

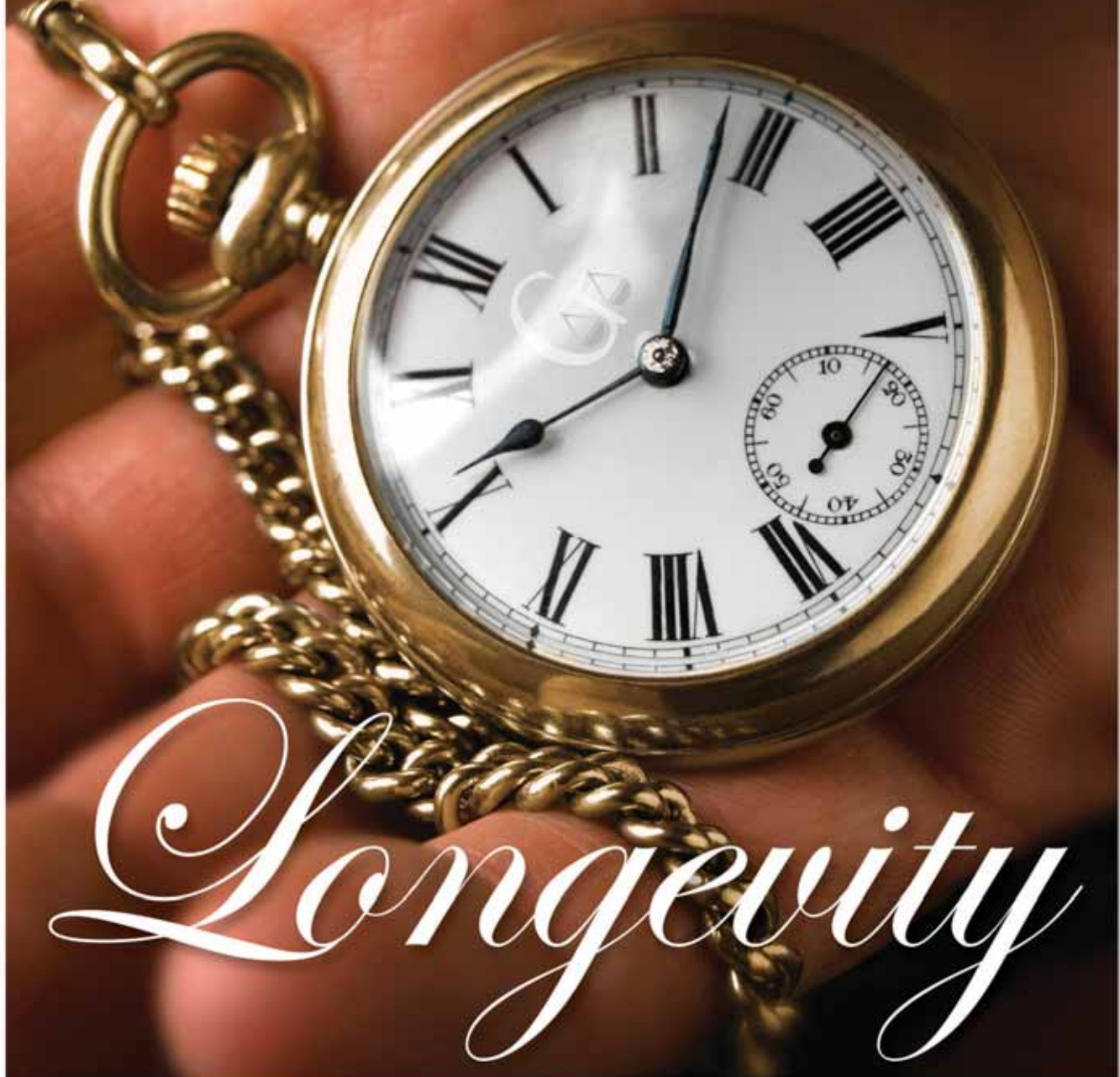
Georgia Bar Journal

April 2008 ■ Volume 13 ■ Number 6



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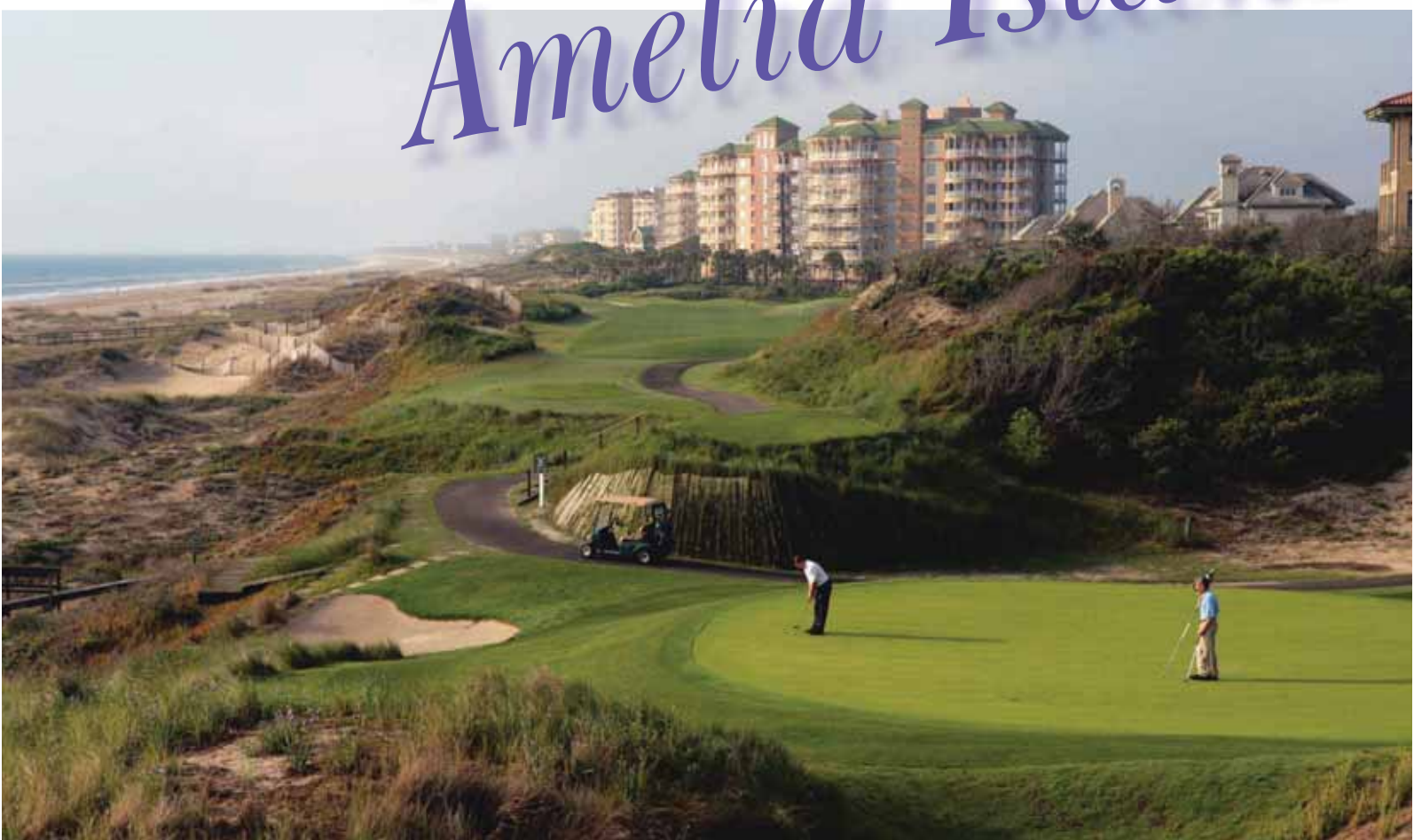
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melissa

*... is a Counsel On Call Attorney. She's also
a transplanted New Yorker and mother of two.*

Melissa has always excelled; she received two academic scholarships, graduated near the top of her law school class, and worked for five years for Proskauer Rose in New York. After a move to Atlanta and with two young children at home, however, it appeared her legal career might be put on hold.

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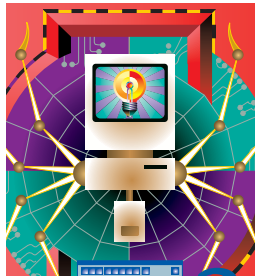


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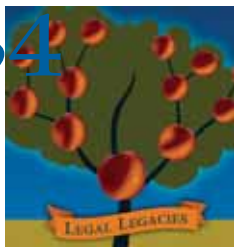


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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes)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



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What are Georgia Lawyers Doing?

Three times each year, the president of the State Bar of Georgia has the opportunity to meet with our counterparts from other Southeastern states and discuss current events and trends in the legal profession.

When a subject that is just now appearing on the radar screen in another state comes up for discussion, invariably the other presidents will turn their heads toward me and ask, "What is Georgia doing about that?"

Thanks to the vision and dedication of my predecessors, our staff and the expertise of lawyers all over the state, the State Bar of Georgia has earned a reputation among our peers for implementing innovative approaches on any number of matters that have arisen through the years.

Some of the cutting-edge programs we are asked about have been in place 15 to 20 years in Georgia. This year, I have been called on to furnish information about

our mentoring program, mandatory CLE, client security funds, professionalism and the unlicensed practice of law.

Without question, our State Bar is among the top three states nationally in terms of programs. Even one of the larger bars, Texas, has largely adopted our Foundations of Freedom public education and awareness initiative. Our latest product of that program, our

new jury education video, "Ensuring Fairplay the American Way," is already in great demand.

So the question "What is Georgia doing?" is one that never puts me in an awkward position of answering, because indeed we do have programs in place that address most every issue that my colleagues bring up. And I am proud to report on our success in dealing with those issues or finding a solution to any problem that arises.

This month, I would like to expand that question just a bit as it relates to a quote from Thomas Jefferson that I often use in speeches and articles: "The study of law qualifies a man to be useful to himself, to his neighbors and to the public." Jefferson thus challenges us to not only use our skills to make a

"These past 10 months, I have also learned that there are countless examples of Bar members performing good works in their communities."

living; we should dedicate a significant portion of our lives to serving others—either through pro bono work or providing leadership and service to our communities.

So, to answer to Jefferson's challenge, "What are Georgia lawyers doing?"

In my travels around the state this past year as your president, I have witnessed first hand the dedication of fellow Bar members who are working to ensure that, as an organization, we are meeting our obligation to serve the public and the justice system. Many Georgia lawyers volunteer their time and expertise through leadership of the various Bar sections. I can personally attest to the tremendous effort of our Executive Committee members and the Board of Governors.

The members of these talented groups spend many hours, and in some cases days, away from their own law practices and travel at their own expense to attend meetings or otherwise work on behalf of a stronger legal profession and court system. As president, I appreciate their efforts and applaud them for all they do.

These past 10 months, I have also learned that there are countless examples of Bar members performing good works in their communities. In addition to the individuals and organizations who earn various State Bar or national awards for community service, there are many whom you might not hear about except through local publicity in their own hometowns. This is by no means a complete list, but these are the kinds of efforts going on in our state that have been brought to my attention, and I would like to share them with you:

- William Scott Schulten, who donated pro bono hours to assist the city of Sandy Springs in obtaining green space.
- Robert M. Clyatt of Valdosta, who has spearheaded Kids' Chance Inc., a program that provides educational scholarships to children of Georgia

workers who have been seriously injured or killed in work-related accidents.


- The Gate City Bar Association, which sponsors the Justice Robert Benham Law Camp at the Georgia State University School of Law.
- Judge Steve Jones and the Western Circuit Bar Association, who worked to raise funds to match a grant from the Lawyers Foundation of Georgia to operate the new Athens office of the Georgia Legal Services Program.
- Cobb County lawyer Roger Gustafson, one of the first volunteers for the One Child One Lawyer program of the Fulton County Juvenile Court.
- The Valdosta Young Lawyers Division, whose members volunteered to complete construction of a new Habitat for Humanity home.
- The Savannah Bar Association, whose members are working to organize a local chapter of HELP, an organization that helps facilitate free legal services to homeless individuals.
- The Georgia Legal Services Program and local lawyers in Douglasville, who participated in a free "Ask A Lawyer Day" program.
- The Baldwin County Bar Association, working with the local Department of Family and Children Services to provide Thanksgiving meals to local families.
- Elbert County State Court Judge Richard Campbell, who helps enhance cultural activities in his community by directing and acting in plays at the historic Elbert Theatre.
- The Waycross Bar Association, whose members helped provide food, clothing and toys to local families and children through its Community Christmas Project.

Again, this is by no means a complete community service honor roll

for Georgia lawyers—that list would number in the thousands and take up the entire *Bar Journal*. These happen to be a few that have been brought to my attention recently by fellow Bar members. I want to thank those of you who have helped keep me informed, and I encourage all lawyers to continue to serve others in your communities.

In addition to those serving at the community level, we again have a long list of Georgia lawyers who have assumed positions of leadership in the state and federal government, outside of the judicial branch. These would include elected officials like U.S. Sen. Saxby Chambliss, U.S. Reps. John Barrow, Sanford Bishop, Nathan Deal and Jim Marshall, state Attorney General Thurbert Baker, Labor Commissioner Michael Thurmond, Georgia House Speaker Glenn Richardson and approximately 30 other members of the Georgia General Assembly. Also, there are many, many Georgia lawyers serving in locally elected offices or in appointed positions on public boards and authorities.

Finally, and certainly not least, there are those fellow Bar members who have sacrificed so much in military service to our country. On page 50 of this *Bar Journal*, you will read about the Georgia lawyers who are or have served in Iraq, Afghanistan and other theaters of war, and there are thousands of others who have served during other eras—in war and at peace. They all deserve our admiration and eternal gratitude.

So the answer to "What are Georgia lawyers doing?" is "a lot." Thanks to our members, the State Bar of Georgia can be proud of an outstanding tradition of service to our communities, our state and our nation. I think Thomas Jefferson would be proud as well. 

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

2008 State Bar Annual Meeting

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The theme of Opening Night is "An Evening of Cirque."

Opening Night

Welcome to "An Evening of Cirque!" Join friends, colleagues and family at this section-sponsored Opening Night Event based on Cirque du Soleil. Be captivated and amazed as you watch performers from aerialists to acrobats. The evening will also feature comedians and a DJ, along with interactive games for kids such as the ever popular arts and crafts. Dress casually

and come on out for this exciting evening around the pool.

CLE, Sections & Alumni Events

Fulfill your CLE requirements or catch up with section members and fellow alumni at breakfasts, lunches and receptions.

Presidential Inaugural Gala

The evening will begin with a wine & cheese reception honoring the Supreme Court of Georgia justices, followed by the Awards Ceremony where Jeffrey O. Bramlett will be sworn in as the 2008-09 State Bar president. Following the inauguration and awards, relax and enjoy your evening in one of three themed rooms of dinner, dancing and entertainment!

Social Events

Enjoy an exciting and entertaining welcome reception, the Supreme Court Reception and

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Amelia Island Plantation offers 249 luxury hotel rooms, one-, two- and three-bedroom villas, as well as a spectacular two-tiered pool deck.

Annual Presidential Inaugural Gala, along with the numerous recreational and sporting events that will be available.

Family Activities

Golf, tennis, shopping, swimming, sightseeing and other activities are all offered by the resort and are available at your convenience.



Bring your family to the 2008 State Bar Annual Meeting for some family fun!

Kids' Programs

Programs designed specifically to entertain children will be available.

Exhibits

Please don't forget to visit the exhibit booths at the Annual Meeting. If you get your exhibitor card stamped and turned in you will be entered into a drawing to win a two-night stay at Amelia Island Plantation!

by Cliff Brashier



"Ensuring Fairplay the American Way"

As part of the Foundations of Freedom program, the State Bar of Georgia has produced a juror DVD, "Ensuring Fairplay the American Way." This video was primarily developed

for viewing by potential jurors when they report for jury duty in any courthouse in Georgia. It can also be used as a tool for lawyers or judges when they speak in their communities to civic, school or church groups.

The program includes interviews of three of our nation's respected administrators of justice: Chief Justice Leah Ward Sears of the Supreme Court of Georgia, retired U.S. Supreme Court Justice Sandra Day

O'Connor and U.S. Supreme Court Justice Samuel Alito. Additionally, three Georgia jurors give their personal views about their jury duty experience. These interviews with justices and jurors make an accessible and compelling case for viewers to take their turn guarding democracy through jury service. The State Bar thanks these justices and jurors for their important contribution to this video.

"On behalf of the State Bar of Georgia, I hope that you will help us support this important project by showing "Ensuring Fairplay the American Way" in your courtroom and in your community."

Packaged with the DVD are suggested remarks for judges, clerks or other court personnel to use when introducing the juror program to prospective jury members. The remarks can be tailored to include specific instructions to any particular court. There is also a second set of remarks that any lawyer or judge can use when speaking to the public in general to help them better understand the jury process.

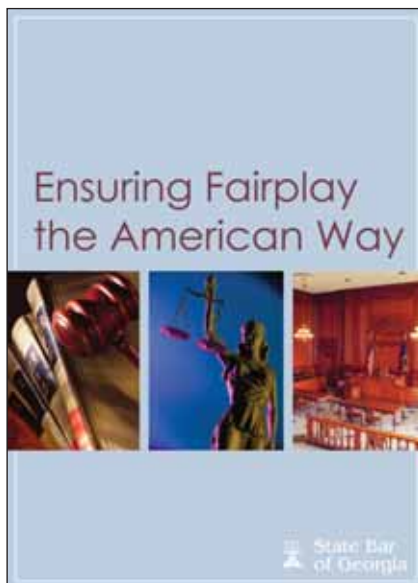
stand the jury process.

The Foundations of Freedom's main goal is to restore public confidence in the judicial system by educating the public. The juror DVD helps in this objective by showing that jury service is not just crucial for a democratic judiciary, it is rewarding for the juror. As Justice Alito concludes, "I know many, many people

who have been called for jury duty, and they said, 'You know, I didn't want to serve. I went down to the courthouse very reluctantly.... But I did serve, and I really felt a sense of having made a good contribution to the community by serving. And I would be very happy to serve again.'"

The justices explain why our legal system relies on a representative sample of the citizenry, rather than experts or professionals, to determine facts and truth. As Justice O'Connor points out, "I might be one of the litigants some day in a courtroom, needing to have the issues addressed by a jury drawn from my community. And I want good citizens to be on my own jury if that ever happens to me."

Chief Justice Sears points out the importance of getting the right jury for the case. "The point is not to just get an adequate jury as fast as possible," she says. "We're not aiming for shortcuts; we're aiming to be fair. That's what's important




If you would like a free copy of the State Bar's new juror DVD, "Ensuring Fairplay the American Way," please contact the Bar's Communications Department at 404-527-8792 or stephaniew@gabar.org.

—fairplay. What's at stake is justice—people's lives—and doing what's right."

On behalf of the State Bar of Georgia, I hope that you will help

us support this important project by showing "Ensuring Fairplay the American Way" in your courtroom and in your community. When you are called upon to speak at your child's school, or to give a speech to any group, please remember that this 18-minute DVD will help you make an important contribution to our profession and to our system of justice. If you would like a free copy, please contact the State Bar's Communications Department at 404-527-8792 or stephaniew@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

The Times They Are A-Changin'

The Greek philosopher, Heraclitus, is attributed with saying “the only constant is change.”¹ How apropos to the constantly

shifting practice of law? Even in the short time that I have been in the legal profession, I have witnessed the practice impacted dramatically by new technologies.

During the summer of 1996, my first summer of law school, I clerked for a Chapter 7 Bankruptcy Trustee in Rockville, Md., a Washington, D.C., suburb. We were working on clearing out some old petitions and needed a one-page document to close a file. I called the debtor’s attorney and requested that he fax over the document. He replied that he did not have a fax machine and that the U.S. mail would get it to me

soon enough. I was shocked; no fax machine? How could he practice law? But the document did get to me soon enough, albeit not on my schedule of wanting the petition off my desk that day.

It is not only fax machines that have changed the practice of law. Overnight delivery services and e-mail have also been instrumental in this change, for good or for bad. In 1998, when I was admitted to the Bar, the transactional lawyer’s day was, in many respects, effectively over at the Fed Ex deadline and the litigator’s day was effectively over when the clerk’s office closed. Today, documents can easily be sent electronically, so the transactional lawyer’s day can last all night and the litigator, in some courts, can file online until midnight.

It is an open question whether these changes have had a net positive impact on the profession. Certainly, they make it easier to deliver docu-

ments. They also make it possible to practice remotely. However, the immediate gratification and “want it yesterday” world that electronic communication

“So, what are the changes to the legal profession that we can anticipate in the future? Without a looking glass, we cannot be sure; however, there are clearly some changes in the profession that have begun and will likely impact our future.”

seems to encourage, and that the client, in many cases, demands, makes it difficult for a lawyer to have the appropriate time to mull over an issue, potentially to the detriment of the product eventually produced.

Positive or negative, change will happen. And it is best to be prepared for this change so as to increase the possibility that its impact will be a positive one. Particularly for young lawyers just starting their careers, it is important to consider what the practice will be like 10, 20 or 30 years hence in considering what area of practice to pursue.

A few years back, I went with my mother to her 20-year medical school reunion. I was struck by the regret that some of her classmates felt concerning the practice area they had chosen. They had struggled during medical school in making a decision about the area on which to focus and wished they had realized the impact managed care would have on their livelihood and career satisfaction.

So, what are the changes to the legal profession that we can anticipate in the future? Without a looking glass, we cannot be sure; however, there are clearly some changes in the profession that have begun and will likely impact our future.

Undoubtedly, technology will continue to have a profound effect on the practice. We are in an Internet world. We are available anywhere via cell phone and e-mail. We can conference by telephone and over the Internet. We can close transactions in virtual closing rooms. We don't need to live in the same town as our clients, or, in fact, ever even meet our client in person. Because of technology, we can have a national or international practice and never leave home. Of course, there are issues of unlicensed practice of law and becoming competent in the various jurisdictions' laws that need to be addressed. Both lawyers and bar associations are currently,

and will continue, grappling with these issues as the increasing global practice becomes more common.

As a result of never having to leave home to practice all over the country, some of the advantages of practicing in a particular locale are disappearing. Being able to practice from anywhere has resulted in law firms and clients working to save costs by moving staff and business to less expensive locations. When I was in law school, I clerked for a summer at Piper & Marbury (now DLA Piper) in downtown Baltimore. The offices were exquisite and located just a short walk from Camden Yards and the Inner Harbour. It was a fabulous place to spend a summer. Within a few years, Piper & Marbury moved the majority of its Baltimore lawyers to an office park in a northern suburb. Only a few lawyers remained in the expensive digs downtown. This move undoubtedly resulted in a huge savings for the firm with little or no impact on its ability to service clients.

Likewise, clients may choose to move work to lawyers who practice in a market with lower fees, a practice sometimes called "onshoring." For example, work that can be done in Atlanta may be done with the same level of service, but a lower cost, by lawyers who work in nearby Chattanooga, Augusta, Savannah or Birmingham. Because of this potential movement of work, lawyers in lower cost jurisdictions can strategically market to attract work from higher cost areas. Kutak Rock LLP is a firm that was an early adopter of this strategy. Kutak Rock was founded in Omaha, Neb., and sought to develop a national public finance practice at a time when the common wisdom was that to be a national public finance lawyer, you had to be in New York City. The founders thought differently—that it was possible to practice in the field of public finance, but live in a saner environment, by marketing quality services at a

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Of course, if work can move throughout the country, it can also move to other countries. English speaking common law jurisdictions would be prime places to move U.S. legal work. India, South Korea, Philippines and Singapore are likely suspects in the potential offshoring market. Not surprisingly, India has been a leader in attracting U.S. legal work. There are a number of legal outsourcing companies that have started up in India, marketing routine legal work to U.S. law firms and corporations. With billable rates of \$20 to \$95 per hour, these companies have managed to attract a substantial amount of work, consisting of everything from document review to preparing patent applications to drafting appellate briefs. In addition, some international law firms and companies have moved legal work to their offices in India. Lawyers in India are trained in the common law and Indian law schools teach only in English. In addition, legal outsourcing companies provide extensive post-graduate training in U.S. law, as well as in English legal writing. After law school, Indian lawyers can expect salaries from \$6,000 to \$10,000.

