opinion appeared in the August 2007 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on or about August 7, 2007. The opinion was filed with the Supreme Court of Georgia on August 15, 2007. No review was requested within the 20-day review period, and the Supreme Court of Georgia has not ordered review on its own motion. In accordance with Rule 4-403(d), this opinion is binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.



Let CAP Lend a Helping Hand!

What is the Consumer Assistance Program?

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

Does CAP assist attorneys as well as consumers?

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

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

What doesn't CAP do?

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

Are CAP calls confidential?

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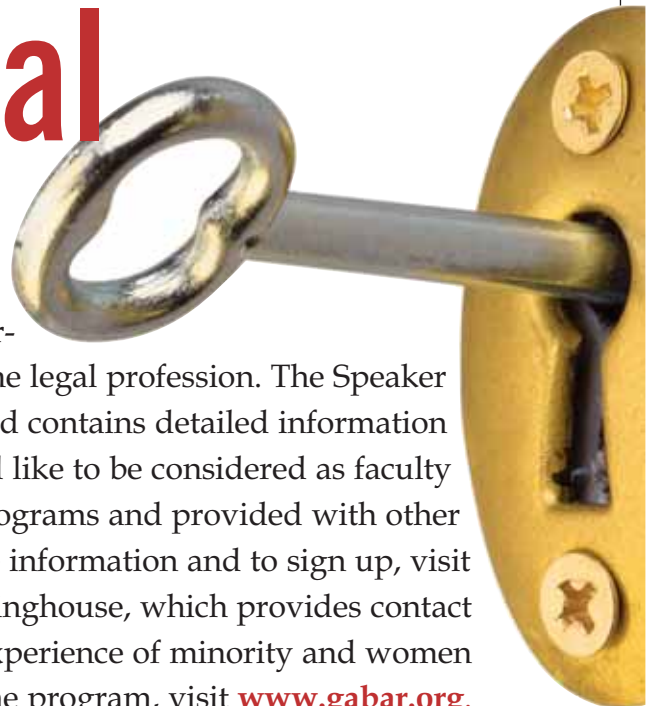
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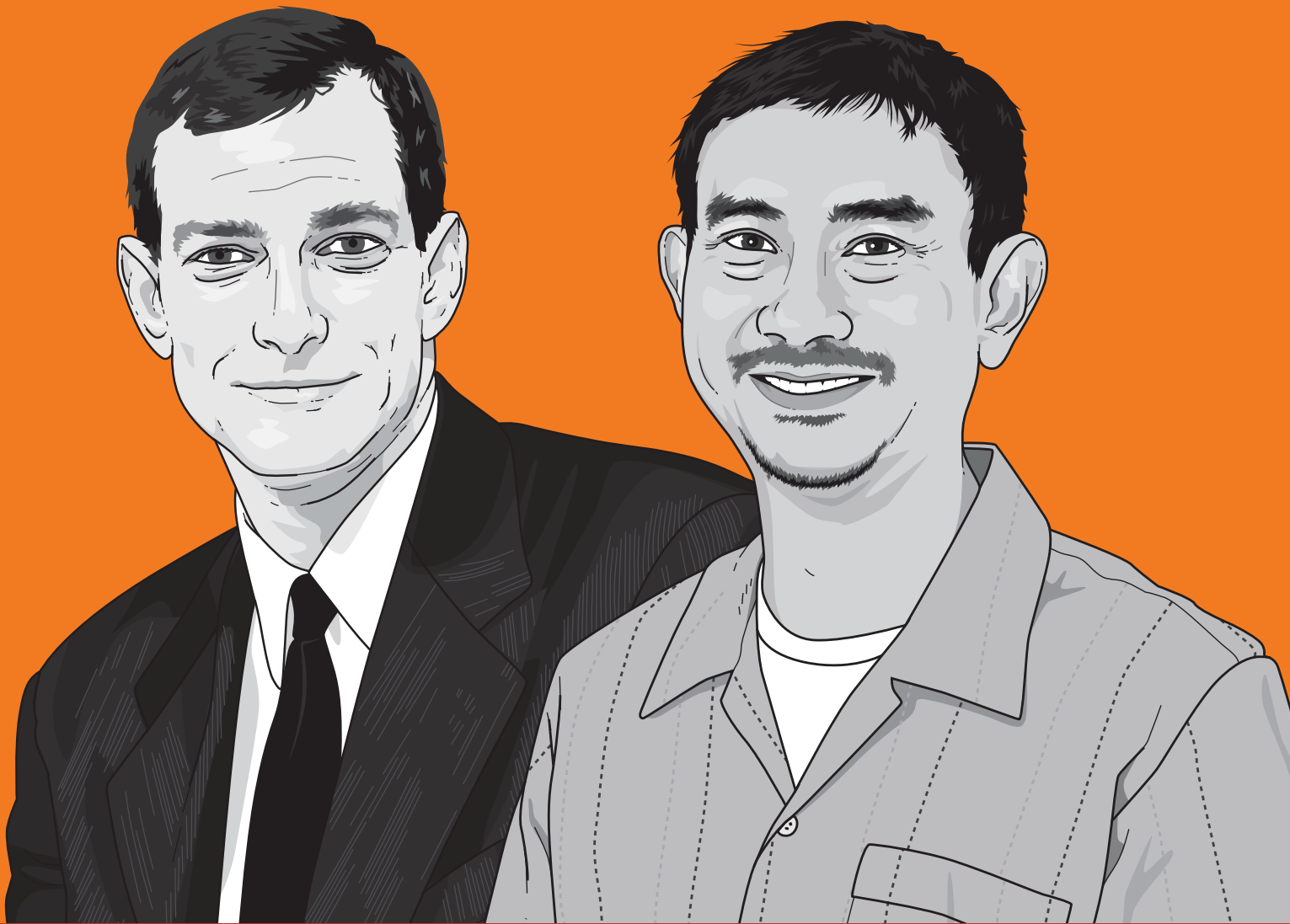
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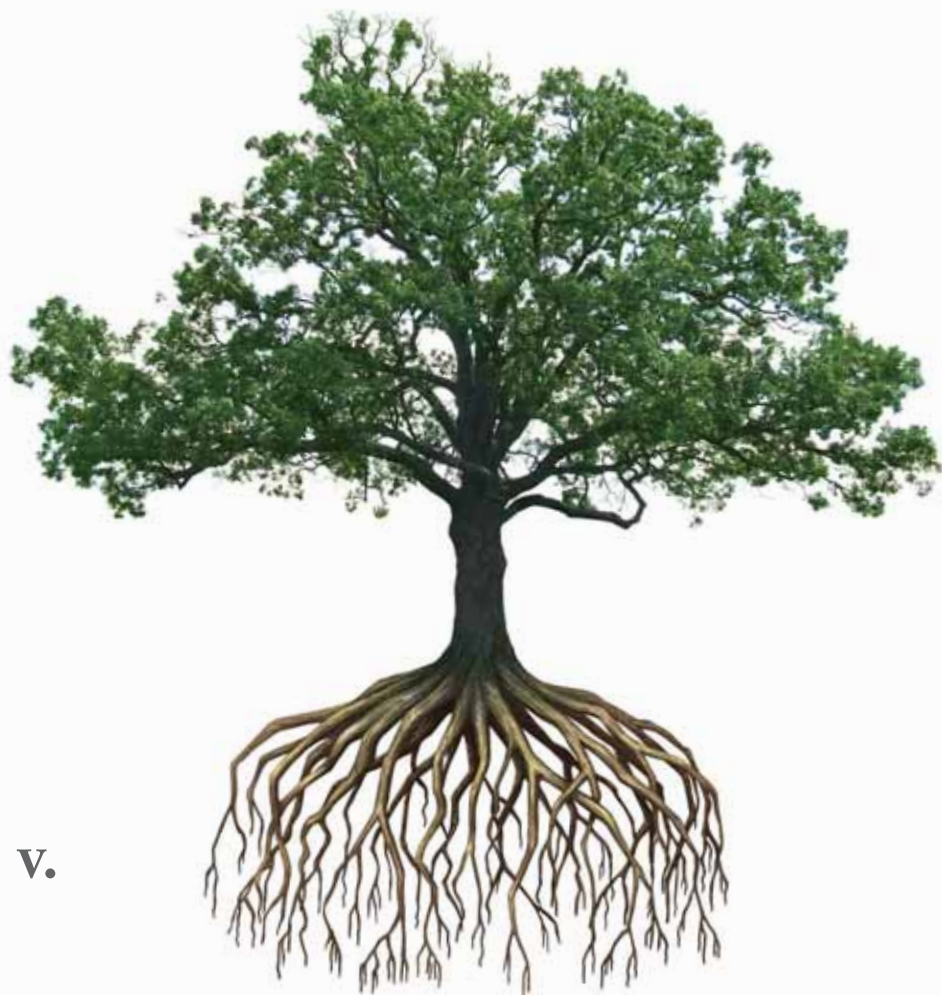
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