As with onshoring, offshoring involves the issue of unlicensed practice of law. In some instances, the foreign lawyer may be admitted to practice in the applicable U.S. jurisdiction. However, most often the foreign lawyer practices under the supervision of a U.S. lawyer, much like a law student or paralegal would do in this country.


Offshoring also involves the issue of ensuring that the client's confidential information remains confidential. Not only must the legal outsourcing company be contractually obligated to maintain those confidences; the laws of the applicable jurisdiction must also be sufficient to enforce the contract.

Furthermore, the potential for the foreign jurisdiction having the right to subpoena or otherwise access the confidential information must be analyzed.²

The impetus behind sending legal work offshore is the dramatic cost savings. However, it is not clear that the cost savings will continue to be as deep. Because computer-programming work has been offshored to India for a longer period than legal services have, we can learn from their experiences.³ As the balance has tipped to demand exceeding supply, Indian software engineers have taken advantage of this leverage and moved from firm to firm following increasing salaries. This has led not just to rising labor costs, but also to high turnover and increased costs for mid-project retraining. Further, companies have found that there are travel and oversight costs in addition to the labor costs that increase the total cost of outsourcing. While U.S. companies find that outsourcing software programming work to India does create a net savings over having the work done in the United States, the savings are more along the lines of 20 percent than the dramatic 70-80 percent sometimes heralded. We can expect that as the amount of legal services outsourced increases and demand exceeds supply, the relative savings will at some point decrease.

"Change or Die"—it is an oft-heard maxim. Perhaps it is a bit harsh, but the message that if you don't adapt to the changing world, you will be left behind is an important one. Globalization has resulted in major changes in our economy and will likely cause great change in the legal profession over the next several decades. There will likely be some practice areas that are impacted more by onshoring and offshoring than others; though none of us can say without a doubt which areas those are. So, while developing skills in areas that are more likely to stay in the United States will certainly insulate a per-

son from having to retool later, embracing the increasing globalization is also a good way to help ensure a successful future legal career. This could be done through using onshoring and offshoring for certain aspects of your own client's work. It could also be done by marketing your legal skills in other jurisdictions. If Indian lawyers can practice law for U.S. clients, then U.S. lawyers can practice law for English or Australian clients.

While it is unlikely that Bob Dylan was referring to the billable hour, his words seem quite prescient: "If your time to you is worth savin', then you better start swimmin' or you'll sink like a stone, for the times they are a-changin'." 

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Endnotes

1. Isaac Asimov has also been credited with this quote.
2. Canada has laws regarding public sector and private sector outsourcing of data processing. These laws are designed to protect personal information that is sent to service providers outside of the country. Interestingly, one of the major concerns the Canadian government has with personal information being sent abroad is the United States' PATRIOT Act. John Beardwood and Daniel Fabiano, *New Canadian Restrictions on Extra-Jurisdictional Data Processing: Foreign Service Providers Take Note*, at <http://www.cba.org/CBA/newsletters/pdf/PRIV-Patriot.pdf>.
3. See Ed Carroll, *Driving Cost out of Engineering – through Outsourcing*, Software Association of Oregon, at http://www.sao.org/Resource_Center/newsletter_articles/200604/200604_ed_carroll_management.php. See also Nari Kannan, *Agile Outsourcing: Managing People Metrics in Outsourced Software Development*, Sourcingmag.com, at <http://www.sourcingmag.com/content/c070305a.asp?action=print>.



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Parents Involved in Community Schools v. Seattle School District No. 1 and Equal Protection: **An Examination of Context**

by Laverne Lewis Gaskins

In 2007, the United States Supreme Court further examined the use of race as a factor in school enrollment in the following cases: *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*¹ (both cases collectively referred to herein as *Parents Involved*). In a five-to-four decision, the Court struck down the use of race in assigning students to school districts in Seattle, Wash., and Louisville, Ky.

Prior to the decision in *Parents Involved*, the Court in the case of *Grutter v. Bollinger*² permitted the use of race as an admissions factor in order to achieve diversity in the student body at a university. The decision in *Parents Involved* illustrates the Court's struggle to balance the government's interest in supporting diversity in specific educational settings while preserving the basic tenet that broad race-based admissions policies are unconstitutional, as established in the seminal case of *Brown v. Board of Education*.³ This article examines the Supreme Court's decision in *Parents Involved* through the application of its decisions in *Grutter* and *Brown*.

Background and Procedural History

At issue in *Parents Involved* was the voluntary use of race-conscious student assignment plans by a school district in Seattle, Wash., and another in Jefferson County, Ky. In each district, racial classifications were employed to determine school assignment in an effort to achieve racial balance.⁴

Although the Seattle school district had neither operated a de jure segregated school system nor been the subject of a desegregation order, in 1998 it adopted a race-based plan to assign students to high schools.⁵ The school district adopted the plan in response to housing selection patterns that impacted the racial composition of the district's high schools.⁶ Under the plan, students were classified as either white or non-white.⁷ Incoming ninth graders were permitted to select, in order of preference, the high schools that they wished to attend.⁸ In an effort to resolve issues arising from over-selection of any particular school, a progressive, three-tiered system of "tiebreakers" was used to determine who would be enrolled at the most popular schools.⁹ One of the tiebreakers was consideration of the student's race in the context of the overall school district's racial composition of 41 percent white and 59 percent non-white.¹⁰ If the school that the student selected was not within 10 percentage points of the district's overall "white/nonwhite racial balance," then the tiebreaker selected the student whose race would support the desired balance at that particular school.¹¹



Parents of Seattle students who were denied assignment to a particular school challenged this system and argued that it violated the Equal Protection Clause of the 14th Amendment,¹² Title VI of the Civil Rights Act of 1964¹³ (hereinafter Title VI), and the State of Washington Civil Rights Act.¹⁴ After a series of decisions in federal and state courts, the United States Court of Appeals for the 9th Circuit, in a rehearing en banc, eventually affirmed the ruling of the district court that Seattle's plan was narrowly tailored to serve a compelling government interest.¹⁵

In contrast, the Jefferson County school district was under a desegregation decree from 1975 until 2000, when the decree was dissolved after a finding was made that the district had achieved unitary status.¹⁶ In 2001, Jefferson County adopted a voluntary student assignment plan that required "all nonmagnet schools to maintain

a minimum black enrollment of 15 percent, and a maximum black enrollment of 50 percent."¹⁷ Students were assigned to a "resides" school within their geographic area of residence, and elementary "resides" schools were grouped into clusters to promote integration.¹⁸ Students were assigned to schools within clusters based upon available space and achievement of the specified racial enrollment percentages.¹⁹

The petitioner in the Jefferson County case alleged violations of the Equal Protection Clause of the 14th Amendment.²⁰ The district court held that the school system had asserted a compelling interest in maintaining racially diverse schools and that the assignment plan was narrowly tailored to achieve that interest.²¹ The United States Court of Appeals for the 6th Circuit affirmed in a per curiam opinion, relying upon the district court's reasoning.²²

Plurality Opinion

On June 28, 2007, the Supreme Court reversed the judgments of the Courts of Appeals for the 6th and 9th Circuits in *Parents Involved*. Chief Justice Roberts delivered the opinion of the Court, which Justices Scalia, Thomas and Alito joined in part.²³ Justice Thomas filed a concurring opinion,²⁴ and Justice Kennedy filed an opinion concurring in part and concurring in the judgment.²⁵ Justice Stevens filed a dissenting opinion,²⁶ as did Justice Breyer with Justices Stevens, Souter and Ginsburg joining.²⁷

In reversing the lower courts' decisions, the Court reaffirmed the well-established standard of review that racial classifications are subject to strict scrutiny under the Equal Protection Clause.²⁸ The Court stated that to withstand strict scrutiny, the school districts' use of race in assignment plans must be narrowly

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tailored and further a compelling governmental interest.²⁹

Justice Roberts identified two interests that qualify as compelling: remedying the effects of past intentional discrimination and achieving diversity in higher education.³⁰ With respect to the issue of remedying past intentional discrimination, the Court reasoned that once Jefferson County had achieved unitary status, its remedy was complete and "[a]ny continued use of race must be justified on some other basis."³¹ In contrast, the Seattle public schools were never segregated by law, and, therefore, Justice Roberts concluded that the school district did not have the necessary history of intentional discrimination to establish a compelling interest.³² As concerns the issue of achieving diversity, Justice Roberts distinguished the facts of *Parents Involved* from those in *Grutter* and declined to extend the holding in *Grutter* to the elementary and secondary educational settings presented in *Parents Involved*.³³

Grutter Distinguished

Despite striking down the assignment practices outlined in *Parents Involved*, the Court made it clear that the use of race in the context of education is still permissible under the standards set forth in *Grutter*.³⁴ The plurality opinion, however, found that an extension of *Grutter* to the instant case would be misplaced, and restricted the application of *Grutter* to the unique environment of higher education, and even there, only when race was one of many factors considered in fostering a diverse student body.³⁵

In *Grutter*, the University of Michigan's law school faced a challenge to its race-conscious admissions program.³⁶ The plaintiff in *Grutter* alleged that the university's law school's practice of considering race in admissions decisions violated the Equal Protection Clause, Sections 1981 and 1983 of Title 42 of the United States Code and Title VI.³⁷ The law school's admission policy sought a "mix of students with vary-

ing backgrounds and experiences who will respect and learn from each other."³⁸ Consistent with this goal, the law school's admission policy considered "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans."³⁹

Justice Sandra Day O'Connor issued the majority opinion,⁴⁰ with Justices Stevens, Souter, Ginsburg and Breyer concurring.⁴¹ Justices Rehnquist, Scalia, Kennedy and Thomas dissented.⁴² Justice O'Connor reaffirmed Justice Powell's opinion in *Regents of the University of California v. Bakke*⁴³ that "student body diversity is a compelling state interest that can justify the use of race in university admissions."⁴⁴ In recognizing that all governmental uses of race are not necessarily invalidated by strict scrutiny, the Court held that "[w]hen race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring requirement is also satisfied."⁴⁵

The law school in *Grutter* engaged in a broad admissions approach, conducting a review of each applicant's file that took into account not only race and ethnicity, but a wide variety of other characteristics that contribute to a diverse student body.⁴⁶ The Court in *Grutter* endorsed these efforts on the part of the law school to achieve a "critical mass" of minority students, noting that this admissions process bore the hallmark of a narrowly tailored plan.⁴⁷

In *Parents Involved*, Justice Roberts noted that under *Grutter*, the use of race is permissible only as "part of a 'highly individualized, holistic review.'"⁴⁸ He concluded that narrow tailoring analysis was needed to ensure that the racial classification "was indeed part of a broader assessment of diversity, and not simply an effort

to achieve racial balance."⁴⁹ The Court held that unlike the law school in *Grutter*, the school districts in *Parents Involved* did not use race as a factor that was weighed with others in reaching a decision, but rather as the deciding factor.⁵⁰ The Court noted that the school districts' plans "employ[ed] only a limited notion of diversity, viewing race exclusively in [w]hite/nonwhite terms in Seattle and [b]lack/'other' terms in Jefferson County."⁵¹ The plurality noted that the controversial practices were primarily designed to achieve racial balance rather than focus on pedagogical concerns.⁵²

The plurality opinion in *Parents Involved* further distinguished the facts in *Grutter* by pointing out that the number of minority students that the law school sought in order to achieve diversity was undetermined, while the Seattle and Jefferson County districts sought to achieve predetermined racial percentages.⁵³ In holding this practice unconstitutional, the plurality reasoned that "[a]ccepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society."⁵⁴

***Brown v. Board of Education:* Echoes of History**

One of the most interesting aspects of *Parents Involved* was the reliance by both the plurality and the dissenters on the decision in the case of *Brown v. Board of Education*.⁵⁵ Indeed, in stating that "when it comes to using race to assign children to schools, history will be heard,"⁵⁶ Justice Roberts acknowledged the importance of the *Brown* analysis of the intersection of race and education.

The plaintiffs in *Brown* challenged the "separate but equal" doctrine announced in *Plessy v. Ferguson*.⁵⁷ Chief Justice Warren delivered the opinion of the Court in *Brown* and declined to examine "tangible factors" in assessing the

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equality of education but rather considered “the effect of segregation itself on public education.”⁵⁸ To this end, Chief Justice Warren affirmed the Kansas court’s finding that “[s]egregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system,”⁵⁹ but noted that the lower court had still ruled against the plaintiff. The Court in considering the effect of segregation on education found that “the doctrine of ‘separate but equal’ has no place” in public education, is “inherently unequal,” and violates the Equal Protection Clause of the 14th Amendment.⁶⁰

The plurality opinion in *Parents Involved* relied on the fundamental premise of *Brown* in striking down race-conscious assignments as unconstitutional. The Court contended that “[b]efore *Brown* schoolchildren were told where they could and could not go to school based on the color of their skin”⁶¹ and that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”⁶²

In his dissent, Justice Breyer criticized the plurality opinion’s invocation of *Brown*. He argued that the use of *Brown* betrays that case’s history and legacy, “distorts precedent,” and “misapplies the relevant constitutional principles.”⁶³ According to Justice Breyer’s analysis, there were three distinct features of the *Parents Involved* case that were consistent with the dictates of *Brown*. First, the school districts’ plans in *Parents Involved* were narrowly tailored and served a compelling interest.⁶⁴ Second, distinctions between de jure segregation caused by school systems and de facto segregation caused by housing patterns were meaningless in the context of the *Parents Involved* case.⁶⁵ Third, “real-world efforts to substitute racially diverse for racially segregated schools (however caused) are complex, to the point where the

Constitution cannot plausibly be interpreted to rule out categorically all local efforts to use means that are ‘conscious’ of the race of individuals.”⁶⁶ In addition, Justice Breyer challenged the plurality’s attempt to distinguish between the use of race in higher educational settings, as opposed to elementary and secondary educational settings.⁶⁷

In support of his proposition that the school district plans in question were narrowly tailored and supported a compelling state interest, Justice Breyer contended that “[a] longstanding and unbroken line of legal authority tells us that the Equal Protection Clause permits local school boards to use race-conscious criteria to achieve positive race-related goals, even when the Constitution does not compel it.”⁶⁸ He argued that strict scrutiny must be used in context in determining the constitutionality of a particular practice, citing the Court’s statement in *Grutter* that “[a]lthough all governmental uses of race are subject to strict scrutiny, not all are invalidated by it,”⁶⁹ and therefore, distinctions should be made between racial classifications that harmfully exclude and those that include. Justice Breyer found that the school districts had established that integration is a compelling governmental interest based on three factors: (1) an interest in remedying the effects of prior discrimination; (2) an interest in overcoming the adverse effects of highly segregated schools; and (3) an interest in cultivating an atmosphere that reflects the society in which the children will live.⁷⁰ He also contended that the plans, in the context in which they were applied, satisfied strict scrutiny and were narrowly tailored because they did not seek to exclude or otherwise distribute goods or services in short supply based on race; did not seek to impose unfairly burdens upon members of one race alone; and were designed to keep races together and not apart.⁷¹

Justice Breyer relied on the historical context of *Brown* in arguing that the voluntary adoption of narrowly


tailored desegregation plans is constitutionally permissible, even in situations in which de jure segregation has not existed, but de facto segregation does exist. In Justice Breyer’s view, the plurality placed misguided reliance on the distinction between de jure and de facto discrimination in declaring the school districts’ plans unconstitutional because this distinction concerns what the Constitution *requires* the districts to do and not what it *permits* them to do.⁷² To support the proposition that the plans were appropriate, Justice Breyer noted that both the Seattle and Kentucky districts were initially highly segregated schools and underwent considerable litigation and modification in an effort to achieve integration.⁷³ Finally, Justice Breyer maintained that contrary to the plurality’s opinion, there is no meaningful legal distinction between the higher education context in *Grutter* and the elementary and secondary school context in *Parents Involved*. Justice Breyer contended that it simply is not plausible for a racially diverse education to be constitutionally compelling for a law student and not for a high school student.⁷⁴

Overall, Justice Breyer concluded that the plurality’s reliance upon *Brown* was a “cruel distortion of history” in its comparison of the school system of the 1950s to the modern-day circumstances of a denied request to transfer to a school closer to home.⁷⁵ He was echoed by Justice Stevens, who argued in his dissent that in citing *Brown*, Chief Justice Roberts failed to take into account that only black schoolchildren, and not white schoolchildren, were ordered where they could and could not attend school.⁷⁶ Justice Stevens also contended that the plurality opinion failed to acknowledge that there is a fundamental difference between a decision to exclude a member of a minority because of race and a decision to include such a member for that reason.⁷⁷

Conclusion

As the plurality opinion and dissents demonstrate, efforts to bal-

ance competing societal interests through the 14th Amendment continue to evolve, especially in educational settings. Nevertheless, the implication of the case of *Parents Involved* is clear: The Supreme Court has preserved the use of race as a factor to be considered in educational admissions, but has restricted the use of this factor to situations in which there was de jure segregation that has not been remedied and to higher education settings in which the achievement of diversity is being considered as one component of a holistic assessment of the student body.

Implicit in the mission of schools is that they function as vehicles for social change, and serve to assist in the transformation of lives by preparing students to live in a robust and diverse democratic society. Matters related to law, education and race are inextricably intertwined and incapable of being dissected into exact formulas of empirical precision so as to always avoid unduly burdening one group for the benefit of another. The Constitution is a man-made construct that inherently incorporates the fallibility of the human condition in its endeavor to achieve compromises satisfactory to all. Therefore, an examination of the constitutionality of a particular practice must, necessarily, be a function of context. Notwithstanding this fact, as revealed in *Parents Involved*, issues concerning the legacy of de facto and de jure discrimination and what constitutes an appropriate remedy for that legacy force society and the courts to ask if and when (if ever) it is logically plausible to distance the past, move toward a race-neutral society and stop discrimination by stopping discrimination on the basis of race. 



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cum laude, an M.Ed. from Valdosta State University, and Juris Doctor degree from Florida State University's College of Law. Prior to beginning her career in education law, she was engaged in the private practice of law.

Endnotes

1. 127 S. Ct. 2738 (2007).
2. 539 U.S. 306 (2003).
3. 347 U.S. 483 (1954).
4. *Parents Involved*, 127 S. Ct. at 2746.
5. *Id.* at 2746-47.
6. *Id.* at 2747.
7. *Id.* at 2746.
8. *Id.* at 2747.
9. *Id.*
10. *Id.*
11. *Id.*
12. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1, cl. 2.
13. "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (2000).
14. "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." WASH. REV. CODE § 49.60.400(1) (2008).
15. *Parents Involved*, 127 S. Ct. at 2748-49.
16. *Id.* at 2749.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 2750.
21. *Id.*
22. *Id.*
23. *Id.* at 2746.
24. *Id.* at 2768 (Thomas, J., concurring).
25. *Id.* at 2788 (Kennedy, J., concurring in part and concurring in the judgment).
26. *Id.* at 2797 (Stevens, J., dissenting).
27. *Id.* at 2800 (Breyer, J., dissenting).
28. *Id.* at 2751-52 (majority opinion).
29. *Id.*
30. *Id.* at 2752-53.
31. *Id.* at 2752.
32. *Id.*
33. *Id.* at 2753-54.
34. *Id.* at 2754.
35. *Id.*
36. *Grutter v. Bollinger*, 539 U.S. 306, 316-17 (2003).
37. *Id.*
38. *Id.* at 314.
39. *Id.* at 316.
40. *Id.* at 311.
41. *Id.* at 344.
42. *Id.* at 364 (Rehnquist, C.J., dissenting).
43. 438 U.S. 265 (1978).
44. *Grutter*, 539 U.S. at 325.
45. *Id.* at 327.
46. *Id.* at 337-39.
47. *Id.* at 333-34.
48. *Parents Involved in Cmty. Schools v. Seattle School Dist. No. 1*, 127 S. Ct. 2738, 2753 (2007) (citing *Grutter*, 539 U.S. at 337).
49. *Id.*
50. *Id.*
51. *Id.* at 2754.
52. *Id.* at 2755 (plurality opinion).
53. *Id.* at 2756.
54. *Id.* at 2757.
55. 347 U.S. 483 (1954).
56. *Parents Involved*, 127 S. Ct. at 2767.
57. 163 U.S. 537 (1896). Under the separate but equal doctrine set forth in *Plessy*, "equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate." *Brown*, 347 U.S. at 488.
58. *Brown*, 347 U.S. at 492.
59. *Id.* at 494.
60. *Id.* at 495.
61. *Parents Involved*, 127 S. Ct. at 2768.
62. *Id.*
63. *Id.* at 2800 (Breyer, J., dissenting).
64. *Id.* at 2802.
65. *Id.*
66. *Id.*
67. *Id.* at 2821-22.
68. *Id.* at 2811.
69. *Id.* at 2817 (citing *Grutter v. Bollinger*, 539 U.S. 306, 326-27 (2003)).
70. *Id.* at 2820-21.
71. *Id.* at 2818.
72. *Id.* at 2823-24.
73. *Id.* at 2802-09.
74. *Id.* at 2829.
75. *Id.* at 2836.
76. *Id.* at 2798 (Stevens, J., dissenting).
77. *Id.* at 2798 n.3 (citing *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 243, 248 n.6 (1995) (Stevens, J., dissenting)).

Methods for Discovery in Arbitration



Arbitration is increasingly becoming the preferred method of dispute resolution for commercial disputes. The reason is clear—speed and reduced cost, without sacrificing the neutrality of the decision-maker. Although extensive formal discovery in litigation promotes the policy of achieving full disclosure of information and, thus, the fair resolution of a dispute, such full-blown discovery is viewed as inconsistent with speed and reduced cost. Thus, in arbitration, limited pre-trial discovery is the rule.

Within the arbitration process, discovery procedure normally will be based on party agreement, including the agreed arbitration rules. Absent that, the consent of the tribunal is required. The arbitrators usually will provide for relevant pre-hearing document production and will almost always allow witness examination at the arbitration hearing. Also, depending on the nature of the case and the attitudes of the arbitrators, parties may be permitted to take a limited number of depositions of a limited duration. Arbitrators typically allow no interrogatories or requests for admissions.

Due to the limited discovery within the arbitration process, lawyers should be aware of all legal and creative discovery options both within and outside of the arbitration process. This article will address methods of discovery both within and outside the arbitration process, with the goal of presenting the full range of discovery options in arbitration.

Discovery Within the Arbitration Process

The biggest influence on the determination of discovery methods within the arbitration process

will be the actions taken or not taken by the parties themselves.¹ For example, if an arbitral tribunal lacks the authority to compel discovery, then the specification of discovery methods and rules in the arbitration agreement may be the only way around the possibility of having incomplete evidence at the time that an award is made.² Thus, in their arbitration agreement, parties should focus on choosing methods and rules that are most appropriate to their given situation and potential disputes.³ The parties may do this by (a) setting forth the discovery procedure in their arbitration clause; and (b) referencing rules or procedural law that provides for discovery procedure. Short of these steps, parties may stipulate to discovery procedure after a dispute arises, known in arbitration procedure as a “submission agreement.” Once the parties are engaged in dispute, however, reaching agreement on arbitration procedure and the scope of discovery may prove difficult or impossible.

Specifying Discovery Procedure in the Arbitration Agreement

The easiest and most efficient manner to avoid uncertainty over discovery in arbitration is for the

parties to agree in their arbitration clause on how they will conduct discovery. At the time of drafting the contract, negotiations on the dispute resolution provisions are generally the least controversial. For example, the parties can generally agree on exchanging documents relevant to the disputed issues in the matter, the pre-hearing exchange of witness statements (which will provide the parties time to rebut the witnesses’ testimony at the hearing), and an agreed number of depositions of party opponent witnesses per side, pursuant to a time schedule. At the very least, the parties can usually agree to an exchange of only those documents that each side will use to support its case at the hearing, while agreeing to withhold documents to be used exclusively for cross-examination.⁴

The parties also should consider adding provisions to their arbitration agreement establishing their duty to comply with the discovery procedures that they have set forth in the arbitration clause, including conditions that will encourage compliance with the discovery procedures and discourage parties from engaging in dilatory tactics. At a minimum, the compliance terms should require the parties to answer

reasonable discovery requests and establish time limits for the discovery process. The parties further may agree to provide the tribunal with the authority to penalize noncompliance by, for example, drawing adverse inferences that the contents of a document are adverse to a party's case if that party fails to produce a requested document without sufficient showing of reason. Alternatively, and if not authorized by law or the applicable rules, the parties may authorize the tribunal to compel production of documents and the appearance of witnesses by issuing a subpoena. Moreover, the parties should agree to a mandatory pre-hearing conference, during which the parties may raise outstanding discovery issues.⁵

Prior agreement on discovery methods will almost always expedite fact development and, thus, promote efficiency and thereby reduce costs. It also will reduce tension after a dispute arises.⁶

Referencing Governing Law or Rules in the Arbitration Agreement

In general, the parties should agree to the rules or the law that will govern the discovery proceeding. For example, the parties can agree that the civil discovery procedures under the law of the state in which the arbitration will be held will govern or that the discovery procedures will be conducted pursuant to the rules published by Judicial Arbitration and Mediation Services, Inc. (JAMS).⁷ Many arbitration rules, however, lack specific guidance on discovery. Thus, the tribunal may be left with wide discretion to determine which methods of discovery may be used (or whether discovery will be used at all), subject to the tribunal's concern for ensuring a basic measure of equity by considering the expectations of the parties and the need for conducting a full and fair hearing. The tribunal also is limited in its discretion by the rules of arbitration as dictated by the administering institution, for example, the

American Arbitration Association (AAA).⁸ The parties should consult the administering institution's rules to see whether they address the issue of discovery.

Look to the Law of the State in Which the Arbitration is Taking Place

The parties should consider whether the law of the state in which the arbitration is taking place contains any provisions governing discovery in arbitration. The governing law on arbitrations in Georgia is the Georgia Arbitration Code (GAC).⁹ It applies "to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced," with the exception of certain enumerated agreements.¹⁰ The GAC anticipates a discovery process by providing that arbitrators may establish discovery procedures allowing the parties to obtain depositions and documents and that "[a] party shall have the opportunity to obtain a list of witnesses and to examine and copy documents relevant to the arbitration."¹¹

Many states have adopted some form of the Uniform Arbitration Act (UAA),¹² which provides for more limited discovery than the GAC. In particular, Section 17 of the UAA empowers an arbitrator to issue a subpoena "for the attendance of a witness and for the production of records and other evidence at any hearing," with the subpoena enforceable in state court.¹³ Section 17 also empowers the arbitrator, upon request of a party or witness, to permit "a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing."¹⁴ Further discovery is permitted in the arbitrator's discretion.¹⁵ In addition, Section 17 empowers a court in a state other than the state in which the arbitration is pending to enforce a subpoena issued by the arbitrator.¹⁶

Arbitrations Involving Transactions in Interstate Commerce

The Federal Arbitration Act (FAA)¹⁷ applies to any arbitration involving a transaction in interstate commerce.¹⁸ The FAA preempts any state law that conflicts with its provisions.¹⁹ Section 7 of the FAA permits the arbitrators to "summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case." The summons is enforceable in the U. S. district court for the district in which such arbitrators are sitting, with sanctions for failure to comply.²⁰ Several federal courts have interpreted Section 7 of the FAA to apply to pre-hearing document production.²¹

Third-Party Discovery

The arbitral tribunal's authority over the proceeding rests on the parties' private contractual arrangement to submit their disputes to that tribunal. Thus, the tribunal generally has no power to enforce its orders upon nonparties that are not bound by the arbitration clause of the parties' agreement. As a result, tribunals are hesitant to compel nonparties to produce documents or to appear at deposition.²²

For example, in the context of the FAA, the U.S. Court of Appeals for the 3rd Circuit has held that the FAA does not authorize arbitrators to issue pre-hearing document subpoenas,²³ while the U.S. Court of Appeals for the 4th Circuit has held that arbitrators may only compel nonparty depositions or compel nonparties to provide documents during pre-hearing discovery if there is a showing of special need or hardship.²⁴ The U.S. Court of Appeals for the 8th Circuit and the U.S. District Court for the Northern District of Georgia, on the other hand, have found that arbitral subpoenas for pre-hearing document discovery from third parties issued pursuant to the FAA are enforce-

able.²⁵ The U.S. Court of Appeals for the 2nd Circuit, in contrast, has held that arbitral subpoenas for third-party document discovery are enforceable at a hearing for document production and authentication purposes only.²⁶

Section 7 of the FAA does not expressly address whether an arbitral subpoena has to comply with the territorial limits of Federal Rule of Civil Procedure 45(b)(2), including that “a subpoena may be served at any place outside [the district of the issuing court] but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection.”²⁷ Federal courts are divided on this issue.²⁸

The GAC follows the FAA model in permitting arbitrators to:

issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. These subpoenas shall be served and, upon application to the court by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.²⁹

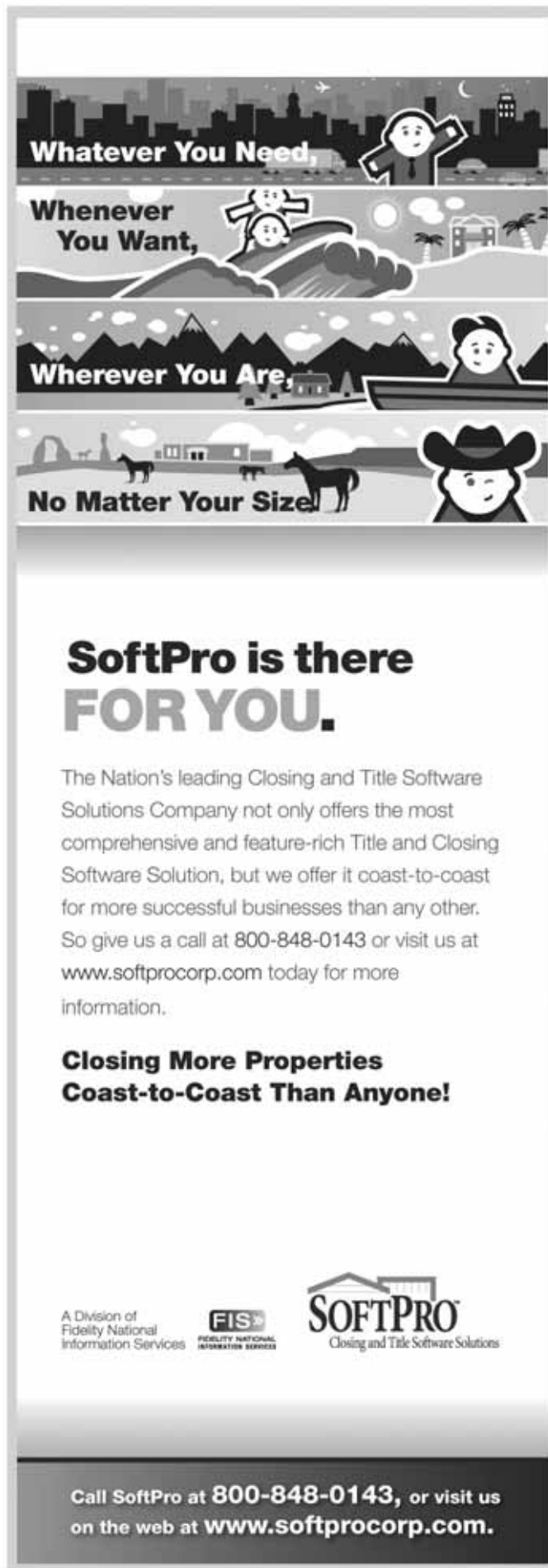
Whether this provision authorizes arbitrators to issue pre-hearing discovery subpoenas is uncertain.³⁰ A non-party, nonresident witness, however, likely cannot be compelled to appear for a deposition in Georgia.³¹ Nonparty, nonresident witnesses nonetheless may be compelled to attend a deposition in their own state of residence if the state law in which they reside so provides. See discussion at page 26 *infra*.

Discovery Rules in International Arbitration

The leading international arbitral institutional rules generally permit pre-hearing discovery, but are far less specific than domestic rules. Some institutional rules are more explicit than others. For example, under the rules of the American Arbitration Association (International Rules) and the United Nations Commission on International Trade Law (UNCITRAL), arbitral panels may order a party to deliver to the panel and to the other party a summary of the documents and other evidence. At any time during the proceeding, the panel may order a party to produce documents, exhibits or other evidence that it deems necessary or appropriate.³²

The Rules of the International Chamber of Commerce are less explicit about discovery. Under those rules, the arbitrators have the authority simply to “establish the facts of the case by all appropriate means.”³³ The authority to order production of documents is generally thought to be implicit in this broad mandate.

The International Bar Association has adopted by resolution the Rules of the International Bar Association on the Taking of Evidence in International Commercial Arbitration (IBA Rules) with the expectation that the parties may incorporate the IBA Rules into their arbitration agreement. The IBA Rules generally empower the arbitral panel with discretion to allow the



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parties to use four different methods of discovery: the document request, the witness statement, the site inspection and the expert opinion. The IBA Rules do not, however, contemplate the use of depositions.

Discovery Outside the Arbitration Process

Discovery methods within the arbitration process may not be sufficient even though the parties expressly provided for discovery procedure or rules in the arbitration agreement. The institutional rules and state or federal laws for the conduct of the arbitral proceedings likewise may be unsatisfactory. Most significantly, it is uncertain whether the arbitrator will compel discovery or even determine a proper scope of discovery.³⁴ The below discovery methods provide a broader range of options.

Discovery Methods Through the Courts

Applying Directly to Courts for Discovery In Aid of Arbitration

A party may apply directly to a court to obtain discovery in aid of arbitration. The general rule, however, is that a court cannot order pre-hearing discovery in the absence of “extraordinary circumstances.” The party must prove that discovery is a matter of necessity rather than mere convenience. A showing of exceptional circumstances is a difficult test to satisfy.³⁵ For example, one court held that “[t]he term ‘exceptional circumstances’ addresses situations where a party’s ability to properly present its case to the arbitrators will be irreparably harmed absent court ordered discovery.”³⁶ Nonetheless, courts have found facts to satisfy this exception.³⁷

Discovery in Court Proceeding for Enforcement of Arbitration Governed by FAA

A party also may make application for discovery from a federal

court under Rule 27 of the Federal Rules of Civil Procedure, “Depositions Before Action or Pending Appeal.” Rule 27 provides for discovery in anticipation of any action being filed that is “cognizable in any court of the United States.” It is most commonly invoked by parties who are seeking to conduct depositions in anticipation of a federal court case.³⁸ Nonetheless, although the statute only refers to obtaining testimony, it has been held to apply to document production in a federal court proceeding authorized by the FAA, i.e., a proceeding for the enforcement of an arbitration or other action related to arbitration.³⁹ The applicant must, however, demonstrate a “special need,” i.e., that the evidence sought is not available by other means.⁴⁰ For example, a “special need” may exist where a party to an international arbitration shows that another party in possession of evidence is trying to move such evidence to a location where it could not be obtained by subpoena of an arbitrator under the FAA.⁴¹

Ancillary Litigation Indirectly Relating to Arbitral Claims

Parties to an arbitration agreement may commence litigation that relates indirectly to claims subject to the arbitration agreement, for example, an action against a parent company of a subsidiary that is party to the arbitration agreement. This may provide an opportunity to obtain broad civil litigation discovery regarding the merits of an arbitrable dispute. The party runs the risk, however, of waiving the right to demand and compel arbitration of that dispute, unless the collateral judicial proceeding is sufficiently unrelated to the issues submitted in the arbitration.⁴²

State Laws Permitting Discovery for Out-of-State Proceedings

Many state codes have provisions for ancillary discovery in connection with out-of-state proceedings. Thus, a party should look to the law of the state in which the

discovery is sought to determine whether a court of that state may compel the discovery needed for the arbitration.⁴³

The most recent uniform state law enactment, the Uniform Interstate and International Procedure Act (UIIA), provides at Section 3.02(a) that “[a] court of this state may order a person who is domiciled or is found within this state to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside this state.” The commentary to Section 3.02(a) provides that “the term ‘tribunal’ is intended to encompass any body performing a judicial function.” Thus, under the UIIA, a party to a foreign or out-of-state arbitration proceeding has a good possibility of obtaining compelled discovery disclosure in aid of the arbitration.⁴⁴

The prior uniform act, titled the Uniform Foreign Depositions Act (UFDA), is still in effect in a number of states with significant commercial activity,⁴⁵ including Georgia.⁴⁶ Section 1 of the UFDA provides, in pertinent part:

Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

It is uncertain whether an order from an arbitrator in an out-of-state arbitration proceeding compelling discovery will satisfy the requirement of Section 1 of the UFDA.

Letters Rogatory to Obtain Discovery Abroad

Parties to an arbitration agreement may be able to obtain a “letter

rogatory" from a court to obtain discovery abroad. A letter rogatory is a formal written request sent by a court to a foreign court asking that the testimony of a witness residing within that foreign court's jurisdiction be taken pursuant to the direction of that foreign court and transmitted to the requesting court for use in a pending action. A letter rogatory also can include requests for the production of documents.⁴⁷

A court is inherently vested with the authority to issue letters rogatory.⁴⁸ Federal courts implicitly have the authority to issue letters rogatory under 28 U.S.C. § 1781(a)(2). Whether to issue such a letter is a matter of discretion for the court. When determining whether to exercise its discretion, a court will generally not weigh the evidence sought from the discovery request, nor will it attempt to predict whether that evidence will actually be obtained.⁴⁹ It is uncertain whether a court will exercise that discretion in aid of a pending arbitration.

Obtaining Discovery for International Arbitration

For parties involved in an international arbitration, 28 U.S.C. § 1782 provides a helpful, but still limited, discovery tool. Section 1782 empowers a district court to order a person residing or found in the district to "produce a document or thing for use in a proceeding in a foreign or international tribunal." The district court's authorization, however, extends only to documents or things to be used before a "tribunal."⁵⁰ The U.S. Supreme Court stated in dicta that "arbitral tribunals" are included within the definition of "tribunal" under Section 1782.⁵¹ The U.S. District Court for the Northern District of Georgia recently relied upon the dicta to hold that a private arbitration panel is a "tribunal" for purposes of Section 1782.⁵² As a result, it is likely that more parties to private foreign arbitration proceedings will attempt to use Georgia federal district courts to take

advantage of that ruling to compel discovery for those proceedings.

Discovery Methods Out-of-Court

Materials from Client

The prudent lawyer will instruct a client to locate and gather all of the relevant materials in its possession, in order that the case may be thoroughly investigated as early as possible. These instructions should also include making a list of all potential party witnesses. Also, client files from prior court cases, arbitrations, administrative hearings and internal investigations pertaining to the same or similar issues should contain relevant and useful material.

Discovery on the Internet

All kinds of information potentially useful in an arbitration can be found through the Internet, for example, location of witnesses, information on companies, medical information, expert witnesses, etc. Social networking sites, such as Facebook and MySpace, provide detailed information on persons at a touch of the mouse. In intellectual property arbitration disputes, the Internet is particularly useful. For example, a trademark owner quickly can do an Internet search for users of its marks and, thus, discover infringers of its trademark, including both intentional and unintentional infringers. Legal databases such as Lexis and Westlaw also are sources of much information.

Private Investigators

Private investigators can serve as a useful tool in performing many services, such as conducting background investigations, investigating claims suspected of being bogus (e.g., personal injury claims), witness interviewing and assessment, and advising on due diligence. Private investigators also can provide reports and testimony summarizing their work, which can be useful as evidence or

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preparation material for the arbitration hearing.

Open Record Laws

With respect to disputes involving documents maintained by a public entity, access to such information may be available under federal or state open records or freedom-of-information statutes.⁵³ Federal agencies are subject to the federal Freedom of Information Act,⁵⁴ which provides access under specified procedures to information maintained by the federal government agency (excepting certain privileged or confidential information).⁵⁵ Many states, including Georgia, have adopted open records statutes providing for similar access to state government agencies.⁵⁶ Use of these procedures to obtain disclosure of information in aid of arbitration likely would not waive the right to arbitration because they are not inherently inconsistent with the arbitration process.⁵⁷

Conclusion

The benefits of the speed and reduced cost of an arbitration do not necessarily have to come at the expense of pre-hearing discovery. Most rules and laws within the arbitration process do not provide firm guidance on discovery procedure. Even if they do, the procedure may be insufficient. Providing for discovery needs in the agreement and using discovery methods, both inside and outside of the arbitration process, are too often ignored. The diligent and creatively thinking lawyer will be aware of and use all available options. 



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Endnotes

1. Peter R. Griffin, *Recent Trends in the Conduct of International Arbitration – Discovery Procedures and Witness Hearings*, 17-2 J. INT'L ARB. 19, 28 (2000).
2. George A. Lehner, *The Discovery Process in International Arbitration*, 16-1 MEALEY'S INT'L ARB. REP. 13 (2001).
3. Griffin, *supra* note 1, at 28.
4. Lehner, *supra* note 2.
5. *Id.*
6. *Id.*
7. <http://www.jamsadr.com/rules/comprehensive.asp>.
8. The AAA is a popular dispute resolution choice for commercial disputes. It has promulgated several rules affecting discovery. Rule 21 of the AAA Commercial Arbitration Rules provides:
 - (a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct: (i) the

production of documents and other information, and (ii) the identification of any witnesses to be called.

(b) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.

(c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

American Arbitration Ass'n, Commercial Arbitration Rules, Rule R-21 (Sept. 1, 2007). Under Rule 9 of the AAA Commercial Arbitration Rules, which provides that, "[a]t the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference . . . [to] address such issues as . . . potential exchange of information," the parties may conduct depositions or exchange pertinent documents voluntarily in advance of the administrative conference. *See* Mary A. Bedikian, *Discovery in Arbitration, in ARBITRATION & THE LAW*, AAA GENERAL COUNSEL'S ANNUAL REPORT (Nov. 5, 1994). Furthermore, at the Rule 20 preliminary hearing, "the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters." This hearing may be used to demonstrate to the arbitrator the need for an order requiring the production of certain discovery. *See* Bedikian, *supra*. Under Rule 31, the arbitrator also, where "authorized by law," may subpoena witnesses or documents upon the request of any party or independently. In large or complex cases, "the arbitrator(s) may order depositions of, or the propounding of interrogatories to, such persons who may possess information . . . necessary to determination of the matter." American Arbitration Association, Commercial Arbitration Rules, *supra*, Rule R-4(d).

9. O.C.G.A. §§ 9-9-1 to -18 (2007).
10. *Id.* § 9-9-2(c).
11. *Id.* § 9-9-9(b), (c).
12. The text of the Revised Uniform Arbitration Act (2000) is available at <http://www.law.upenn.edu/bll/archives/ulc/uarba/arbitrat1213.htm>.
13. REV. UNIF. ARBITRATION ACT § 17(a), 7 U.L.A. 57 (2005).

14. *Id.* § 17(b).
15. *Id.* § 17(c), (d).
16. *Id.* § 17(g), 7 U.L.A. 58 (2005).
17. 9 U.S.C. §§ 1-16 (2006).
18. *Id.* § 2.
19. *Langfitt v. Jackson*, 284 Ga. App. 628, 634, 644 S.E.2d 460, 465 (2007).
20. 9 U.S.C. § 7 (2006).
21. *See, e.g., In re Sec. Life Ins. Co. of Am.*, 228 F.3d 865, 870-71 (8th Cir. 2000).
22. *Lehner*, *supra* note 2.
23. *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 407-10 (3d Cir. 2004) (Alito, J.).
24. Application of Deiulementar Compagnia Di Navigazione S.p.A. v. M/V Allegra, 198 F.3d 473, 479-80 (4th Cir. 1999); *COMSAT Corp. v. Nat'l Sci. Found.*, 190 F.3d 269, 275-77 (4th Cir. 1999).
25. *In re Sec. Life Ins. Co.*, 228 F.3d at 870-71; *Festus & Helen Stacy Found., Inc. v. Merrill Lynch, Pierce Fenner, & Smith Inc.*, 432 F. Supp. 2d 1375, 1379 (N.D. Ga. 2006); *see also Stanton v. Paine Webber Jackson & Curtis, Inc.*, 685 F. Supp. 1241, 1242-43 (S.D. Fla. 1988) ("[T]he court finds that under the Arbitration Act, the arbitrators may order and conduct such discovery as they find necessary. . . . Plaintiffs' contention that § 7 of the Arbitration Act only permits the arbitrators to compel witnesses at the hearing, and prohibits pre-hearing appearances, is unfounded.").
26. *Stolt-Nielsen SA v. Celanese AG*, 430 F.3d 567, 577-80 (2d Cir. 2005); *cf. Integrity Ins. Co. v. Am. Centennial Ins. Co.*, 885 F. Supp. 69, 71 (S.D.N.Y. 1995) ("[A]n arbitrator does not have the authority to compel nonparty witnesses to appear for pre-arbitration depositions.").
27. FED. R. CIV. P. 45(b)(2)(B).
28. *Compare Dynegy Midstream Servs. v. Trammochem*, 451 F.3d 89, 94-96 (2d Cir. 2006) and *Hay Group, Inc.*, 360 F.3d at 412, with *In re Sec. Life Ins. Co.*, 228 F.3d at 871-72, and *Festus & Helen Stacy Found., Inc.*, 432 F. Supp. 2d at 1378.
29. O.C.G.A. § 9-9-9(a) (2007); *see Michael F. Hoellering, Scope of Documentary Discovery in U.S. and International Arbitration*, American Arbitration Association (1991).
30. *See DOUGLAS H. YARN, ALTERNATIVE DISPUTE RESOLUTION: PRACTICE AND PROCEDURE IN GEORGIA* 271-72 (3d ed. 2006) ("Although the GAC also empowers the arbitrator to issue subpoenas for attendance at a hearing, the arbitrator appears to have little power to actually compel discovery.").
31. *See Blanton v. Blanton*, 259 Ga. 622, 622, 385 S.E.2d 672, 672 (1989).
32. AAA INT'L ARB. R., art. 19 (2-3); UNCITRAL R., art. 24.
33. ICC R. OF INT'L COMM. ARB., art. 20(1) (1998).
34. *Lehner*, *supra* note 2.
35. Wendy Ho, Comment, *Discovery in Commercial Arbitration Proceedings*, 34 HOUS. L. REV. 199, 211 (1997).
36. *Oriental Commercial & Shipping Co. v. Rosseel, N.V.*, 125 F.R.D. 398, 401 (S.D.N.Y. 1989).
37. *See, e.g., Ferro Union Corp. v. S.S. Ionic Coast*, 43 F.R.D. 11, 13-14 (S.D. Tex. 1967) (holding that plaintiff was entitled to take depositions, request documents and inspect foreign-flagged vessel that would be in a U.S. port for only four days, where future ports of call were unknown, and where there was an opportunity to inspect the steel that was the subject matter of the dispute).
38. Nathan D. O'Malley & Shawn C. Conway, *Document Discovery in International Arbitration – Getting the Documents You Need*, 18 TRANSNAT'L LAW. 371, 382 (2005).
39. Application of Deiulementar Compagnia Di Navigazione S.p.A., 198 F.3d 473, 482 (4th Cir. 1999) (plaintiff successfully argued that it expected to be a party to an action cognizable in the United States under the FAA, either to compel an arbitration in London, seek security, or to enforce an award).
40. *Id.* at 486.
41. O'Malley & Conway, *supra* note 38, at 382-83.
42. Robert F. Cushman, G. Christian Hedemann, & Avram S. Tucker, *Formal and Informal Discovery Procedures and Their Enforcement in Arbitration*, in ALTERNATIVE DISPUTE RESOLUTION IN THE CONSTRUCTION INDUSTRY § 17.13 (Wiley Law Publ'ns 1991).
43. Brian M. Cogan & David A. Sifre, *United States Federal Courts: No Longer Available to Compel Discovery in Connection with Non-United States Arbitrations*, 10 AM. REV. INT'L ARB. 19, 23 (1999).
44. *Id.* at 23-24. Jurisdictions enacting the relevant portion of the UPA include Massachusetts, Michigan, Pennsylvania and the Virgin Islands. *Id.* at 24.
45. *Id.*
46. O.C.G.A. § 24-10-111 (1995).
47. *Asis Internet Servs. v. Optin Global, Inc.*, No. C-05-05124-JCS, 2007 U.S. Dist. LEXIS 50621, at *8-10 (N.D. Cal. June 29, 2007). Notably, Federal Rule of Civil Procedure 28(b)(2) allows for a deposition in a foreign country "pursuant to a letter of request (whether or not captioned a letter rogatory)."
48. *Asis Internet Servs.*, *supra* note 47, at *8-10.
49. *Id.*
50. 28 U.S.C. § 1782 (2005).
51. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258 (2004).
52. *In re Roz Trading Ltd.*, 469 F. Supp. 2d 1221, 1224-25 (N.D. Ga. 2006).
53. *Cushman, Hedemann, & Tucker*, *supra* note 42, at § 17.14.
54. 5 U.S.C. § 552 (2007).
55. *Id.*
56. *See O.C.G.A. § 50-18-70 to -77* (2006 & Supp. 2007).
57. *Cushman, Hedemann, & Tucker*, *supra* note 42, at § 17.14.



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Metadata: Ethical Obligations of the Witting and Unwitting Recipient

by David Hricik and Chase Edward Scott

As shown in our last article in the February 2008 issue of the *Georgia Bar Journal*, software commonly used by lawyers often creates embedded data, otherwise known as metadata.¹ As previously discussed, there are means to avoid creating embedded data, as well as means available to remove hidden data already created. In theory, at least, it is possible to remove all metadata prior to sending a document to opposing counsel.

In Theory

As also mentioned in our last article, even good lawyers in large, sophisticated firms have recently transmitted documents that contain not just embedded data, but confidential embedded data—even revealing whom the lawyer’s client was intending to sue.² Accidents will happen; people are not perfect, and no doubt even the best software will miss some form of embedded data even if the document is properly scrubbed.

Suppose you open a document sent to you from opposing counsel. Is it ethical for you to purposely

mine through the document to see if there is embedded data present? If it is present, can you actually use it?

Before turning to those questions, it is important to note that the discussion in this article is limited to inadvertent transmission outside the context of document production. Procedural rules, such as the new Federal Rules of Civil Procedure, may replace or augment the issues of ethics discussed here.³ Thus, this discussion may have limited application to document production during litigation.

Can You Look?

Given that metadata is a relatively new concern for lawyers, it is not surprising that formal ethical rules do not yet directly address the question of whether it is proper for a lawyer to search an electronic file sent by another lawyer to see whether any useful embedded data is present. Like most states, however, Georgia has a general catch-all rule that prohibits “professional conduct involving dishonesty, fraud, deceit or misrepresentation.”⁴ The question, then, is whether it is dishonest or deceitful to mine for metadata in a document exchanged between counsel. Although the State Bar of Georgia has not yet addressed this issue, bar associations in other jurisdictions have, and their opinions may provide some guidance to Georgia lawyers.

Unfortunately, however, those bar associations that have analyzed the issue have openly split on whether it is ethical for a lawyer to look for metadata. Further, the split is deep, direct and irreconcilable.

On one end of the spectrum, the bars of New York, Alabama, Florida and Arizona have concluded that conducting a purposeful search for metadata is unethical. The New York Bar Association emphasized that “it is a deliberate act by the receiving lawyer, not carelessness on the part of the sending lawyer, that would lead to the disclosure of client confidences and secrets” in the embedded data.⁵ Alabama’s bar similarly condemned the act of mining for metadata as “a knowing and deliberate attempt by the recipient attorney to acquire confidential and privileged information in order to obtain an unfair advantage against an opposing party.”⁶ The Florida Bar also agreed, but more softly wrote that a recipient should not try to view metadata that the lawyer knows or should know was not intended for his or her viewing.⁷ Most recently, Arizona’s bar issued an opinion advising lawyers that as a general rule a lawyer may not “mine” documents from opposing counsel for metadata.⁸

On the other end of the spectrum, both the American Bar Association (ABA) and the Maryland Bar Association found nothing unethical with deliberately mining for metadata documents sent by opposing counsel outside of the context of discovery.⁹ The ABA expressed its disagreement in mild terms, however, stating only that “the Committee does not believe that a lawyer . . . would violate” his or her professional duties by mining for metadata.¹⁰ Taking a slightly more nuanced approach, the District of Columbia Bar reasoned that viewing metadata is dishonest only if, before viewing it, the

lawyer *actually knew* that the metadata had been inadvertently sent.¹¹

Perhaps representing the more balanced view is a very recent opinion from the Pennsylvania Bar Association. After noting the split detailed above, the Pennsylvania Bar refused to take a bright-line position on whether mining for metadata is unethical. Instead, it stated that “each attorney must determine for himself or herself whether to utilize the metadata contained in docu-

data should proceed with caution, particularly if the embedded data reveals the other side’s client confidences, privileged information, or work product and the circumstances are such that a reasonable lawyer would know that the embedded data was sent inadvertently. More fundamental than whether the lawyer will be disciplined for examining embedded data is the question of whether it is professional to do so. The ethics rules decide only matters

of discipline, and the broader and greater question of whether it is “right” to look should not be lost. Not only does the adage of “what goes around comes around” apply, but a judge, for example, may question the integrity of a lawyer who intentionally takes advantage of an opponent’s mistake that reveals privileged information. More is at stake than discipline.

Assuming, however, that a Georgia lawyer comes across metadata in an exchanged document either by intentionally mining for it or through innocent discovery,

does the lawyer have any obligation to notify the sender of the existence of the metadata?

Must the Recipient Notify the Sender of the Mistake?

A lawyer may learn of the existence of embedded data intentionally—the issue discussed above—or by mistake. As shown above, a lawyer can actively “mine” for metadata contained within a document. At the same time, an attorney who creates a document with track changes turned on may believe that the record of changes is free from the unintended viewer’s prying eyes as long as the track



ments and other electronic files based upon the lawyer’s judgment and the particular factual situation.”¹² Similarly, the Pennsylvania Bar stated that whether the information should be used turned upon “the nature of the information received, how and from whom the information was received, attorney-client privilege and work-product rules, and common sense, reciprocity and professional courtesy.”¹³

Georgia lawyers are thus left with neither controlling authority nor a clear majority rule from those authorities that have addressed the question of whether it is ethical to mine for metadata. If the opinions suggest anything, it is that a lawyer who decides to mine for embedded

changes setting has been changed from “Final Showing Markup” to “Final.”¹⁴ Without the proper removal of metadata, any holder of the electronic document maintains the ability to manipulate that document in the same manner as the document’s creator. This means that when a lawyer opens a document sent from opposing counsel and currently has track changes set to “Final Showing Markup,” that document will show all track changes regardless of the original creator’s track changes setting. If sensitive information had previously been deleted from the document by its creator, the unwitting attorney could inadvertently be exposed to this information and may be faced with a serious ethical obligation. Thus, while most metadata is discovered through intentional mining, accidental exposure to embedded data is still possible.¹⁵

The question of a lawyer’s professional duty to notify opposing counsel about inadvertently-sent metadata may be somewhat similar to obligations that arise when entire documents are inadvertently sent. For instance, many states expressly impose an obligation upon a lawyer who is inadvertently sent a document to notify opposing counsel of the mistake. Specifically, Model Rule of Professional Conduct 4.4(b) requires a “lawyer who receives a document relating to the representation of the lawyer’s client . . . [who] knows or reasonably should know that the document was inadvertently sent” to “promptly notify the sender.”¹⁶ The comments also specifically state that the rule covers inadvertently sent e-mail.¹⁷ Model Rule 4.4(b), however, has only been adopted in a few jurisdictions.¹⁸

Georgia does not yet have a specific rule like Model Rule 4.4(b). This fact, however, does not mean that ethical obligations are not raised when a lawyer inadvertently receives a sensitive document. For example, other states without a rule specifically addressing inadvertent transmission have nonetheless issued opinions that impose obliga-

tions on the recipient in such situations. The question that Georgia lawyers face is whether the duty exists even in the absence of a specific rule governing the situation.¹⁹


In the context of misdirected faxes, mail, e-mail and other communications besides embedded data, the authorities have generally recognized that ethical obligations can arise when a lawyer receives a document that was not intended for him or her, such as the receipt of a fax intended for opposing counsel’s client.²⁰ As a general principle, those authorities hold that where a lawyer receives privileged or confidential client information from another lawyer where the circumstances reasonably show that the disclosure was inadvertent, the recipient must notify the sender of the mistake and, in some jurisdictions, follow the sender’s instructions on how to proceed next.²¹

Assuming that such a duty exists in Georgia, the question would be whether that duty should apply in the special context of embedded data. Several bar associations have analyzed this duty in the context of embedded data where the lawyer intended to send the file containing that data to the lawyer who received the file but did not intend to transmit embedded confidential information. Unfortunately, those authorities have also split widely on whether the recipient has any duty to notify the sender of the presence of embedded data.

The opinions split along the same lines, essentially, as they do concerning whether it is dishonest to look. Specifically, the ABA²² and the Maryland Bar²³ concluded that there was no obligation to notify the sender, while New York,²⁴ Alabama,²⁵ Florida²⁶ and Arizona²⁷ concluded that such an obligation exists. The District of Columbia concluded that an obligation to notify existed only if the lawyer had actual knowledge that the embedded data was sent inadvertently before examining it,²⁸ while Pennsylvania again adopted a facts-and-circumstances approach to the question.²⁹

What, then, must a Georgia lawyer do when faced with this situation? Without clear guidance, the best advice would be the same as that regarding how to handle whether mining is appropriate: The greater the significance of the information and the clearer it is that the information was sent by mistake, the more likely it is that it is unethical not to notify the sender of the presence of embedded data. Whether inadvertent transmission waives the attorney-client privilege is, of course, a different question, and how the lawyer should proceed after notification—whether he should follow the sender’s, his client’s, or his own view of what to do—is itself a complex issue unaddressed by any Georgia authority.

Conclusion

Georgia lawyers are, at least for the time being, at an impasse when it comes to the treatment of opposing counsel’s metadata. As the significance of metadata becomes more widely known, each state will no doubt develop its own approach to the treatment of inadvertent disclosure of confidential information through metadata. Until such a time arrives in Georgia, we hope that, at a minimum, we have provided a warning as to where these problems await and some guidance regarding how to emerge from this ethical predicament unscathed. 



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Endnotes

1. See generally David Hricik & Chase Edward Scott, *Metadata: The Ghosts Haunting e-Documents*, 13 GA. B.J., Feb. 2008, at 16.
2. *Id.* at 20 n.21.
3. See FED. R. CIV. P. 26(b)(5)(B).
4. GA. RULES OF PROF'L CONDUCT R. 8.4(a)(4) (2001).
5. N.Y. St. B. Ass'n, Op. 749 (2001). All on-line ethics opinions and rules are available through <http://www.hricik.com/StateEthics.html>.
6. Ala. St. B. Office of General Counsel, Op. 2007-02 (2007) ("it is ethically impermissible for an attorney to mine metadata from an electronic document he or she receives inadvertently or improperly from another party").
7. Florida Prof'l Ethics Comm., Op. 06-2 (2006).
8. St. B. Ariz., Op. 07-03 (2007).
9. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-442 (2006); see Md. B. Ass'n, Ethics Op. 2007-9 (2007) (not unethical to view metadata).
10. ABA Formal Op. 06-442, *supra* note 9, at 4 n.10. The ABA also stated that it "views similarly" the Florida Bar Association's conclusion that mining metadata is unethical. *Id.*
11. D.C. B. Ethics Op. 341 (2007).
12. Pa. Bar Ass'n Comm. on Legal Ethics and Prof'l Responsibility, Formal Ethics Op. 2007-500 (2008).
13. *Id.*
14. As discussed in our previous article, Views may be changed in Microsoft Word to allow the user either to see or not to see changes that have been made to a document. Thus, it is possible that a lawyer may, depending on the View that is set in Word, not even know that there is embedded data in an exchanged document.
15. We created a copy of this file with track changes on, but the "Show" toolbar for track changes showing "Final," and then saved the file and e-mailed it. When the recipient opened the file with his "Show" toolbar set to "Final Showing Markup," all of the changes were visible. Thus, it is possible for a recipient to view metadata unintentionally. The discussion in this section, however, would likely apply whether the lawyer learned of the presence of embedded data intentionally, or by mistake.
16. MODEL RULES OF PROF'L CONDUCT R. 4.4(b).
17. *Id.* cmt. 2.
18. Andrew M. Perlman, *Untangling Ethics Theory from Attorney Conduct Rules: The Case of Inadvertent Disclosures*, 13 GEO. MASON L. REV. 767, 783-85 (2006) (listing jurisdictions that had adopted Model Rule 4.4(b)).
19. See generally Robert C. Port, *Whoops! You've Got Mail!*, 6 GA. B.J., Feb. 2001, at 16.
20. The ABA mentioned inadvertent transmission of e-mail when analyzing waiver of privilege over a misdirected fax: "[T]he availability of xerography and proliferation of facsimile machines and electronic mail make it technologically ever more likely that through inadvertence, privileged or confidential materials will be produced to opposing counsel by no more than the pushing of the wrong speed dial number on a facsimile machine." ABA Standing Comm. on Legal Ethics and Prof'l Responsibility, Formal Op. 92-368 (1992), *withdrawn*, Formal Op. 05-437 (2005); accord Fla. St. Bar Ass'n. Comm. on Prof'l Ethics, Op. 93-3 (1994) ("Such an inadvertent disclosure might occur as part of a document production, a misdirected facsimile or electronic mail transmission, a 'switched envelope' mailing, or misunderstood distribution list instructions.").
21. See generally Douglas R. Richmond, *Key Issues in the Inadvertent Release and Receipt of Confidential Information*, 72 DEF. COUNS. J. 110 (2005); James Q. Walker, *Ethics and Electronic Media*, 716 PLI/LIT 313, 334-36 (2004).
22. ABA Formal Op. 06-442, *supra* note 9.
23. Md. B. Ass'n Ethics Op. 2007-9, *supra* note 9.
24. N.Y. St. B. Ass'n Op. 749, *supra* note 5.
25. Ala. Op. 2007-02, *supra* note 6.
26. Florida Prof'l Ethics Comm. Op. 06-2, *supra* note 7.
27. St. B. Ariz. Op. 07-03, *supra* note 8.
28. D.C. B. Ethics Op. 341, *supra* note 11.
29. Pa. Formal Ethics Op. 2007-500, *supra* note 12.

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Georgia Lawyer Legacies

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

Illustration by Marc Cardwell

With a Bar membership as diverse as Georgia's—where people relocate to our cities from the other 49 states and countries as far away as China—it may be easy to forget that for a number of Georgia lawyers, the roots of their legal careers run deep. For some, they are but the second generation: the beginning of a legal legacy that may stretch for generations to come. Others, however, can find their last names in Georgia Bar Association rosters from before the Civil War.

We asked the Bar's membership to let us know if they were a member of such a family. The response was overwhelming. We followed up with six families who can boast attorneys across two or more generations and on the following pages list dozens and dozens more. While these accounts are not exhaustive, they are a sampling of the stories, legacies and legends that comprise the membership of the State Bar of Georgia.

Abbot Family

As a fifth generation lawyer and a fourth generation judge, Superior Court Judge Louisa Abbot

(admitted to the Bar in 1982) knows what it means to honor the profession. She follows in the footsteps of members of the Abbot-Hardeman family, dating back to the 1800s. On the Hardeman side, her maternal great-great-great-grandfather Robert Vines Hardeman served as lawyer, state representative and Superior Court judge in the Ocmulgee Circuit. Other Hardeman family lawyers include Abbot's great-grandfather, Robert Northington "R.N." Hardeman (1894) and her grandfather, Robert Northington Hardeman Jr. (1915). Two paternal great-great uncles, Judge William Little Phillips and John Robert Phillips both practiced in Jefferson County. According to Judge Abbot, "If you were to take a look at the cases on appeal out of the courts in Jefferson County, you would see that many are connected with an Abbot, Phillips or Hardeman."

Judge Abbot's view of lawyers and the legal profession was integrally shaped by how her father, James Carswell "Jim" Abbot (1951), and grandfather, William Wright Abbot Jr. (1914), conducted themselves, both as lawyers and as members of the community. They were the kind of men who believed that everyone was important and everyone deserved a chance. "So many people in society think badly of the profession. Growing up, I thought lawyers were heroic. People who knew my father and grandfather depended on them. People came to the back door for advice that they were happy to provide. My father even helped the gas station attendant with his taxes. I had no other concept of lawyers other than that they were people who helped others."

As the oldest of five children, Judge Abbot said she wasn't encouraged or discouraged by her father to carry on the legal tradition in the family, though she had many conversations with him about the law during her childhood, and hung around his law office regularly.

She was not really considering the profession of law for herself. After five years of college, her professors were telling her it was time to graduate. Her father even contacted a history professor to ask him to encourage her to work toward that goal. At about the same time, Judge Abbot decided she wanted a white Chevy pickup truck. She promised her father she would go to law school if he'd co-sign on the loan. "I don't think Dad ever anticipated me actually going to law school, but once I decided to do so, my parents were surprised and pleased." Judge Abbot graduated from UGA law school in 1982, 31 years after her father.

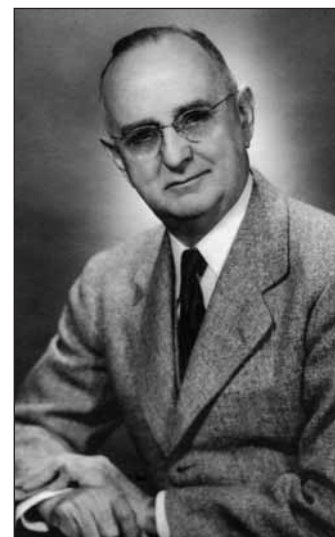
The Abbot-Hardeman family has always practiced in Georgia, mostly in Louisville. Her father practiced with her grandfather from 1951 to 1968 in a general civil practice with emphasis on real estate, banking and finance, probate and estate planning and business law. Judge Abbot, however, never practiced with any of her relatives. She began her legal career by clerking for Judge Avant Edenfield in Savannah and then got a job with a civil rights firm in town. "I talked with my father about returning to Louisville to practice, but he said there wasn't room. We would either be opposing each other or working together and there wouldn't be enough work to go around in such a small community." So she stayed in Savannah. Even though about two hours separated father and daughter, Judge Abbot continued to rely on him for advice on moral and ethical issues and obligations. "He was a man who knew how to meet his obligations."

In 2000, Gov. Roy Barnes appointed Judge Abbot to the bench when Superior Court Judge Charles Mickel was appointed to the Court of Appeals of Georgia. Her 18 years of prior legal experience provided her with a solid foundation from which to transition to a judgeship, but it was not without challenges. "As a judge, you are constantly making decisions. Both lawyers and judges spend a lot of time worrying about the outcome of those decisions, but as an attorney, it's easier to let things go. What you do as a judge has a profound effect on people and it is a heavy weight to bear. Being a lawyer taught me how to listen and have patience, two things that are absolutely necessary to possess as a judge."

The members of this legal family were deeply involved in their communities. From lawyers and judges to members of community boards, to state senators and county attorneys, each family member built upon the legacy of the one before to hold the profession and their fellow man to the highest standards. As Judge Abbot puts it, "Truly, I must have come by my chosen profession most honestly." A greater compliment to her family could not be found.



Judge Louisa Abbot beside the forms cabinet that was in the law office of Abbot & Abbot and its successors. The firm partners gave the cabinet to Judge Abbot upon her father's death.



Above Left James Carswell Abbot, admitted to the Bar in 1951. Above Right: William Wright Abbot Jr., admitted to the Georgia Bar Association in 1914.



Judge Charles Pannell Sr. and his family at his 1963 swearing in. From left: son Jim, wife Ruth Ann, son Bill, Judge Pannell and son Charlie.



Bob Pannell, Jim Pannell, Bill Pannell, Judge Charles Pannell Jr., Jon Pannell and Chad Pannell at the U.S. District Court.

Pannell Family

Six members of the Pannell family gathered in the chambers of U.S. District Court Judge Charles A. "Charlie" Pannell Jr. (1970) to share the Pannell family lawyer legacy. This meeting was orchestrated by a member of the youngest generation of Pannell attorneys and the judge's son, Charles A. "Chad" Pannell III (2004). Once everyone arrived and cleared through security, greetings were dispensed, and the men settled in to reflect on their family history.

The late Judge Charles A. Pannell Sr. of the Georgia Court of Appeals began the family tradition when he was admitted to the Bar in 1936. He practiced law in Chatsworth and served as city and county attorney. Beginning in 1939, he served in both the Senate and House of the Georgia General Assembly at various times. As the governor's floor leader, he helped

pass legislation establishing the organized Bar Association in 1963. "Our father had a strong love and dedication to public service, which has influenced the whole family," said one of his sons.

The second generation of family lawyers include the three sons of Judge Pannell Sr.: Charlie now serves on the District Court; James L. "Jim" Pannell (1974) is a partner in the Savannah firm of Gray & Pannell, LLP; and William A. "Bill" Pannell (1986) has his own civil practice in Atlanta. Robert D. "Bob" Pannell (1968), a nephew of Judge Pannell Sr., is a partner with Nelson, Mullins, Riley & Scarbrough, LLP.

Thus far, the third generation consists of Chad, an associate with King & Spalding and Jonathan "Jon" Pannell (2006), a partner with his father Jim in Gray & Pannell, LLP. Another grandson, William Pannell, who is graduating this year from the University of

Hawaii, has recently taken the LSAT.

"There just isn't much originality in the family," stated Jim with a smile, commenting on why members of the family keep choosing this profession. He recalled that his father was always involved in the important affairs in the community and people constantly came to him for advice. As children, Charlie and Jim often went to the courthouse and the Capitol in Atlanta with their father. Bill visited his chambers when he served on the Court of Appeals and later served on the staff of the Alaska Supreme Court. It never occurred to son Charlie to be anything other than a lawyer, if you wanted to be involved in the community and issues of the day. Service to members of the community made a strong impression. Bob Pannell remarked that he noticed that lawyers were always respected and at the center of things when he

was growing up in Thomson, Ga. In the second grade, he made the decision to become a lawyer.

The third generation, Chad and Jon, indicated that they didn't know there was any other profession, which makes sense if every interaction with other family members puts you in a room with relatives who practice law in different capacities.

"Being an attorney in the Pannell family means that you can join in the conversation at family gatherings," said Bill.

The Pannells all practice in Georgia, although in different areas of the state and in different areas of law. Prior to his nomination to the U.S. District Court for the Northern District of Georgia in 1999, Charlie served as district attorney and then judge on the Superior Court for the Conasauga Judicial Circuit. Jim's practice primarily focuses on municipal bonds, business law and civil litigation in Savannah. He served in

the Legislature during the 1980s. Jon also works with municipal bonds and business law with his father. Chad concentrates his practice in intellectual property, specifically patent law, while Bob deals in securities and Bill is involved in civil litigation. The Georgia connection is also evident in the law schools that they attended. Judge Pannell Sr., Charlie, Jim and Chad all graduated from the University of Georgia; Bill and Jon graduated from Georgia State University. The only one to look elsewhere for his education was Bob, who is a proud graduate of the University of Virginia law school, but he found his way back home to Georgia to practice: "About one-third of my graduating class went to New York City and I almost accepted a job there, but I knew I would eventually end up in Atlanta, so I came straight here."

When asked why each decided to stay and practice in Georgia, the

theme of the collective responses was that, "There is no better place to live and work than Georgia. It's where I'm from and where I know people."

The common thread that runs through this family is a sense of honor and respect for the profession and those who practice law. These six gentlemen work in a profession they respect and in a state they love. The sense of responsibility they share transcends the work they do and is evident in their family life and in the way they contribute to society. These men proudly and honorably represent their family name. Will this legacy continue with future generations? Only time will tell, but with a family history as rich as the Pannells, it wouldn't be surprising.

Arrington Family

"'Can't' doesn't live at 883 Neal Street NW." That's what the Arringtons grew up hearing from

Back: Audrey Arrington, Marvin Arrington Jr., Joseph Arrington II, Joseph Arrington. Front: Jill Arrington, Judge Marvin Arrington Sr., Michelle Arrington.





Marvin Arrington Sr., Cynthia (Arrington) Wright, Joseph Arrington Sr. and Audrey Arrington



James Philip Self has practiced in Atlanta for 35 years.

their mother. As a truck driver and a domestic worker, George and Maggie Arrington taught their children the importance of education. The family motto is "Arringtons do not give up. They may give out, but they don't give up." Success was preached regularly, no matter the obstacle. Three out of the six Arrington children went on to graduate from law school, while the others, Cynthia A. Wright and Yvonne A. Daniel, had successful careers in social work and teaching, respectively, after graduating from college. (Bobby George Arrington, the sixth and oldest Arrington child, died in 1995. The family says he was always supportive of their endeavors and is missed greatly.)

In 1967, Hon. Marvin Arrington Sr. became the family's first law school graduate. The dean of Emory Law School approached Judge Arrington and his best friend Clarence Cooper with an offer: he would pay for their tuition if they would attend his school. Marvin Sr. and Cooper made history as the first two black students to attend and graduate from Emory's law school.

"I certainly think that my attending law school impacted my family, and I encouraged [my siblings] as I practiced in the Atlanta area and saw so many injustices and discrimination," Marvin Sr. said. "I

am sure they heard me talk about these issues of exclusion, and my charge was to open up the system so that we all could participate as American citizens."

Following Marvin Sr., older brother Joseph Arrington Sr. graduated from North Carolina Central law school in 1969, although he decided to pursue a profession other than law. Next to get a law degree was Audrey Arrington (2002), who graduated from Woodrow Wilson College of Law in 1979.

When Audrey was asked what she believed really encouraged them to go to college and law school, she said, "Robert H. Brinson Jr. was a lawyer my mother worked for, and his family was instrumental to our family. Mr. & Mrs. Brinson were integral to our family. My mother would save money for Christmas for us, and they would match it or double it. If she saved 50 cents, they would put in 50 cents. We cared about them because they cared about us so much. Mr. Brinson told us we could all be lawyers."

Although none of the family practice together, they do rely on one another for advice. Marvin Sr. sits on the bench of the Superior Court of Fulton County, after practicing law for 31 years with the law firm of

Arrington & Hollowell. After more than 35 years of teaching, Audrey will retire in 2009. She will then practice full-time in her firm, Audrey L. Arrington & Associates, practicing civil, criminal, wills and estate law. Jill Arrington (1995), also an Emory Law School graduate, took her law degree and went into non-profit and real estate consulting, working as a property manager with Duke Realty. She feels her law degree gives her a "grounded background into the key issues affecting these two industries." After also graduating from Emory, Joseph Arrington II (1996), a sole practitioner with J. Arrington, II, LLC, is a multi-media and intellectual property attorney specializing in transactional issues related to all facets of multi-media. Marvin Arrington Jr. (1996) is another graduate of Emory and heads the ArringtonLawFirm, specializing primarily in entertainment law—including intellectual property, corporate, criminal and general civil litigation. (Jill, Joseph II and Marvin Jr. all attended Emory during the same period.) Michelle Arrington (2003), a staff attorney with State Court Judge Patsy Porter, graduated from DePaul University in Chicago. She handles all civil cases that come before Judge Porter from contract disputes, to negligence cases to medical malpractice.



Judge William Jefferson "Bill" Self II, Jill Self Elliot and Judge Tilman E. "Tripp" Self III with the portrait of Judge Tilman E. Self Sr.

The Arringtons are a close-knit family. "We always have been and always will be. My mother brought us up like that. We always had to study, and we must give due to Joseph Sr., as he was the first one to go to college. He's the one who got us all started," Audrey said.

Jill said, "There once existed a family reunion T-shirt that listed adjectives that started with the letter 'A,' commemorating the Arrington family. A few of those adjectives were aggressive, able, abundant, arrogant—all of which, to me, present a family that seeks to be the best in whatever endeavor it chooses and isn't shy in relaying its accomplishments."

When asked why she decided to stay and practice in Georgia, Audrey replied, "We are all Grady babies. This is home. I want to give back to Georgia what Georgia has given to me."

Each Arrington gives back to the community in their own way. Marvin Jr. contributes to local charities and educational institutions as well as serving on the boards of non-profit organizations. Michelle said, "It has been instilled in me to have high ethical and moral standards and to always find a way to give back to my community and to those who will come after me."

Self Family

Three successive generations of judges is something for a family to be proud of. Following in the footsteps of the late Judge Tilman E. Self Sr. (1949) isn't the easiest thing to do, but son Judge William Jefferson "Bill" Self II (1974) and grandson Judge Tilman E. "Tripp" Self III (1997) are honored to try.

Tilman Sr. had four children, three of whom are attorneys in Georgia: J. Philip Self (1971), Bill and Alera "Jill" Self Elliott (1975). Tripp is the son of the oldest brother, the late Tilman E. Self Jr., a successful real estate broker and master appraiser.

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State Bar of Texas
Vermont Bar Association
Washington State
Bar Association
State Bar of Wisconsin
Association of Legal
Administrators (ALA)



State Bar
of Georgia

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Tilman Sr. was an active man in his community and church, and he was very active in politics. He always wanted to serve in public office—it was the highlight of his life. He yearned to have a judicial position that allowed him to reach his ultimate goal at the end of his career. “He thought being a judge would be boring, but he found out that wasn’t true at all!” said Bill.

Philip was Tilman Sr.’s first son to attend law school. He went to the University of Georgia where he received both his undergraduate and law degree. He has practiced law since 1974, concentrating in tax law, estate planning, mergers and acquisitions and transactions. Though Philip has practiced in Atlanta for 35 years, when he returns to his hometown for extended periods of time, he is “reminded of how highly the Self name is esteemed in [Macon].” He said, “The overwhelming outpouring of love and support for our family at the death of our brother Tilman [Jr.] in February proves that

he carried forward the good name that is better to be had than riches. It’s truly awesome.”

When asked why he became a lawyer, Bill said, “It was inevitable that I would go into law. I followed Philip. I just expected that I would become a lawyer because my dad and brother were.”

And how did Bill go from practicing law to sitting on the bench like his father? On Tilman Sr.’s deathbed, he asked that someone who cared as much about the bench as he did would continue his term. He then lapsed into a coma, and Bill told his father that he would do it. In 1989, Bill was elected to complete the three years and seven months left in Tilman Sr.’s term, and Bill enjoyed the job. It was hard work, but he was carrying on the tradition of his father. After the completion of his father’s term, Bill was elected in 1992 and continues to serve as the judge of the Bibb County Probate Court.

After practicing for five years, Tilman Sr.’s daughter Jill was

forced to take a medical leave of absence from her practice following a car accident that required extensive physical therapy. She was a real estate agent for a while and then decided to go back to practicing law and formed Jill Elliott, LLC, a firm specializing in residential real estate closings. She’s also a stand up comic (taking after her mother, Mary Paul Self, who was a stand up comic and realtor) performing throughout the Southeast for corporations, country clubs and comedy clubs. Jill’s clients refer to her closings as “gigs.” She brings joviality to her closings, plays the theme from Jeopardy if the parties are taking too long to sign and plays the theme from Jaws while they sign their Security Deeds. She merged her practice with a larger firm in 2005 and remains of counsel with them.

Tripp is the only one in the next generation to be a lawyer, and is now a judge. After fulfilling his

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goal of serving in the U.S. Army, he went to law school. "I was 12 years old when Pop [Tilman Sr.] was sworn in," he said. "I decided that if that's what Pop was going to do, that's what I was going to do. I grew up in his chambers and at the courthouse."

When Tripp was elected judge, his Uncle Bill swore him in. "It was the most special thing for me to swear in Tripp," Bill said. "We used Pop's Bible, Tripp wore his Pop's robes, and it was in the same courtroom where Pop and I were both sworn in."

The family has some history of practicing law together. Bill practiced with Tilman Sr. for six years before his father was elected judge. Tripp and Phil worked on several legal matters together. Phil also practiced with Tilman Sr. in Macon for about a year, between completing law school and starting with his first law firm in Atlanta.

Tripp says that carrying on the family name is a tremendous responsibility. "When running for judge, everyone would tell me stories about Pop and how some people paid him in chickens!" he said. "They would say they would do anything for me as long as I'd be like my grandfather."

Although the elder Selfs aren't sure if there will be future generations of lawyers and judges in the family, Tripp says that his 4-year-old daughter Walker "lawyers him around" all day. While Tripp was being sworn in, she stood in a chair and proudly held the Bible. Tripp said, "As I was standing there and trying not to cry, because it was such an emotional moment for me, Walker was whispering to her mom. Later I found out she said, 'Mama, I've got a wedgie.'"

Candler Family

There has been a Candler practicing law in Decatur, Ga., since Charles Murphy, the Superior Court of DeKalb County clerk, legislator in the Georgia House and Senate, as well as the U.S. House of Representatives (1851-1853), brought



Milton A. Candler, admitted to the Bar in 1856, was the first Candler to practice law in Decatur, Ga. Generations of Candlers have since followed.

son-in-law Milton Anthony Candler (1856) into his practice following Milton's study of law at the University of Georgia.

Like his father-in-law before him, Milton combined his law career with public service. He served in the Georgia House from 1861 to 1863; the Georgia Senate from 1868 to 1872; and the U.S. House of Representatives from 1875 to 1879. Following his legislative tenure, Milton returned to his law practice in Decatur, where he died in 1909.

Milton, the son of merchants from Villa Rica, Ga., was the eldest brother of siblings who rose to fame of their own accord: Ezekial Slaughter Candler, an attorney who practiced in Mississippi; Asa Griggs Candler, the founder of the Coca-Cola Company and former mayor of Atlanta; Bishop Warren Candler, president of Emory College and the first chancellor of Emory University after the school's relocation to Atlanta; and John Slaughter Candler, an Atlanta attorney who served on the Supreme Court of Georgia.

Milton's son, Charles Murphy Candler (admitted in the late 1800s), practiced law in Decatur

with his father and also followed in the example of his father, and maternal grandfather before him, and became an elected official, serving in both the Georgia House and Senate. Charles married Mary Scott, daughter of George Washington Scott, founder of the Decatur women's college Agnes Scott College.

Charles and Mary had two sons who became attorneys like their father, grandfather and great-grandfather before them: George Scott "Scott" Candler (1911) and Charles Murphy "Murphy" Candler Jr. (1930). Murphy founded the Decatur firm of Weeks and Candler, where he practiced his entire career. Scott graduated from Davidson College and the Atlanta Law School and, following his return from service as a U.S. Army captain during World War I, began practicing law with his father Charles in the early 1920s. Scott picked up the family baton of public service by winning the post of mayor of the city of Decatur in 1922, an office he held for 17 years. Following his terms as mayor, Scott served as the sole county commissioner for DeKalb County from 1939 to 1955. In his later years, he returned to the practice of law, sharing an office with future Supreme Court of Georgia Justice George Carley.

Born in 1926, at the beginning of his father's legal career, it is probably not surprising that Scott Candler Jr. (1950) also went into law. Following his 1949 graduation from Emory Law School, Scott Junior founded the Decatur law firm of McCurdy and Candler in 1951 with Julius A. McCurdy.

Today, the McCurdy and Candler letterhead boasts the names of Scott Jr.'s sons, G. Scott Candler III (1979) and Clark Ellison Candler (1981). The three Candlers practiced together for approximately five years before Scott Jr. retired in 1986. On working in a law firm founded by his father, Clark said, "On the one hand, my father's firm would be a comfortable choice and there would

arguably be a certain 'ease of entry,' but on the other hand, perhaps a perception that I hadn't made it on my own, and but for that connection, I wouldn't be here. The prior attribute is true—it was a fairly comfortable entry. However, I tried to dispel the latter attribute as best I could by earning my way through hard work in school, and generally earning the opportunity of which I was the beneficiary."

Clark's wife, Terri Candler (1981), though now retired, worked at both the Decatur firms of Weeks and Candler (founded by Clark's great-uncle Murphy) and McCurdy and Candler.

Scott and Clark represent the sixth generation of family attorneys to practice in Decatur, stretching back to their great-great-grandfather Charles Murphy. Clark said, "So many generations in one profession in one town is a bit unusual I am sure; I have never quite known what to think of it. But I am happy with my professional life occurring in the same community where so many of my

ancestors made their homes. One day someone in my family will break out of the mold, and dip his or her toe in a profession and community apart from the one to which we have become accustomed, and I wish them much success, if for no other reason than for the fact that he or she had the courage to do so!"

However, as Scott III and Clark's sons, Scott Candler IV and Clark Candler II, are currently in law school and preparing to enter law school, (University of Virginia and UGA respectively), there is already a seventh generation of Candler attorneys in the works. Clark said, "The other three children between my brother and me are too young at this point to consider law school, so this could get even worse!"

Highsmith Family

The Highsmith Family tradition of law practice began in the very late days of the 19th century when James Parker "J.P." Highsmith was admitted to the Georgia Bar Association on July 23, 1899. He was later elected to

the Brunswick Judicial Circuit Superior Court in 1914 and served three terms before running for the Georgia Court of Appeals in 1926. (A race he ultimately lost.) Four of Judge Highsmith's five sons were Georgia attorneys, three of whom remained in the state their entire legal careers: E. Way Highsmith (1928), M. Fuller Highsmith (1931), Jasper Habersham "Jap" Highsmith (1931) and Norwood H. Highsmith (1948).

Jap Highsmith began his law practice with his father under the firm name of Highsmith and Highsmith in Baxley, Ga., following his graduation from George Washington Law School in Washington, D.C., and his admittance to the Bar. He also served as city attorney for Baxley, as well as the solicitor of the State Court of Appling County. In the 1950s, the firm of Highsmith and Highsmith became Highsmith, Highsmith, Alaimo and Knox with offices in Hazlehurst, Baxley and Brunswick. In those days, Jap and his brother Way were the principal Highsmiths. In 1976, the firm reverted to Highsmith and Highsmith (both Alaimo and Knox went on to judgeships), retaining its Baxley office. But this time, Jap was the elder attorney and brought his son, Robert Sparks "Bob" Highsmith Sr., into the practice upon Bob's graduation from Emory Law School.

Bob said, "The very first thing he [Jap] did my first day in the office was hand me a plat and told me to write a legal description. (Law school doesn't teach you these practical matters.) He remarked as I began to try to perform the task, 'I remember what a time Big Dad [J.P.] had trying to train me.' What I wrote failed his every hope and my training began."

Bob continued, "As for trial work, my training



Seated: Terri Candler, Standing: Clark Candler, Clark Candler II (entering UGA Law Fall 2008) and Scott Candler III.



Charles Murphy Candler, Scott Candler Sr. and Scott Candler Jr.



Jap Highsmith, holding grandson Robert Highsmith, and wife.



Bob Highsmith observes as his son Robert Highsmith Jr. is sworn in to the Bar.

from him consisted of one remark: 'Cases are won in the office before they go to trial.' He was of course referring to preparation. I remember one case in particular against an insurance company for claims due under its policy, bad faith damages and attorney fees that I tried and won after his death. I had spent those hours in the office before trial. Judge Knox, his former partner, called me into chambers while the jury was out and said, 'Bob, [your father] would have been proud of that fine closing argument.' I remarked that it was put together long before trial, as Daddy always said cases were won in the office. To which Judge Knox replied, 'Jap was the best trial lawyer I have ever seen bar none.' (A list that included F. Lee Bailey who was trying a case in Baxley when I was sworn in.) I was never the trial lawyer Daddy was, but I appreciated Judge Knox's remark, who had been quite a trial lawyer himself."

"I can't verify this, but I have been told by trusted people that Daddy never lost a case in Appling County. Judge Knox told me that Daddy had an uncanny ability to know what people would accept and believe."


The father and son team of Jap and Bob practiced together at Highsmith

and Highsmith until Jap's 1985 retirement. The following year, Bob was elected judge of the State Court of Appling County, where he served four terms, from 1987 to 2003. Bob still practices at Highsmith and Highsmith, as well as serving as county attorney for Appling County, an office he has held for 27 years. Bob also serves a mentor for his own attorney son, Robert Sparks Highsmith Jr. (1998), a partner at Holland & Knight in Atlanta.

Though a portrait of his great-grandfather Judge J.P. Highsmith hangs in the state courthouse in Appling County, Robert says that he came to the decision to become a lawyer on his own accord. "I never felt one iota of family pressure to be an attorney," he said. "By the time I got to college, I knew it was what I wanted to do."

In the clerk's office at the Appling County Courthouse, there is an old leather-bound "Registry of Attorneys." On the "H" page there are the four signatures, written across 100 years, of Judge J.P. Highsmith, Jap Highsmith, Bob Highsmith and Robert Highsmith. It's a legacy in writing of a family of men who've made their mark on the legal profession and their communities across centuries and generations.

Conclusion

These six families represent a mere sampling of so many in Georgia that proudly claim a legacy of commitment to the law and service to their communities. Whether that legacy is just beginning or stretches back over many generations, their dedication to strengthening our society is evident in the activities of their daily lives. These men and women truly understand what it means to honor their profession. 



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Georgia Legal Legacies

**This is not a complete list of all State Bar of Georgia members who met the criteria set forth. The information was compiled from e-mails received from Georgia lawyers who volunteered their family's information in response to a request from Immediate Past President Jay Cook on March 30, 2007.*

Robert Northington "R.N."
Hardeman (1894)
William Wright **Abbot** Jr. (1914)
Robert Northington Hardeman Jr.
(1919)
James Carswell Abbot (1951)
Hon. Louisa Abbot (1982)

Benjamin C. **Abney** (1972)
Elizabeth Cade Abney Daniel
(2001)

Charles F. **Adams** (1949)
Hon. William P. Adams (1977)
Brian P. Adams (2005)

Warren **Akin** (1935)
William Morgan Akin (1974)

Aaron I. **Alembik** (1958)
m. Judith M. Alembik (1973)
Michael D. Alembik (1961)
Julius Alembik (1975)
Gary Morton Alembik (1988)
Richard Scott Alembik (1991)
Marcia Stacy Alembik (2007)

John F. **Allgood** (1973)
Sara E. "Beth" Allgood Blalock
(2003)

Thomas F. **Allgood** (1952)
Robert L. Allgood (1978)
Thomas F. Allgood Jr. (1979)

Hon. Marvin S. **Arrington** Sr. (1970)
Jill A. Arrington (1995)
Marvin S. Arrington Jr. (1996)
Joseph Arrington II (1996)
Audrey L. Arrington-Hawkins (2002)
Michelle Arrington (2003)

C. King **Askew** (1971)
Edgeley Askew Myers (2004)
m. Matthew M. Myers (2003)

Col. T. H. **Barksdale** Jr. (1948)
A. R. Barksdale (1950)
Wales F. Barksdale (1978)
Kathleen Barksdale Pattillo (1987)

Grace H. **Barnes** (1945)
Jerry Alan Buchanan (1976)
Kimberly C. Gaddis (1996)
William Alan Buchanan (2007)

Roy E. **Barnes** (1972)
Allison Barnes Salter (2000)
m. John Frank Salter (2000)

W. Hale **Barrett** (1954)
Susan Dupre Barrett (1991)

George L. **Barron** Jr. (1973)
Garlan Barron Furin (1995)
Graham L. Barron (2007)

David C. **Barrow** Jr. (1947)
Charles W. Barrow (1976)
Charles E. W. Barrow (2005)

Harris P. **Baskin** Jr. (1974)
Carol S. Baskin (1976)
Dawn M. Baskin (1996)

Ansley B. **Barton** (1976)
Thomas McCarty Barton (1989)
Sara Barton O'Dea (1992)

John M. **Beauchamp** (1962)
Robert Mason Beauchamp (1990)
F. Lee Beauchamp (1992)
John H. "Buck" Beauchamp (1996)

Hon. Griffin B. **Bell** (1947)
Griffin B. Bell Jr. (1970)
Griffin Boyette Bell III (2002)

Harry H. **Bell** Jr. (1935)
John Chapman Bell (1938)
John C. Bell Jr. (1972)
David B. Bell (1977)
Ansley Bell Threlkeld (2001)
Sara Manly Grainger (2002)
m. Paul H. Grainger (2001)

James T. **Bennett** Jr. (1947)
Michael S. Bennett Sr. (1977)
Michael Sheppard Bennett Jr.
(1993)
James Thomas Bennett (1998)

Fred D. **Bentley** Sr. (1948)
Fred D. Bentley Jr. (1980)
Robert Randall Bentley (1984)

Kathryn Travis **Bergeron** (1991)
Amy Bergeron Panessa (1998)
m. Brian Keith Panessa (1998)

Susan Macklin **Berkowitz** (1993)
Stacy Berkowitz Williams (1998)
Alison Berkowitz Prout (2004)

Barry W. **Bishop** (1974)
Christi A. Cannon (1995)
Christopher Lee Bishop (2005)

James H. **Bisson** III (1976)
m. Susan W. Bisson (1976)
Jennifer Bisson Floyd (2004)
Rebecca Bisson Gober (2007)

Hon. G. Alan **Blackburn** (1972)
Jennifer Blackburn (2004)

Hon. Joseph H. **Blackshear** (1929)
Joseph Blackshear Atkins (1987)
m. Marybeth (Robertson) Atkins
(1988)

Hon. Jesse G. **Bowles** (1946)
Jesse G. Bowles III (1974)

David Silver **Bracker** (1936)
I. Henry Bracker (1970)
Susan A. Bracker (2002)

Robert Douglas **Branch** (1924)
R. Byron Attridge (1960)
William H. Attridge Jr. (1997)

Hon. Perry **Brannen** (1926)
Hon. Perry Brannen Jr. (1964)
Frank P. Brannen (1966)
Franklin P. Brannen Jr. (1996)
m. Mary (Hay) Brannen (1995)

Jerry W. **Brimberry** (1962)
Mark Douglas Brimberry (1989)
Jerry Wayne Brimberry Jr. (1992)

Jack Thomas **Brinkley** (1958)
Jack T. Brinkley Jr. (1981)
Matthew James Brinkley (2006)

Hon. William C. **Brinson** (1917)
Curt M. Johnson (1993)

Hon. Carl Cecil **Brown** Jr. (1973)
DaCara S. Brown (2002)

Thomas J. **Browning** (1973)
Tyler Jennings Browning (2000)

James V. **Burgess** Jr. (1967)
James Vance Burgess III (1998)
m. Alison Leigh Burgess (1998)

Thomas R. "Tommy" **Burnside** Jr.
(1961)
Thomas Reuben Burnside III (1991)

Walter H. **Burt** (1914)
Hilliard P. Burt (1949)
Walter H. Burt III (1975)

Susanne F. **Burton** (1975)
Jon William Burton (1991)
m. Patricia B. "Beth" Attaway
Burton (1992)
Jeremy Michael Attaway (2003)

Howard S. **Bush** (1972)
Brian C. Bush (1998)

Johnnie L. **Caldwell** Sr. (1952)
Hon. Johnnie L. Caldwell Jr. (1973)
William G. Johnston III (1990)
David B. Cox (1998)

Clarence H. **Calhoun** Jr. (1939)
Richard W. Calhoun (1977)

Daniel P. **Camp** (1970)
James Taylor Camp (1998)

Robert Patrick **Campbell** Sr.
(1932)
W. Kent Campbell (1969)

George S. **Candler** (1911)
Hon. Thomas S. Candler (1915)
Murphey Candler Jr. (1930)
John S. Candler II (1931)
Asa Warren Candler (1938)
Scott Candler Jr. (1950)
George Scott Candler III (1979)
Clark Ellison Candler (1981)
m. Terri A. Candler (1981)

David L. **Cannon** (1982)
David L. Cannon Jr. (1995)
Christi A. Cannon (1995)

**Italics denotes deceased.*

Ira Ewell **Carlisle** (1911)
Edwin A. Carlisle (1938)
 Hon. Ralph E. Carlisle (1960)
William R. Carlisle Sr. (1969)
 William R. Carlisle Jr. (1996)
Robert E. Carlisle (1998)
 Thomas A. "Tad" David (2004)

Henry T. Chance (1934)
Kenneth R. Chance (1965)
 Stephen R. Chance (1995)
 m. Erin Reynolds Chance (1999)
 Allison B. Chance (1997)

Leah F. **Chanin** (1954)
 Leonard N. Chanin (1984)

Hon. W. H. **Chason** (1950)
 Margaret Clair Chason (1985)
 Jonathan Kevin Chason (1987)

Joseph E. **Cheeley** Jr. (1950)
 Joseph E. Cheeley III (1980)
 Robert David Cheeley (1982)
 John P. Cheeley (1993)

Hon. Julian P. Cheney (1951)
Hon. John Max Cheney Sr. (1951)
 Curtis Van Cheney Jr. (1971)

Cecil M. **Cheves** (1974)
William M. Cheves (1976)
 William M. Cheves Jr. (2005)

Nickolas P. **Chilivis** (1952)
 Nickolas P. T. Chilivis (2002)
 m. Kathryn Webb Chilivis (2004)

Ruth F. **Claiborne** (1976)
 William Randolph Claiborne (2005)

Randall M. **Clark** (1972)
 Jason Randall Clark (2004)
 Brandon Slade Clark (2004)

Alexander S. **Clay** IV (1970)
 Alexander Stephens Clay V (1996)

H. William **Cohen** (1970)
 Brian Scott Cohen (1998)

Hon. Aaron **Cohn** (1938)
 Leslie L. Cohn (1973)
 Leslie K. Lipson (2001)
 m. Aaron William Lipson (2000)

Theo Wade Coleman (1932)
 Wade H. Coleman (1964)
 Wade Harrison Coleman Jr. (1997)

James M. **Collier** (1960)
 Edward R. Collier (1990)

Ariel V. **Conlin** (1953)
 S. Elizabeth Conlin (1977)
 m. T. Bart Gary (1978)

Garland B. Cook (1950)
 Garland Bennie Cook Jr. (1977)
 James David Cook (1979)
 Steven Allan Cook (1991)
 Kenneth Douglas Cook (1991)

J. Vincent **Cook** (1964)
 Jay Wright Cook (2007)

Charles M. Cork Sr. (1929)
 Charles M. Cork Jr. (1955)
 Charles Madden Cork III (1982)
 Alan Patrick Taylor (2006)

Lindsey Cowen (1965)
 Martin Lindsey Cowen III (1975)
 m. Hon. Linda S. Cowen (1985)
 Hon. Velma Cowen Tilley (1978)
 m. Stanley D. Tilley (1978)

Terrence Lee **Croft** (1970)
 Michael G. Regas II (1991)
 Thomas Albert Croft (1992)

Hon. W. J. Crowe (1919)
 Norman J. Crowe Jr. (1976)
 James E. Crowe Jr. (2003)
 Christy Crowe Childers (2005)

Hon. George B. Culpepper Jr. (1923)
 Hon. George B. Culpepper III (1946)
 m. Donna (Jones) Culpepper (1990)
 Hon. Bryant Culpepper (1972)

Henry C. Custer (1966)
 William V. Custer IV (1986)
 m. Cheryl (Fisher) Custer (1986)
 Cawthorn H. Custer (1991)
 m. Michael Morrone Custer (1995)

Remer C. **Daniel** (1966)
 Remer Craig Daniel (1996)

Hon. Jefferson L. Davis (1943)
Ronald L. Davis (1965)
Hon. Jefferson L. Davis Jr. (1970)
 Ashley Davis Stewart (2003)

Jefferson Davis (1947)
 Jefferson Davis Jr. (1962)
 A. Kimbrough Davis (1966)
 Bryan J. Davis (2002)

Rebecca J. **Davis** (1981)
 James W. Davis II (1985)
 James W. Davis III (1997)

T. Hoyt **Davis** Jr. (1940)
 William Davis Harvard (1981)
 John N. Davis (1985)

James M. **Deichert** (1982)
 Capt. Christian L. Dichert (2000)

William T. **Divine** Jr. (1952)
 William Douglas Divine (1980)

Lester Zack **Dozier** Jr. (1963)
 John William David Dozier (1998)

Charles J. "Chuck" **Driebe** (1957)
 Charles James Driebe Jr. (1982)

John Steven **Dugan** (1980)
 Steven Cole Dugan (2007)
 m. Kristy Waldron Dugan (2007)

James A. Dunlap (1942)
 Edgar B. Dunlap II (1974)
 Eleanor (Dunlap) Henderson (1976)
 James A. Dunlap Jr. (1988)
 Mary Eleanor Henderson (2007)

Hon. B. Avant **Edenfield** (1958)
 Gerald M. Edenfield (1970)
 Vera Sharon Edenfield (2004)
 Kristie Alicia Edenfield (2005)

Shirley White **Edwards** (1997)
 Kari Melissa Gibbs (2001)

James A. **Eichelberger** (1963)
 Theodore B. Eichelberger (1985)
 Karl Joseph Eichelberger (1998)
 Katherine Anne Eichelberger (1999)

E. Larry **Eidson** (1961)
 Lenné Eidson Espenschied (1985)

Hon. J. Robert Elliott (1934)
 Thomas B. Buck III (1962)
 Susan Elliott Rich (1976)
 Beryl B. Farris (1977)

W. G. **Elliott** (1958)
 Walter G. Elliott II (1982)
 James L. Elliott (1985)

Richard A. **Epps** (1974)
 Richard Alonzo Epps Jr. (1999)

Hon. Philip F. **Etheridge** (1965)
 Paul E. Jordan (1979)
 Mark Sutton Etheridge (1999)

Archibald A. Farrar Sr. (1948)
 Archibald A. Farrar Jr. (1974)
 Robert N. Farrar (1976)

Alfred D. **Fears** Sr. (1948)
 Alfred D. Fears Jr. (1981)
 Denise (Fears) Hemmann (1981)
 Hon. William A. Fears (1985)

Hon. Jule Wimberly Felton (1919)
Jule W. Felton Jr. (1954)
 James R. Paulk Jr. (1964)
 Jule W. Felton III (1985)
 James T. Paulk (1999)
 Stephanie Ann Paulk (2002)

Monroe **Ferguson** (1967)
 Hon. Pamela Pauline Ferguson (1989)
 Lydia Michelle Ferguson (2000)

Robert E. Flournoy Jr. (1952)
 Robert E. Flournoy III (1980)
 Matthew C. Flournoy (1985)

Thomas Moffett Flournoy (1931)
 Thomas M. Flournoy Jr. (1966)
 Thomas Moffett Flournoy III (1998)

John J. Flynt Jr. (1938)
 John J. Flynt III (1971)
 Crisp B. Flynt (1977)
 Anna Elizabeth Flynt (2006)

Charlie Franco (1950)
 Leonard L. Franco (1976)

Theodore **Freeman** (1976)
 Christopher B. Freeman (2004)

Hon. Joseph J. Gaines (1952)
 Karen Lea Gaines (1980)

J.D. Gardner (1917)
Jay D. Gardner (1955)
 James R. Gardner (1978)

Benjamin B. Garland (1932)
J. Richmond Garland (1935)
 Edward T. M. Garland (1964)
 Benjamin M. Garland (1968)
 John Byrd Garland (1973)
 James A. Garland (2002)
 John A. Garland (2004)

Hon. Edgar C. **Gentry** (1938)
William C. Gentry (1986)

John J. **Gilbert** (1929)
James B. Gilbert Sr. (1941)
James B. Gilbert Jr. (1969)
Ernest B. Gilbert (1976)

R. K. **Girardeau** (1948)
Hon. John E. Girardeau (1968)
Jill M. Girardeau (2003)

Nathaniel E. **Gozansky** (1973)
m. Elizabeth A. Johnson (1982)
Hon. Michelle (Gozansky)
Harrison (1994)
m. Victor J. Harrison (1999)

Thomas E. **Greer** (1975)
Jonathan Lee Greer (2006)

C. E. **Gregory Jr.** (1934)
Cleburne E. Gregory III (1973)
Charles L. Gregory (1975)

W. Thomas **Griffith** (1950)
Amy (Griffith) Dever (1982)

Robert W. **Grout** (1969)
Bradley W. Grout (1997)
m. Megan Webb Grout (1997)

Hon. Henry F. **Guess** (1915)
Hon. William Marion Guess Sr.
(1931)
Hon. Marion Guess Jr. (1969)

Ellsworth **Hall Jr.** (1929)
John Ellsworth Hall III (1957)
F. Kennedy Hall (1964)
Clisby Hall Barrow (1993)
John Ellsworth Hall IV (1997)

William M. **Hames** (1963)
m. Margie Pitts Hames (1963)
Adam M. Hames (1998)

Jeffrey Coe **Hamling** (1973)
Kathryn Hamling Mulkey (2001)

Granger **Hansell** (1925)
Allen E. Lockerman Jr. (1931)
McChesney Hill "Mac" Jeffries
(1950)
C. B. Rogers (1953)
Charles Hansell "Chip" Watt III
(1973)
M. Hill Jeffries Jr. (1980)
Brian DeVoe "Buck" Rogers (1994)
Allen Elijah Lockerman IV (1994)
Halsey George Knapp Jr. (1980)
Tina Shadix Roddenberry (1987)
Charles Hansell Watt IV (2004)

R. Ernest **Harben Jr.** (1968)
Jennifer Harben Harry (2002)

James W. **Harris** (1974)
T. Daniel Brannan (1982)
Joseph E. Gotch (1998)
Matthew T. Harris (2006)
m. Erin Penn Harris (2005)

John Burke **Harris Jr.** (1947)
John Burke Harris III (1978)
m. Joan E. West Harris (1978)
William C. Harris (1980)
m. Sarah Stevenson Harris
(1986)

Roy V. **Harris** (1919)
William McKenzie Dallas (1921)
Catherine Harris Helms (1986)
Lucinda (Dallas) Bentley (1987)
William McKenzie Dallas III
(1988)
Elizabeth Dallas Gobeil (1995)

G. Hughel **Harrison** (1955)
Samuel H. Harrison (1981)
James Keith **Hasson Jr.** (1971)
Keith Samuel Hasson (1999)

Samuel B. **Hatcher Jr.** (1909)
James Madden Hatcher Sr. (1921)
Kenneth M. Henson (1947)
J. Madden Hatcher Jr. (1961)
Samuel F. Hatcher (1971)
Kenneth M. Henson Jr. (1977)
Carlton M. Henson (1980)
J. Madden Hatcher III (1986)

James Iverson **Hay** (1972)
Mary (Hay) Brannen (1995)

Dewey **Hayes Sr.** (1949)
Dewey N. Hayes Jr. (1979)
Franklin Darrow Hayes (1992)

Henry C. **Head** (1951)
James B. Head (1982)
David Carleton Head (1990)

Herman **Heyman** (1921)
Deborah Heyman Harris (1985)

George **Hibbert** (1948)
David W. Hibbert (1975)
Jonathan W. Hibbert (1984)
Henry Allen Hibbert (1989)

Hon. James Parker "J.P."
Highsmith (1899)
Everett Way Highsmith (1928)
M. Fuller Highsmith (1931)
Jasper Habersham "Jap"
Highsmith (1931)
Norwood H. Highsmith (1948)
Hon. Robert Sparks Highsmith
Sr. (1976)
Robert Sparks Highsmith Jr. (1998)

Milton **Hirsch** (1949)
Jay Forbes Hirsch (1986)
Matt Andrew Hirsch (2002)

Floyd G. **Hoard** (1955)
Vivian D. Hoard (1985)

Kenneth B. **Hodges Jr.** (1977)
Kenneth Bryant Hodges III (1991)

Sidney **Holderness Jr.** (1924)
Sidney Holderness III (1974)

J. Kurt **Holland** (1929)
Jack K. Holland (1970)
Lynn Holland Goldman (1998)

Howell **Hollis** (1941)
Howell "Buddy" Hollis III (1974)

Hon. F. A. **Hooper** (1916)
Charles N. Hooper (1960)
Ellis C. Hooper (1963)

Arthur **Howell** (1943)
Richard Sherman Howell (1974)
James S. Howell (1977)
Donna Wolff Howell (1977)
Virginia B. Fuller (2002)

Roy William **Ide III** (1966)
Oliver Logan Ide (1997)
Jennifer Nava Ide (2000)

Hon. G. Conley **Ingram** (1952)
Hon. Sylvia Lark Ingram (1978)
Nancy Ingram Jordan (1982)

R. Chris **Irwin** (1970)
R. Christopher Irwin III (2000)

Clayton **Jay** (1904)
Harvey L. Jay (1929)
Clayton Jay Jr. (1947)

Ben Franklin **Johnson Jr.** (1939)
Ben F. Johnson III (1968)
Sherman D. Johnson (1971)
Ben Franklin Johnson IV (1996)

Clete D. **Johnson** (1951)
C. Donald Johnson Jr. (1973)
Clete Daniel Johnson (2004)

Jean Earle **Johnson Sr.** (1949)
Jean E. Johnson Jr. (1964)
J. Alfred Johnson (1969)
Shondra Johnson Pruitt (1996)

William P. **Johnson** (1957)
Hon. Alton Parker Johnson II (1995)

Howard P. **Jolles** (1951)
Hon. Isaac S. Jolles (1952)
Nathan Michael Jolles (1989)
Marcy A. Jolles (1999)

C. Baxter **Jones** (1915)
Frank C. Jones (1950)
Thomas C. James III (1972)
Baxter P. Jones (1982)
Ramsey Henderson Bridges (2006)

D. R. **Jones** (1950)
D. Richard Jones III (1978)

Harold D. **Jones Jr.** (1956)
Sharon Hudson Rooble (1989)

J. Norwood **Jones Jr.** (1941)
m. Maymie Norwood Jones
(1952)
Lewis N. "Woody" Jones (1969)
Elizabeth Jane (Jones) Pope (1997)
m. William Gregory Pope (1996)

Melvin H. **Jones** (1975)
Rolf Anthony Jones (1996)

Michael R. **Jones Sr.** (1973)
Austin O. Jones (2003)
Michael R. Jones Jr. (2004)

Hon. Michael L. **Karpf** (1971)
Benjamin Waggar Karpf (2007)

William R. **King** (1967)
George S. King (1968)
Michael G. Wasserman (1974)
Jill Wasserman (2001)
m. Wystan Getz (1998)
Rebecca F. Wasserman (2003)
m. Noah P. Peeters (2004)

Mildred L. **Kingloff** (1930)
William Kenneth Travis (1974)
Andrew Samuel Travis (2005)

**Italics denotes deceased.*

<p><i>Charles H. Kirbo</i> (1939) Bruce W. Kirbo (1951) Ben Kirbo (1966) Thomas L. Kirbo III (1967) Glenn A. Kirbo (1977) m. Helen V. Kirbo (1981) Bruce W. Kirbo Jr. (1982) Dorothy Kirbo McCranie (1999) Clifford M. Kirbo (2000) m. Martha Holland "Holly" (Cox) Kirbo (2001) Glenn A. Kirbo Jr. (2005) m. Taryn Murphy Kirbo (2005)</p> <p>Hon. W. D. "Jack" Knight (1958) Elizabeth Knight Bobbitt (1989) W. Daniel Knight Jr. (1994)</p> <p>Myron N. Kramer (1973) Deborah S. (Kramer) Kitay (1975) Theresa L. Kitay (1987)</p> <p>Carol Kessinger Kuhn (2002) Christopher Kessinger (1999)</p> <p><i>Leonard LaConte</i> (1933) Margaret LaConte Chapura (1997)</p> <p>Robert B. Langstaff (1955) James Pope Langstaff (1982) Thomas Q. Langstaff (1986) Robert B. Langstaff Jr. (1995)</p> <p><i>Roger H. Lawson</i> (1930) Hon. Hugh Lawson (1965) Dawn Hunsicker (Lawson) Taylor (1994)</p> <p>Hon. William F. Lee Jr. (1967) Nathan Thomas Lee (2001)</p> <p>Irwin M. Levine (1963) Carol A. Levine (1983) m. David J. Perling (1977) Kenneth Sylvan Levine (2002) Sam Louis Levine (2004) Morton P. Levine (1953) Jonathan R. Levine (1985) Ronald A. Levine (1990)</p> <p><i>B. H. Levy</i> (1935) Alan Sims Gaynor (1959) B. H. Levy Jr. (1973)</p> <p><i>Hon. George Raysor Lilly</i> (1928) Hon. Roy M. Lilly (1941) Roy M. Lilly Jr. (1974) George R. Lilly II (1983)</p>	<p><i>William O. Lindholm</i> (1973) Sue Carey Lindholm (1982) John David Lindholm (1992)</p> <p><i>Samuel Brown Lippitt</i> (1914) S. B. "Sammy" Lippitt Jr. (1954)</p> <p>Robert J. Lipshutz (1943) Randall M. Lipshutz (1976)</p> <p>Clarence V. Long (1978) Tammi S. Long (1997)</p> <p><i>Daniel MacDougald Jr.</i> (1947) Daniel MacDougald III (1974) Harry W. MacDougald (1985)</p> <p><i>William H. Major</i> (1954) William H. Major III (1982)</p> <p><i>Hon. Rosser A. Malone</i> (1929) Thomas William Malone (1965) Rosser Adams Malone (2000)</p> <p>John P. "Jack" Manton (1967) Jason R. Manton (1998) Jed Davis Manton (2006)</p> <p>Edwin Marger (1971) Diane Marger Moore (1978)</p> <p>Juanita D. Marsh (1951) C. Bradford Marsh (1984) m. Elizabeth Ann Obenshain (1982)</p> <p><i>T. Baldwin Martin</i> (1914) T. Baldwin Martin Jr. (1948)</p> <p><i>J. Emory McCorvey</i> (1939) m. Bessie W. McCorvey (1962) <i>John B. White</i> (1940) <i>Charles E. Cardin</i> (1985) Leslie J. Cardin (1985)</p> <p><i>James Roy McCracken</i> (1925) William R. McCracken (1969) Claudia McCracken (2005)</p> <p>Robert P. McFarland (1977) R. Parker McFarland Jr. (2001)</p> <p>Virginia (Miller) McGuffey (1976) m. C. Wade McGuffey Jr. (1976) Barbara Miller Goetz (1981) m. Victor E. Goetz (1980) William J. Miller Jr. (1985) Carroll Wade "Mack" McGuffey III (2003)</p>	<p>Dennis S. Meir (1972) Jennifer Meir Meyerowitz (1999) m. Adam Scott Meyerowitz (1997)</p> <p>M. David Merritt (1963) John M. Merritt (2000)</p> <p><i>Theodore H. Milby</i> (1971) Meredith M. Milby (2003)</p> <p><i>George Hugh Miller</i> (1925) John W. Miller (1979) John Broadhurst Miller (2003)</p> <p><i>Wallace Miller</i> (1904) <i>J. Littleton Glover</i> (1935) <i>Wallace Miller Jr.</i> (1939) <i>Lawton Miller</i> (1941) John B. Miller (1947) Alexander Lawton Miller Jr. (1961) <i>John V. Skinner Jr.</i> (1962) J. Littleton Glover Jr. (1966) John B. "Jay" Miller Jr. (1970) Frank Butler III (1975) Wallace Miller III (1977) Hon. Nancy Nash Bills (1989)</p> <p>William O. Miller (1949) Rebecca Jane Miller (1989) m. Dean Daskal (1982) Jenny Rebecca Turner (2000)</p> <p><i>David L. Mincey</i> (1940) David L. Mincey Jr. (1973) David L. Mincey III (2003)</p> <p>John T. Minor III (1952) John T. Minor IV (1981) John T. Minor V (2006)</p> <p>Harlan Erwin Mitchell Sr. (1948) <i>Douglas Wright Mitchell Jr.</i> (1949) Douglas Wright Mitchell III (1972)</p> <p><i>Warren R. Mixon</i> (1917) <i>Hon. Oliver K. Mixon</i> (1936) Harry Mixon (1964) Kice H. Stone (1967) James W. Hurt (1968) Thomas W. Tucker (1974) John L. Mixon III (1976) Warren L. Mixon (1982) Sharon Hurt Reeves (1995) Susan Hurt Sumner (1997) T. Harry Hurt (2000) James W. Hurt Jr. (2003) T. Daniel Tucker (2004)</p>	<p>F. Glenn Moffett Jr. (1964) Matthew Glenn Moffett (1990) Michael J. Moffett (1994) m. Paige (Bradley) Moffett (1994)</p> <p>Harvey A. Monroe (1970) Jason Scott Monroe (1996) Bryan Yale Monroe (2002)</p> <p>Thomas R. Mooney (1963) T. Kevin Mooney (1992)</p> <p>Sidney L. Moore Jr. (1970) m. <i>Judith Anne Moore</i> (1977) Thomas Kimball Bond (1990) Sidney Leighton Moore III (2002)</p> <p>Thomas Reid Morgan Jr. (1992) Leah (Morgan) Singleton (2002) m. Dwayne Charles Singleton (2002)</p> <p>Thomas H. Morton (1949) Robert Lamar Morton (1994)</p> <p><i>William Warren Mundy Jr.</i> (1931) George E. Mundy (1972)</p> <p><i>Jack Murr</i> (1937) Catherine (Alexander) Diffley (2000) m. Daniel F. Diffley (2000) Larry Benton Alexander Jr. (2001)</p> <p>Joseph V. Myers Jr. (1970) Joseph V. Myers III (1996)</p> <p><i>Viola Ross Napier</i> (1901) <i>Hamilton Napier</i> (1934) <i>Hendley V. Napier III</i> (1943) Walton N. Smith (1966) Ruth Tinsley (Brown) West (1974) R. Napier Murphy (1975)</p> <p><i>Vickers Neugent</i> (1950) Anne Marie (Neugent) Bishop (1986)</p> <p><i>Hon. Joseph B. Newton</i> (1970) Lucy Elizabeth Newton (2002)</p> <p><i>George C. Nicholson</i> (1932) Chris G. Nicholson (1974) Sam G. Nicholson (1978)</p> <p><i>Charles A. Nix</i> (1957) William L. Nix (1982)</p> <p>John Alexander Nuckolls Sr. (1965) John Alexander Nuckolls Jr. (2006) m. Sonya Sheth Nuckolls (2002)</p>
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Maston Emmett O'Neal Jr. (1930)
Birch Dilworth O'Neal (1937)
W. Warren Plowden Jr. (1968)

E. Wycliffe **Orr** Sr. (1971)
Kristine Orr Brown (1995)
Eston Wycliffe Orr Jr. (2003)

Shelby A. **Outlaw** (1985)
Blue Spruell (2006)

W. Marion "Butch" **Page** (1938)
Carter Page Schondelmayer
(1998)

James Ernest Palmour Jr. (1930)
James Ernest Palmour III (1964)
Hon. Patti (Palmour) Cornett (1987)

Hon. Charles A. Pannell Sr. (1936)
Robert G. Stephens Jr. (1941)
Robert D. Pannell (1968)
Hon. Charles A. Pannell Jr. (1970)
James L. Pannell (1974)
Hon. Lawton E. Stephens (1981)
William A. Pannell (1986)
Charles A. Pannell III (2004)
Jonathan B. Pannell (2006)

Robert W. Patrick Jr. (1964)
Celia Patrick Quillian (1988)
Marguerite Elizabeth "Becky"
Patrick (1991)

Carl S. **Pedigo** Jr. (1974)
m. Kathleen Horne (1976)
Jason Pedigo (2004)
m. Susannah Rogers Pedigo
(2004)

Hon. Clarence L. Peeler Jr. (1945)
Raymond L. Peeler (1998)

C. C. **Perkins** (1952)
Ann-Margaret Perkins (1993)
Clifford C. Perkins Jr. (1977)
Christopher Jason Perkins (2000)

Roscoe Pickett Sr. (1909)
Roscoe Pickett Jr. (1948)
W. Hays Pickett (1951)
Will H. Pickett Jr. (1984)

William S. **Perry** (1968)
Justin Stuart Perry (1998)
William Cavanaugh Perry (2000)
Richard L. Perryman III (2002)

James M. **Poe** (1974)
Emily Allison Poe (2006)

Richard L. **Powell** (1966)
Richele (Powell) Anderson (2000)
m. J. Scott Anderson (1997)

James C. Pratt (1973)
Frances C. (Pratt) Mulderig (2002)

Col. Robert A. **Prince** (1948)
John Matthew Prince (1994)

John David Prodggers (1951)
Hon. Toby Batson Prodggers (1974)
Molly Jean Prodggers (2005)

Henry M. Quillian Jr. (1951)
Henry M. Quillian III (1988)
m. Celia Patrick Quillian (1988)
David W. Quillian (1993)

Philip F. **Ranson** (1974)
Damany Freeman Ransom (2002)

Clark Ray (1913)
Scott A. Ray (1957)
Harry B. Ray (1979)
Paul Chastain Ray (1991)
William Scott Ray (2006)

Hon. R. Hubert **Reeves** III (1966)
Hon. Robert S. Reeves (1969)
Christopher Everitt Reeves (1999)
m. Lisa Hiltz Reeves (2000)

Bob **Reinhardt** (1951)
George R. "Rob" Reinhardt (1979)
John R. Reinhardt (1982)
Hon. William Dyke Reinhardt II
(1991)

Hon. Robert V. **Rodatus** (1976)
m. Nancy J. DuPree (1975)
James V. Rodatus (2005)

S. Richard **Rubin** (1970)
Amy Heather Rubin (2003)

*Hon. Richard Brevard Russell
(1918)*
S. Ernest Vandiver Jr. (1946)
Hon. Robert Lee Russell Jr. (1948)
Samuel Ernest Vandiver III (1973)
Hon. Robert Lee Russell III (1977)
R. Bruce Russell (1978)
Richard B. Russell Jr. (1984)
Russell Worth Parker (2006)
m. Katherine Lewis Parker (2000)

Hon. John Frank **Salter** (1975)
John Frank Salter Jr. (2000)
m. Allison Barnes Salter (2000)

Thomas G. **Sampson** (1971)
Thomas Gatewood "Woody"
Sampson II (1995)

William C. **Sanders** (1975)
Timothy C. Sanders (2003)
m. Margaret (Cammon)
Sanders (2003)

Albert L. **Sandlin** Jr. (1963)
Caroline Coker Coursey (2001)
m. R. Stevan Coursey (1994)

Joe B. **Sartain** (1957)
Perry M. Sartain (1985)
Phillip B. Sartain (1986)
m. Lydia Jackson Sartain (1984)
Larry O. Sartain (1994)
m. Judy (Davenport) Sartain
(1994)

P. Allen Schwartz (1978)
Kimberly L. Schwartz (1987)

Walter A. **Scott** (1963)
Bryan D. Scott (1998)

Hon. Tilman E. Self (1949)
J. Philip Self (1971)
Hon. William J. Self II (1974)
Alera Jill (Self) Elliott (1975)
Hon. Tilman E. "Tripp" Self III (1997)

Leslie N. **Shade** Jr. (1972)
Sharon A. Shade (1979)

J. Carol **Sherwood** Jr. (1973)
H. Burke Sherwood Sr. (1999)

Hon. Marvin H. **Shoob** (1948)
Hon. Wendy L. Shoob (1978)

Hon. Arnold **Shulman** (1937)
Warren Scott Shulman (1965)
Amy Shulman Haney (1989)

John A. Sibley (1911)
James M. Sibley (1942)
Horace H. Sibley (1964)
John A. Sibley III (1969)
Jack N. Sibley (1975)
Quintus W. Sibley (1981)

Arnold Brian **Sidman** (1989)
Eric Laurence Sidman (1996)
Steven Scott Sidman (1997)

Lamar W. Sizemore (1949)
Hon. Lamar W. Sizemore Jr. (1974)
Richard L. Sizemore (2001)

*Col. Alexander Stephens Skelton
(1902)*
Hon. William Carey Skelton (1930)
Joseph S. Skelton (1947)
Marion O. Gordon (1961)
H. Gray Skelton Jr. (1968)
Walter James Gordon Sr. (1976)
John H. Skelton (1996)

Robert H. Smalley Jr. (1951)
Janet Smalley Todd (1982)
Robert Harris Smalley III (1992)

Alexander W. Smith (1909)
Alex W. Smith (1948)
E. Kendrick Smith (1981)

R. Wilson Smith Jr. (1928)
John H. Smith (1961)
Matthew Tyler Smith (1993)

Richard T. **Smith** (1974)
Richard Theodore Smith Jr. (1995)
Kristine Smith Cavin (1995)
m. James Michael Cavin (1995)

Robert R. **Smith** (1967)
Jeanne U. Smith (1982)
Michael R. Smith (1983)
Susan Lorenzo Smith (1984)

Cubbedge Snow (1921)
Cubbedge Snow Jr. (1952)
Cubbedge Snow III (1981)

Fred L. **Somers** Jr. (1967)
Kimberly Somers Ruark (2001)

Hughes Spalding (1910)
William H. Schroder (1938)
Hughes Spalding Jr. (1941)
William H. Schroder Jr. (1965)
Hughes Spalding Craft (1970)
Jack S. Schroder Jr. (1973)
John W. Winborne III (1973)
Michael H. Schroder (1976)
John P. Spalding (1985)
Charles G. Spalding (1986)
Michael Travis Saul (1996)

Ernest H. Stanford (1935)
Ernest H. "Skip" Stanford Jr. (1962)
James F. Brown Jr. (1986)
m. Cynthia (Briscoe) Brown
(1986)

Clifford J. **Steele** (1977)
Elida (Steele) Baverman (1982)
m. Hon. Alan Jerold Baverman
(1981)
Dara L. Steele-Belkin (2000)
m. Jeffrey Alan Belkin (2003)

**Italics denotes deceased.*

Donald Grier **Stephenson** (1935)
Mason W. Stephenson (1971)
Andrew Mason Stephenson (2000)

Richard Picard **Stern** (1952)
Carol (Stern) Osborne (1977)
m. Hon. James Richard
Osborne (1977)
Elizabeth Osborne Williams (2005)
m. Thomas Rhodes Williams
(2006)

V. D. **Stockton** (1952)
L. Allyn Stockton Jr. (1997)

Hon. John R. **Strother** Jr. (1958)
John Richard Strother III (1995)

Robert S. **Stubbs II** (1968)
Robert S. Stubbs III (1983)

Thomas W. **Talbot** (1968)
Frank M. Talbot (1994)

Danny R. **Taulbee** (1974)
Laura Taulbee Marsh (1995)
Wesley C. Taulbee (1999)

Tom W. **Thomas** (1972)
Thomas Walthall Thomas Jr.
(1994)

Guerry R. **Thornton** (1950)
Guerry R. Thornton Jr. (1975)

Willard Norman **Timm** Jr. (1989)
Alicia Ann Timm (2004)
Kristin M. Timm (2006)

Robert D. **Tisinger** (1932)
David H. Tisinger (1962)
Richard G. Tisinger Sr. (1964)
Richard G. Tisinger Jr. (1992)
Joel Wesley Tisinger (2003)

A. Leroy **Toliver** (1981)
Leroy Mills Toliver (2003)

Andrew Benjamin **Tollison**
(1923)
Ray B. Burruss Jr. (1966)
Rhett Brady Burruss (1998)

James Comer **Trapnell** (1917)
Dana D. Lamer Haviland (1975)

Gail M. (Neal) **Travillian** (1993)
Sherry V. Neal (1999)

Russell Godwin **Turner Sr.** (1929)
Russell G. **Turner Jr.** (1947)
Jack P. Turner (1950)
Nelson Goss Turner (1975)

John Lewis **Tye Jr.** (1915)
John Tye Ferguson (1953)
W. Randall Tye (1972)

John **Valente** (1982)
Kristine Valente (1993)
Michelle Valente (1998)

Wayne W. **Vickers** (1965)
Kimberly (Vickers) Gross (1994)

James Everett **Voyles** (1994)
m. Dale (Smith) Voyles (1989)
Jason Everett Voyles (2003)

Charles W. **Walker** (1931)
Patricia Walker Bass (1983)
m. Thomas Langston Bass
(1963)
Thomas Langston Bass Jr. (1993)

Stephen B. **Wallace** (1917)
Albert B. Wallace (1950)
Howard P. Wallace (1955)
Elizabeth Wolverton Wallace (1981)
Stephen Bailey Wallace II (1991)
Janice Marie Wallace (1997)

Samuel C. **Waller** (1947)
Amelia Waller Baker (1984)
m. Thomas W. Baker (1981)
Laura Waller Cullen (1987)

Patrick Francis **Walsh** (1998)
Daniel Stephen Walsh (1993)
Anthony Charles Walsh (1995)

Charles H. "Chip" **Watt** III (1973)
Charles Hansell Watt IV (2004)

Paul **Webb** (1925)
Paul Webb Jr. (1949)
James E. **Webb** (1949)
Laurie Webb Daniel (1982)
John Philip Webb (1994)

Robert W. **Webb Jr.** (1975)
Kathryn Webb Chilivis (2004)
m. Nickolas P. T. Chilivis (2002)

Hon. A. J. "Buddy" **Welch** Jr. (1970)
Andrew Jackson Welch III (2003)

Hon. Charles L. **Weltner** (1949)
William Usher Norwood III (1967)
Philip Weltner Norwood (1975)
Sally Cobb Cannon (1978)
Susan Weltner Yow (1982)
Charles Longstreet Weltner (1985)
Philip Weltner (1985)

Anne Allen Waters **Westbrook**
(1967)
Anne Allen Westbrook (2001)

John L. **Westmoreland** (1915)
John L. Westmoreland Jr. (1948)

William H. **Whaley** (1942)
Patrick K. Whaley (1985)

Hon. Watson L. **White** (1950)
Daniel Walter White (2005)
m. Evelyn Kay White (2005)

John Edward **Wiggins** (1947)
John O. Wiggins (1978)
Renzo Sam Wiggins (1980)
John Robert Wiggins (2006)

Donald Eugene **Wilkes** Jr. (1972)
Mary J. Wilkes (1979)
Karen Suzanne Wilkes (1990)

Jacquelyn Hutchins **Wilkes** (1980)
Julie A. Wilkes Wisotsky (1996)

David H. **Williams** (1980)
David H. Williams Jr. (2000)

George W. **Williams** (1933)
E. Pomeroy Williams (1961)
George W. Williams Jr. (1966)
Robert M. Williams (1969)

James G. **Williams** (1973)
m. Hon. Amanda F. Williams
(1977)
John Thomas Morgan III (1980)
m. Carol Ellis Morgan (1979)
Nathan Taylor Williams (2005)
m. Martha Wilson Williams
(2005)
Frances Williams Dyal (2006)

Hon. Dan **Winn** (1948)
Frank C. Winn (1978)
Dan Nichols Winn (1979)

William Elliott **Woodside** (1973)
Virginia A. (Woodside) Boemanns
(1974)
Erik John Boemanns (2007)

Reuben M. **Word** (1950)
Gerald P. Word (1975)

David M. **Zacks** (1970)
Leslie Blair Zacks (1994)

Thank You to Our Military Members

by Gerald M. Edenfield

As president of the State Bar, I have had the opportunity to observe the ways in which members of this organization contribute to their communities outside the realm of the legal profession. These individuals don't give of themselves for the recognition, but because they are motivated by selflessness and a desire to contribute to the world in which they live. Lawyers serve in many capacities and in many areas, but it is those who are a part of our nation's military that I would like to recognize.


I asked for the help from the Bar's membership in identifying Georgia lawyers who have served, or are currently serving, in this latest military conflict in the Middle East and Afghanistan. The response was staggering. More than 250 e-mails were received recognizing roughly twice that number of attorneys who have served in all theaters of war. These men and women have given up time with their families and in their practices to ensure that those of us at home are able to continue to enjoy the freedoms that we are blessed with. The impact of their service is seen globally and reflected in the work they do for the citizens of other countries, whether that work is legal in nature, or deals with basic survival.

Please join me in recognizing and applauding Georgia lawyers who have been deployed, and are cur-



rently deployed, during this recent military action. Their sacrifices are a true testament to service to the public.

A large number of our membership served this country in World War II, the Korean conflict, the Vietnam War and Operation Desert Storm. Another contingent of members served our country without being deployed. We also salute them and the sacrifices they made. The impact of their service is still felt today.

We give you all our thanks and gratitude. 



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

“The impact of their service is seen globally and reflected in the work they do for the citizens of other countries, whether that work is legal in nature, or deals with basic survival.”

Jonathan Adams, Macon
 Ainnuddin Ahmed, Cheney, WA
 Norman F.J. Allen III, Ft. Stewart
 C. Dawn Archibald, Greenbelt, MD
 Judge Janice Askin, Atlanta
 Harold William Askins III, Atlanta
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 A.J. Balbo, Richmond Hill
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 Donna Lorraine Barlett, Augusta
 Cpt. Charles A. Basinger, Anchorage, AK
 Lt. Col. Eric Bee, Dayton, OH
 Capt. Sondra Bell, San Antonio, TX
 Capt. John Bellflower, Tullahoma, TN
 David Bessho, Atlanta
 Kellyann Boehm, Wichita, KS
 Pamela D. Boles, Cumming
 Phil Botwinik, Duluth
 William B. Britt, Ellijay
 Robert W. Brown, Atlanta
 William Brown, Gordonsville, VA
 Cpt. Bailey W. Brown III
 Col. William H. Buckley, Marietta
 David Bunn, Virginia Beach, VA
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 Judge James T. Chafin, McDonough
 Cpt. David Childs, Atlanta
 Bobby Christine, Augusta
 Major Charles Clark III, Quantico, VA
 Mike Cohan, Montgomery, AL
 Christopher Warren Conowal, Atlanta
 Hugh G. Cooper, Jonesboro
 Maj. Robert Cottrell
 Maj. Dave Crowell, Reedville, VA
 W. Kent Davis, Anniston, AL
 Cpt. Christian Deichert
 Jonathan Dejesus, Richmond Hill
 Scott Delius, Atlanta
 Maj. Patrick Dolan, Annandale, VA
 Bill Dyer, Atlanta
 Alan B. Facticeau, Valdosta
 Joe Ferrero, Atlanta
 Peter G. Fischer, Fayetteville, NC
 Elizabeth Fleming, Saint Louis, MO
 Steven A. Folsom, Camp Pendleton, CA
 Stephan Frank, Roswell
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J. Hamilton Garner, Moultrie
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 Guy Womack, Houston, TX
 Maxwell Wood, Macon
 Col. Larry Youngner, Atlanta

**This is not a comprehensive list. The names were taken from e-mails sent in response to the December 2007 president's e-mail and are current as of Feb. 14, 2008.*

Banker Receives James M. Collier Award

by Len Horton

Georgia Bar Foundation President J. Joseph Brannen presented the fifth annual James M. Collier award to Loyd L. Smith, a former bank executive with C&S Bank, at the Midyear Meeting of the State Bar of Georgia.

The award recognizes an individual who has done extraordinary work to assist the Georgia Bar Foundation in accomplishing its mission. It is named for James M. Collier, a Dawson lawyer who found extraordinary ways to expand the Georgia Bar Foundation's ability to assist law-related organizations helping needful people throughout the state.

According to President Brannen, "Loyd was instrumental in getting IOLTA off the ground at C&S and in helping develop IOLTA account procedures that both banks and the Georgia Bar Foundation use to this day. Without his assistance, it would have taken a lot longer to get IOLTA up and running in Georgia."

Loyd Smith in 1986 was assigned to implement Interest On Lawyer Trust Accounts (IOLTA) for C&S National Bank, then Georgia's largest bank. At the time no other major bank in Georgia had begun offering IOLTA accounts. Loyd saw IOLTA as a product to generate new business and to establish his bank's leadership in the legal community. As we worked together, he became more than a bank officer assigned to implement a new product. He became a member of my team, which was working to implement IOLTA throughout the state and at banks other than just C&S.

He had begun his bank career in operations at C&S in Augusta after a career in the U.S. Army during the



Photo by Sarah I. Coole

The fifth annual James M. Collier was awarded to Loyd L. Smith, a former bank executive with C&S Bank, at the State Bar's 2008 Midyear Meeting.

Korean War. He was transferred to Atlanta where he was assigned the responsibility for new programs. One of those new programs was IOLTA.

When I was having trouble getting IOLTA up and running in Georgia, I asked everyone I knew what they thought was the problem. Our IOLTA revenues were lagging several other smaller states' revenues, and no one could provide the insight needed to solve the problem. Until Loyd Smith.

"Of course I know what the problem is," he said with the confidence of a man who had little experience with failure. "Think of it this way, Len.

Imagine two babies—one, say, in North Carolina and the other here in Georgia. Treat them identically except cut off the legs of the Georgia baby. Wait 20 years and have them run a 100-yard dash. Who do you think will win that race?"

He went on to explain that Georgia's legal restrictions on bank branching were the equivalent to cutting off the legs of Georgia's banking industry. In fact it meant that C&S Bank could not easily branch to other cities from Atlanta. For example, there was no way it could open a branch in Columbus without opening a branch in every county between Atlanta and Columbus. That insight led me to gather statistics about Georgia versus other states. In North Carolina when NCNB, the largest bank, started offering IOLTA accounts, those accounts were immediately available in 88 percent of all cities and towns in the state. In Georgia when C&S Bank started offering IOLTA accounts, they were immediately available in 18 percent of Georgia's cities and towns.


Armed with Loyd's explanation and new statistics, I knew exactly what the problem was and what was needed to solve it. IOLTA revenues took off and the Georgia Bar Foundation and IOLTA were never the same. It was all because of the insight of one banker. Furthermore, his willingness to help me enabled us to avoid many additional mistakes. From Loyd I learned to appreciate the insight and contributions of bankers. He taught me that he knew the law as well as anyone because he had to live with it every day of his business life. Banks were so highly regulated that it is not possible to operate a bank without knowing the law inside out.

Loyd Smith had the advantage of having worked with the Judge Advocate General Corps while he was in the Army. His interest in IOLTA and perhaps his insight into how to sell IOLTA to banks came from those experiences in the

military. Certainly those experiences led to his being assigned to implement IOLTA at Georgia's largest bank.

So meaningful to me was Loyd Smith's involvement in IOLTA that I became an advocate of greater bank participation in IOLTA both in Georgia and throughout the nation. Georgia to this day, I believe, is the only bar foundation to have had a president who is a full-time banking executive. In fact, Georgia has had two. The list of banking executives on our Board of Trustees is a veritable who's who of Georgia bankers. In addition to Joe Brennan, our president and also the president of the Georgia Bankers Association, current Board members include Steve Melton, president of Columbus Bank & Trust and our first banker president, and Bill Easterlin, president of Queensboro National Bank in Louisville. Other bank executives who served on previous Boards include Gary Thompson of Wachovia; Jim Lientz of Bank of

America; three of our former treasurers including Dennis Burnette of Cherokee Bank in Canton, Tim Crim of BankSouth and Herb Orise of First Southern Bank in Lithonia; Linda Davis of Wachovia, and Bob James of Carver State Bank in Savannah.

The collective insight of and support by these bank executives of the Georgia Bar Foundation and IOLTA in this state are invaluable. Loyd Smith was the first banker to extend his helping hand and he did so at a time when IOLTA was a fragile baby with unproven legs. For that reason and for his unending service to the Georgia Bar Foundation since 1986, he is the 2008 recipient of the James M. Collier award. 



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

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How I Became a Bond Lawyer, A Memoir

by James P. Monacell

In 1976, I took my second air flight: Charlottesville to Atlanta. A law student, I would interview with one of the silk-stockings law firms that was looking for new blood in their banking practice. On the first trip, at the invitation of a different firm, I had worn my interview suit and been thoroughly uncomfortable in the cramped cabin of the Piedmont Turboprop. This time I wore faded corduroys, an orange pointy-collared shirt of that disco age, and a lumberjack jacket. The pinstripes waited in my checked bag.

The first interview trip had kept me tense. Unfamiliar airports and cabs, overly lavish accommodations, unfamiliar tipping rituals, and an onslaught of carefully-coiffed, lizard-belted attorneys. But the interviewers, apparently impressed with my University of Virginia credentials, mainly wanted to talk about themselves, I learned, sell their sumptuous firm and enjoy the outrageously chic meals that I was taken to. Now I knew how the whole interview routine worked.

I would know to tell the taxi driver that the law firm was just down Peachtree St. and that I did not want to be taken for another circuitous fare. I could handle it all. It would be fun.

Waiting by the baggage carousel in old Hartsfield, I was feeling like a potential lord of industry. Everyone else's suitcase appeared, and a worry began to grow. Then the damn carousel stopped! My bag was nowhere. I found the baggage office. My suitcase had not made it on the plane in time, so they had transshipped it through Memphis. Leave my name and hotel and they would locate and deliver it in "no time." But in time for my pre-interview dinner? I slunk away to look for a cab.

I considered myself a resourceful guy. I had aced Constitutional Law and was a master at chess problems; I could handle this. It occurred to me that I might buy clothes on my Visa card before dinner. But where would I go in Atlanta, and could I afford it? Short as I was, any suit would need alterations. The airline guy had said I should not have to wait long for my stuff. I had several hours before having to meet my hosts and would, like a good chess player in an uncertain situation, "sit on my hands." Time passed with no word, until I felt compelled to act. I found a huge phone book. *Muses, Davisons, Rich's*—names and addresses that meant nothing to me. I went downstairs and scanned Marietta St. The Omni was an island amidst bleak warehouses and dingy storefronts. I had waited too long, I realized; I had no time to venture farther. It was Sunday. I could not call the firm. I resolved to meet the

dinner interviewers with a big smile and a story of a lost bag that would have them chuckling and recounting my resiliency.

I was to meet them in the hotel lobby. As I entered the elegant oval space in my disco-lumberjack outfit, getting sidewise stares from the well-dressed clientele, my positive attitude ebbed. Presumably the attorneys would be looking for an archetypical Virginia man, known for his blue blazer, rep tie and Bass Weejuns. I cautiously circled the lobby, eyeing everyone in a suit, looking for the tell-tale signs of Atlanta lawyerdom: round "Harvard" glasses, tassel loafers, button-down collars. It proved not that simple, and after approaching a couple of prospects and being met with strained glares, I decided to take a wait-and-see approach. Eventually I saw two perplexed young men across the lobby who would glance at me and then huddle as if to say "That couldn't be him, could it?" I planted the planned smile on my face and approached. I intended to chirp "Are you looking for a well-dressed law student?" but my jauntiness faded as I crossed the room to distressed looks from the pair. I croaked "Excuse me, are you meeting Jim Monacell?" They may not have recoiled, but they at least blanched. I blurted on about the late bag and the uncomfortable airplane, and threw in an offer to pass on dinner or go buy clothes if it presented a problem. They said it was okay. They had reservations at *Bernards* and they were not going to miss the experience.

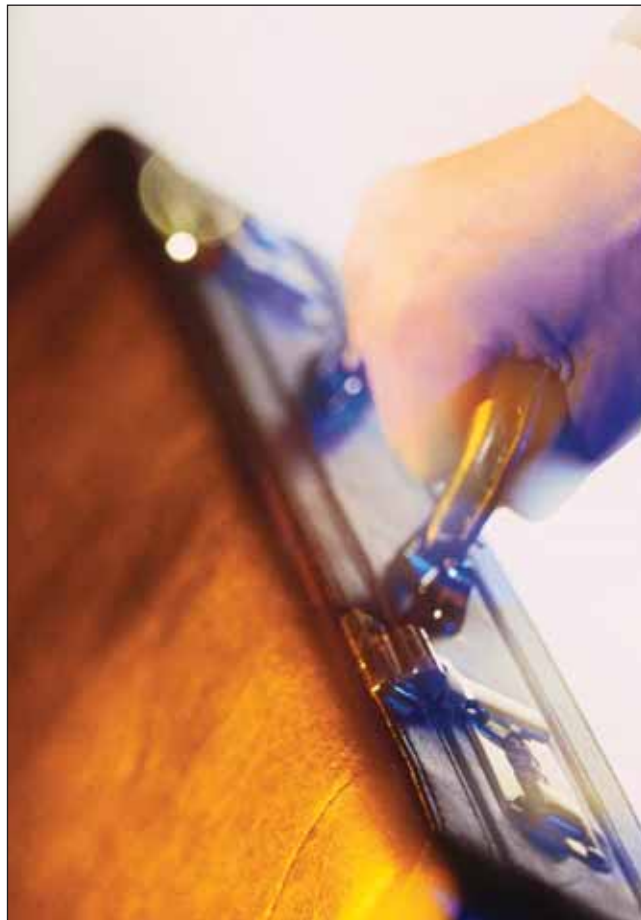
Bernards, I learned in the car, was then *the* place to eat in Atlanta. The irrepressible chef from *Nicolai's Roof* had tired of touristy Russian cuisine and opened his own spot, only 10 tables, in a strip shopping center on Howell Mill Road. The storefront we approached had a doorbell beside a solid door and a "reservations only" card. As we approached I imagined Bernard sizing me up and blocking my way. But we were admitted as the first guests of the

night. I hoped the maitre-d would offer me a spare tie or suitcoat, hopefully something that would blend with an orange shirt, but he avoided eye contact and we were escorted to the least conspicuous booth. A senior partner from the firm—at three to one, they either liked my grades or all wanted to say they had been to *Bernards*—joined us there. I tried a short version of the bag story again, and it was less, not more, funny with the retelling. The others ordered drinks and I looked for a menu.

Bernard did not make a menu. Instead the waiter arrived and wove a tale of the origins of the ingredients the chef had gathered for that day from around the world, and inquired what we would like prepared. The lawyers asked for suggestions and negotiated. In my turn, I said a salad and a pasta dish the waiter had mentioned sounded great. The evening was becoming a tar baby and I, like Br'er Rabbit in the underbrush, "lay low."

My hope for a quick meal before the place filled was denied. There was only one seating at *Bernards*, and dinner was a three-hour affair, as much a celebration of the food as a meal. Bejeweled women on the arms of distinguished men were shown tables. Another group with an apparent student, suitably-dressed, was seated across the room. I tried at times to contribute to the conversation, but had little more to offer. The lawyers, enjoying their big night, leapfrogged me, discussing unfamiliar restaurants and resorts, and, when I failed to contribute on

those topics, office affairs and courtroom "war stories." I hung on through a chocolate mousse and thanked them for a memorable meal. Arriving back at the hotel, there was still no bag. I could not humiliate myself again in the morning. I was rehearsing a rant to give the Piedmont operator, when a bellman arrived at midnight with the bag. I felt I had woken from a nightmare. Put me in a suit and I would wow them at the interview.



In the morning I awoke, dressed in my pinstripe suit and, feeling again like the worldly traveler, decided that there was time to order my first room service breakfast. But the service was slow and time became tight. I was about to leave when a waiter arrived. He arranged the tray of food and the newspaper on the table by the wall. I tipped him and he left. I sat, regarded the linen, silver and newspaper, bolted my food, then rose to get my coat. Bam! My head cracked on the

metal rack elevating the television over the table. Examining myself in the bathroom mirror, I found a bleeding cut on my forehead. So I would appear at the law firm in a suit and tie and a flesh wound! I called the hotel operator to ask for a Band-Aid, and she connected me with the manager. I told him I just needed something in a hurry for a cut, and he insisted on coming up personally.

A fussy little man in white shirt-sleeves finally arrived with a gangly assistant, but no Band-Aid. He peered at the cut, then my desperate look, and declared that I must go the hospital. Dazed and betrayed, I protested that I had an interview and just needed a Band-Aid. The manager glared at my forehead with concern and said it was the hotel's responsibility that I be looked at properly. My confidence melted like butter at a picnic. But surely the hospital staff would take one look, give me a Band-Aid and send me on to my interview. The assistant escorted me into a cab, as if he were going to shepherd me through the whole process, then leaned into the car and told the driver to go the emergency room. He chunked the door and turned away. The Omni's responsibility apparently ended at the motor lobby.

I was taken to the ambulance entrance at what I now know is Crawford-Long. I hesitated on the ramp in my three-piece suit, holding only the bloody washcloth that had staunched the cut, wondering if I might make a break and find the law firm. But I did not know where I was or where to go. I stepped inside the emergency room. Would the admitting nurse give me a Band-Aid and call a cab? She looked at the bloody cloth and asked if I knew where I was. I said, attempting a playful tone, "Not really, other than a hospital in Atlanta." It was the wrong answer—she said I needed to be examined. I must sit in the wheelchair and an orderly would take me to a waiting room.

There was paperwork, waiting, and temperature, blood pressure and health history to be taken, then more waiting. Finally a resident arrived. He did not seem interested in my forehead, but he had a battery of further questions. What was my name and my home? Did I know what day it was? Had I seen stars or heard ringing? Finally, he seemed satisfied that most of my confusion was the result of circumstance or my nature, and decided to clean and dress my "wound," as he called it. After applying butterfly bandages, for reasons I still cannot understand, and sometimes I wonder if were part of a perverse joke, he decided I should have swaths of gauze wrapped completely around my head and taped in place. He said I should go home and lay down and gave me a sheet listing possible effects of a concussion. Some more paperwork and I was discharged and on the loading dock again, to wait for a taxi, stiff in my suit and looking like "The Mummy."

I arrived at the law firm over two hours late, the walking wounded, rumpled, sweat-soaked, bandaged, but I *was* wearing a suit and tie. The hiring coordinator did her best to act like this happened all the time. I was parked on a Chippendale sofa while lawyers were contacted to see if they could rearrange their schedules to see me. Finally, one was available. While I was being escorted to his office, far in the back, beyond some messy file rooms, I was told casually that Mr. attorney-interviewer was blind. Was this my first break of the trip?

He was a thin, reticent man in a dim, messy office, and apparently conducted some sort of law practice using books in Braille and a Dictaphone. I had tired of discussing my adventures and could think of little to ask him that did not focus on his blindness. I did not sparkle in that interview, but looked ahead to the others. We chatted intermittently while the staff looked for another lawyer

willing to speak with me. They did corral the powerful, impeccable founder of the firm to pop in briefly to say hello and give his "elevator speech" before heading out to a luncheon engagement. The coordinator then announced that there were no more interviewers available, but that one of the younger guys from dinner could take me to lunch. And that I did not have to return.

My lunch mate did not find the bandage story much funnier than the baggage one, but opined that "these things happen" and that the firm surely would focus on me and not the odd circumstances. As if that were a good thing. No *Bernards* this time. He took me down a side street to *Herrons*, known for its cinnamon rolls served in lieu of bread. After a quick meal I was on my own.

I found the hotel, slunk by the desk to avoid the manager, packed and left. The taxi ride to the airport held no glamour. I called my wife and gave a brief report. She said I was the victim of bad luck. I wasn't sure. On the chessboard there is no luck, only calculation, planning and the playing out of those plans. I received a polite rejection letter in a few days.

I made a better impression on Hansell, Post, Brandon & Dorsey, then Atlanta's largest law firm. A couple of powerful UVA grads there saw my record and called me to the firm for interviews that proceeded routinely. They told me they wanted to take me to a special new place for dinner that night. It was *Bernards*, of course. I was able to tell them how the place worked. They hired me as the 100th lawyer on the masthead.

Before packing the U-Haul in Charlottesville, I had an electric dream, which still ripples in my mind. My wife and I were at a nighttime cocktail reception, like the law firm interviewee shake-downs I had attended, on the top floor of Atlanta's Coastal States building, dressed in our best. We were exuberant, the two of us, and

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The word on the floor was that this native Georgian had learned the securities practice at one of the elite Wall Street firms that had invariably handled such matters, and he was the first pioneer to return to Atlanta and do it here.

we left the crowd, stepping through glass doors onto an open rooftop terrace and were dazzled by golden lights atop the surrounding skyscrapers. A chill evening breeze tingled our skin, and the night, the loftiness and the lights dizzied us. Without a word, I walked to the edge. I was fearful of the height yet drawn by the thrill, the feeling that I was above the commonplace. Taking my wife's hand, I stepped off the edge, she hesitating but following, into the air. We did not fall, but were whisked to the top of the Peachtree Plaza. There we stepped off again, and by sheer will soared from tower to tower of Atlanta's downtown. I awoke damp, my heart pounding.

An old law school joke tells of a law student who dies prematurely. St. Peter cannot find the student's judgment on the roles, so he gives him a choice of Heaven or Hell. The astute potential lawyer first asks to see both, and an angel escorts him through Heaven, where placid souls loll about with harps, and Hell, where there is a Bull Roast going on with drink, a band and dancing. The student returns to St. Peter and tells him he wants Hell! He is remanded there to find fire, brimstone and the damned. He demands an explanation of Satan, who laughs, "Oh, you must have been here during interview season."

Sitting on the 33rd floor of The First National Bank Building before a large wooden desk in a small, faux-Colonial office, I wondered what in my background prepared me for Hansell Post. As a novice, I was expected to handle whatever tasks the seasoned attorneys passed down. Law school had not taught me for so much as how to

write a letter. In fact, we did not write, but were expected to dictate on unfamiliar equipment using wide bands of black film that were interofficed to a typing pool, and trust that they would be returned on paper. Documents were typed with carbon paper; the firm would acquire a single word processor, a desk-sized MTST, within the next year. If a package needed prompt delivery we used in-house runners, or took it to the Greyhound station or to Delta Dash.

I was not the firm's flashiest performer, but developed a reputation for detailed and careful work. The sleepy area of industrial development bonds boomed in the late 1970s and early 1980s, when it was discovered that these "industrial" bonds could be used to finance everything from K-Marts to office buildings. I was asked to learn to handle private placements of these bonds, and was content and busy with that practice. But then I was unexpectedly summoned to the office of the firm's premier securities partner. This man oozed power. The door to his corner office was always cracked and his voice boomed into the speaker phone, as he stood and directed the associates and staff that processed the thick prospectuses he dealt in. In my office down the hall I would feel the corridor shake as he strode to a partner's office to demand the information or the assistance he required. The word on the floor was that this native Georgian had learned the securities practice at one of the elite Wall Street firms that had invariably handled such matters, and he was the first pioneer to return to Atlanta and do it here.

I appeared in his office at the appointed time and waited while

he completed a call, then had his secretary place another. I hunched on the edge of a client chair and observed an Ivy League degree, a large "carpe diem" paperweight and dozens of "tombstones," miniature legal documents entombed into Lucite blocks, memorializing successful securities offerings. I had no experience with public offerings of securities; had not even taken the course at law school.

The partner then asked his secretary to hold his calls and focused his attention on me. The firm's most significant client, The First National Bank of Atlanta, had asked him to appear at its boardroom before a committee of the board of directors to discuss the bank's powers and risks in underwriting a bond issue for an Americus hospital. The bank proposed to purchase the bonds and to recommend and resell them to customers, a practice that Congress cited as a cause of the Great Depression. Regulators were beginning to allow it now, if done correctly. The session was to be held in two weeks, and I was to accompany him and be prepared to field whatever the committee might throw at us. Then instead of dismissing me, the partner stepped around the desk, sat in the adjacent chair, leaned close to me and in low tones began to tell me about the boardroom.

First Atlanta had received its charter immediately after the Civil War and had built a boardroom to reflect its grand aspirations. The room had been painstakingly dismantled each time the bank moved and was re-erected in the new location. The room then stood in the interior of the glass tower at 2 Peachtree St., where both the bank

and our law offices were located. The bank's board had a peculiar attitude about that very old room and I should take care with the furnishings and, particularly, *not scuff the wood floor*. I figured I could handle the floor, but I searched for everything I could find on the arcane law of bank underwriting, and found comfort only in the knowledge that this partner would be the principal personality representing the firm.

On presentation day the partner and I sat for a long spell in a small anteroom before we were called into the meeting. Seeing that powerhouse squirmily idle and called upon to wait for a summons struck me as supremely odd. Lawyer-client business was done by memo in most cases, by telephone when a nuance was to be conveyed, or over lunch at the Capital City Club when a delicate touch was required. A summons to the boardroom was unusual, requiring a bull of a man like this to appear was peculiar, and for so slight a resource as me to tag along was extraordinary. The partner was uncharacteristically reserved as we waited and it occurred to me even he might be nervous. He mentioned that few people were invited to the boardroom; that he had only been in this room on a few prior occasions. He exhorted me to speak confidently when called upon, but to be careful of the wood. After an awkward interval a wizened secretary, whose sole duty appeared to be to sit by a telephone and guard the door, escorted us in.

We left the harsh florescent-lit institutional space, entered through tall doors, and our eyes adjusted to the dimmer interior of the windowless room. Dark, rich walnut panels guarded all four walls, from the thick baseboards to the crown molding atop the fourteen-foot panels, of the generous, drawn-out rectangle, sucking the light from the room, as if words spoken there could never be repeated outside. Pegged

heart-of-pine planked the floor, waxed to a careful sheen. Cherry hunt boards rimmed the room, carrying silver coffee services and business accoutrements. In corners, a few richly toned tapestry wing chairs huddled beneath black and brass floor lamps. Dominating the room, if such a room can be dominated, was an enormous table of walnut, lustrous with age, inlaid with geegaws of Federal design, and still housing the slots and compartments into which the daily checks and drafts were once sorted. Surrounding the table were two dozen carved armchairs, covered with masculine Chippendale excess, from their scrolled backs that suggested official proclamations, to their claw-and-ball feet that evoked man's domination of nature. The room resonated with decisions affecting the growth of Atlanta over that last century.

Only three men clustered at the far end of the massive table. At its head the executive vice president occupied the power chair. A tall, lanky man with neatly barbered, cotton-white hair and round steel-rimmed spectacles, he wore a crisp seersucker suit and had soft blue eyes and a pleasant mouth. In another room he might be a Norman Rockwell model, carving a Sunday supper chicken or rocking and telling a tale, but in this room he was chairman of the Risk Management Committee. After brief greetings, the securities partner, evidently a friend of all these men, was nevertheless asked formally for a report and gave one, and even graciously allowed me a few practiced words. The committee waited out the report. Then there occurred some atmospheric shift, like a high-pressure front rolling in. The chairman pulled his long frame upright in the head chair and addressed us. Yet it felt like the room that spoke. Our firm had lawyered for this bank since Mr. Post began his practice after the World War I and both businesses had prospered. Commercial

banks were reentering the uncertain field of bond underwriting and this fact loomed with vital significance for standing, growth and profitability. Hansell Post would be expected to devote all required skill and enterprise to the novel tasks at hand to assure the safe conduct of Atlanta's oldest continuously-operated bank into this arena. The law firm then handled the affairs of The Atlanta Newspapers, John Portman, Atlanta Gas Light Company and others; nevertheless, the bank was to receive our utmost energy and attention in precedence to all other clients. We knew then why we were in that room. We would do what was necessary. The message reverberated off the walls.

The bank subsequently underwrote many bonds and expanded on all fronts. Atlanta and Georgia grew, had its eyes opened, and adapted to new ways. I did also and bonds became my regular practice. But some old ways were lost in the years of growth. In 1985, the First National Bank was purchased by the giant Wachovia Bank of North Carolina, and shortly thereafter relocated its offices to 191 Peachtree St. When the boardroom again traveled with the bank, something was lost along the way. The 191 building accommodated only 10-foot ceilings and Wachovia would not build a room grander than the Winston-Salem home office boardroom in any event. The walnut boards were cut down to fit. The boardroom became claustrophobic and was used more routinely. It spoke with a diminished voice. 



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 Houston County Bar Association in memory of Thomas Calhoun
 Dr. and Ms. Hans Steiner, M.D. in honor of Rebecca Miller and Dawson Morton
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 Joshua Waltzer in honor of Rebecca Miller and Dawson Morton

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 The Honorable Kay A. Giese & The Honorable David R. Sweat
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 The Honorable Steve C. Jones

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Kudos



Levitas

Kilpatrick Stockton announced that partner and former U.S. Congressman **Elliott Levitas** received the **Thomas B. Murphy Lifetime Achievement Award** from the Democratic Party of Georgia at the 2008 Jefferson-Jackson Dinner held in January. Levitas received the award for the 4th Congressional District.

Additionally, the firm announced that it was one of two Georgia firms to have 15 IP attorneys named as *Georgia Trend's* 2007 "Legal Elite." The attorneys listed were: **Alfred Lurey** and **Todd Meyers**, bankruptcy & creditors' rights; **Miles Alexander**, **Bill Brewster**, **Ted Davis**, **Jim Ewing**, **Laurel Lucey**, **John Pratt** and **Dean Russell**, intellectual property; **Diane Prucino**, labor & employment; **David Zacks**, personal injury; **Andy Kauss**, real estate; **Lynn Fowler**, tax, trusts & estates; and **Debbie Segal** and **Richard Horder**, pro bono.

Jim Leonard, a partner in the litigation department, was selected as an author in the recently released book, *Health Care Law Client Strategies*, an authoritative, insider's perspective on key strategies for representing and advising clients in the health care arena.

Audra Dial, partner in the litigation department of the Atlanta office, was elected to serve a six-year term on the board of **Special Olympics of Georgia**.

Partner **Candace Fowler** was elected **vice chair** of **Planned Parenthood of Georgia Board of Directors**. Fowler is the leader of Kilpatrick Stockton's real estate investment and development team and a member of the firm's executive committee.

The firm announced that intellectual property attorney **Jonathan Goins**; corporate attorney **Monique McDowell**; litigation attorney **Mark Reeves**; and intellectual property attorney **Sara Vanderhoff** were appointed to community leadership positions. Goins, Reeves and Vanderhoff were selected to the **2008 YLD Leadership Academy**. Goins was also elected to serve on the 2008 executive board of the **Gate City Bar Association**. McDowell was elected to serve on the board of **National Women in Pensions, Inc.**

The firm's **franchise team**, chaired by **Rupert Barkoff**, tied for **third** among the world's top practices according to *Chambers Global 2008*.

Kilpatrick Stockton hosted the statewide non-partisan **election protection hotline** at firm offices in February as part of their Pro Bono Program. Firm lawyers not only staffed the hotlines but also served as roving field attorneys. More than 100 volunteers answered thousands of questions from voters across

the South to help facilitate the voting process. The firm will host the election protection hotline in November for the general election. Partners **Michael Tyler** and **Debbie Segal** led the firm's efforts.

> **The Board of Court Reporting and the Judicial Council of Georgia** selected **Huey Spearman** to fill a vacancy on the board. Spearman was sworn in by Chief Judge Anne Barnes in January.

> **Susan Boltacz**, group vice president at SunTrust Banks, Inc., was named the **first woman member** of the **Advisory Board** of the Georgia State College of Law Tax Clinic. The Advisory Committee consists of several of the leading tax practitioners in Georgia.

> Sixteen top attorneys with **HunterMaclean** were named to *The Best Lawyers in America* listing for 2008: **Janet A. Shirley**, **Frank S. Macgill** and **M. Lane Morrison**, trusts & estates; **LeeAnn W. Aldridge** and **W. Brooks Stillwell III**, real estate law; **H. Mitchell Dunn Jr.**, tax law and trusts & estates; **Andrew H. Ernst**, environmental law; **T. Mills Fleming**, health care law; **Robert S. Glenn Jr.**, alternative dispute resolution and maritime law; **Wade W. Herring II**, labor & employment law; **John M. Hewson III**, corporate law; **Sally C. Nielsen**, employee benefits law; **David F. Sipple**, maritime law; **John M. Tatum**, commercial litigation; **Harold B. Yellin**, land use & zoning law; and **Arnold C. Young**, insurance law, personal injury litigation and product liability litigation.

The firm also announced that **David E. Poston** was elected **vice president/president elect** of the 2008 board of directors for the **Legal Marketing Association's Southeastern Chapter**. Poston is the president of Poston Communications in Atlanta. The Legal Marketing Association is a not-for-profit organization dedicated to serving the needs and maintaining the professional standards of the men and women involved in marketing within the legal profession.



Kevin P. Weimer of **Fellows LaBriola LLP** in Atlanta was installed as **president** of the **Atlanta Chapter of the Federal Bar Association**. Weimer's practice focuses on complex business and commercial litigation and catastrophic personal injury cases. The Federal Bar Association is a national organization comprised primarily of attorneys who practice in federal courts and before federal administrative agencies, as well as those who work in the government sector.

- > **Fisher & Phillips LLP** partner **Tex McIver** delivered a **presentation** entitled, "2008 Employment Law Update & Managing the Generation Y Worker" at the International Health, Racquet & Sportsclub Association's 27th Annual International Convention & Trade Show, which was held in March in San Diego. He presented an overview of employment laws that affect the sports club industry and examine how they impact managing a younger, more independent-minded workforce. McIver is a senior partner in the Atlanta office of Fisher & Phillips.


Also, partner **Andria Ryan** spoke during the Sixth Annual Hospitality Law Conference held in February in Houston. Ryan's "Protecting Your Company's Assets: Non-Compete Agreements, Trade Secrets & Confidential Information" presentation explored the variety of methods of securing, protecting and tracking a company's critical trade secrets and confidential information. Ryan is a partner in the Atlanta office of Fisher & Phillips and chairs the firm's hospitality industry practice group.

- > **Fulton County District Attorney Paul L. Howard Jr.** was **elected** to the position of **director-at-large** of the **National District Attorney's Association**. In addition, Howard received the prestigious **Trumpet Award** in January. The annual awards acknowledge the accomplishments of men and women who have significantly contributed to enhancing the quality of life for all individuals and/or groups who augment the richness of this great global society by partnering with the cause of justice and equality for all.
- > **Greenberg Traurig, LLP**, announced that **Paul C. Savage**, of counsel, was certified as a Leadership in Energy and Environmental Design **accredited professional** by the U.S. Green Building Council (USGBC) and is the only Georgia-admitted attorney currently holding this certification, according to the USGBC's online directory. With this certification, Savage joins a select group of attorneys nationwide who have recognized the significance of "green" building trends on the future of the building industry and have responded by getting certified.
- > **Alston & Bird LLP** announced that it was **ranked in the top 50** among *FORTUNE* magazine's "**100 Best Companies to Work For**" in 2008. Alston & Bird is ranked 31st on the list and is the only law firm to make the list for nine consecutive years.
- > Responding to a growing number of clients seeking guidance on the legal complexities associated with the collapse of the subprime home mortgage lending market, **Locke Lord Bissell & Liddell LLP** announced that it **formed** a new **financial guaranty insurers section** dedicated to serving the needs of the nation's financial guaranty insurers who face mounting legal challenges from financial and insurance regulators and investors.
- > **Peter G. Stathopoulos**, managing director of Bennett Thrasher PC's state & local tax consulting practice, was selected as a **contributor and host** for **podcasts** on *Business to Business Magazine's* website. The biweekly series of podcasts and transcripts will be available to hear or download two times a month on the magazine's website at www.btobmagazine.com and on the Bennett Thrasher website at www.btcpa.net.

On the Move

In Atlanta

- > **Holt Ney Zatzoff & Wasserman, LLP**, announced that **Ellen W. Smith** became a **partner**, and **Eric D. Swartz** became an **associate** of the firm. Smith practices in the areas of zoning and land use law, landlord and tenant law, and trial practice. Swartz practices in the areas of trial practice, zoning and land use law, and condemnation litigation. The firm is located at 100 Galleria Parkway, Suite 600, Atlanta, GA 30339; 770-956-9600; Fax 770-956-1490; www.hnzw.com.
- > **Jason M. Loring** joined the commercial lending team of **Parker, Hudson, Rainer & Dobbs LLP** as an **associate**. Loring's practice focuses on representing banks and other lending institutions in connection with the documentation and closing of corporate financing transactions. 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.
- > **J. Benjamin Finley, C. Gregory Ragsdale, Michelle LeGault, MaryBeth V. Gibson, Lara P. Percifield and Talia J. Nurse** announced the formation of **The Finley Firm, P.C.** Finley handles property and casualty litigation matters. Ragsdale leads the firm's workers' compensation practice. LeGault leads the firm's civil litigation defense practices. Gibson leads the firm's class action and mass tort practices. Percifield and Nurse handle insurance coverage disputes, general property and casualty matters, and workers' compensation matters. The firm's Atlanta office is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; www.thefinleyfirm.com.

>  **Chorey, Taylor & Feil, P.C.**, announced that **John L. Watkins** joined the firm as a **shareholder**. Watkins was previously a shareholder of Wagner, Johnston & Rosenthal, P.C., and a partner of McKenna Long & Aldridge LLP. The firm is located at 3399 Peachtree Road NE, Suite 1700, The Lenox Building, Atlanta, GA 30326; 404-841-3200; Fax 404-841-3221; www.ctflegal.com.



>  **Kilpatrick Stockton** announced that **Michael Pavento** joined as **partner** in the firm's intellectual property department. Pavento is a member of the intellectual asset acquisition & transactions team. Also, **Miles Alexander** and **Steve Clay** were elected as firm **co-chairs**. **Bill Boice** and **Rich Cicchillo** were elected to the firm's **executive committee**. The firm's Atlanta office is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatrickstockton.com.


> **Carlock, Copeland, Semler and Stair, LLP**, announced that **Asha F. Jackson**, member of the health care litigation and general liability practice groups, was named **partner** and **Charles M. McDaniel Jr.**, member of the general liability and trucking and transportation litigation practice group, as well as leader of the insurance coverage and bad faith litigation subgroup, has been named **partner**. The firm's Atlanta office is located at 2600 Marquis Two Tower, 285 Peachtree Center Ave., Atlanta, GA 30303; 404-522-8220; Fax 404-523-2345; www.carlockcopeland.com.

>    
Sweeney Weigand Watters Walker

McGuireWoods LLP announced that **Mandy K. Sweeney** joined the firm as an **associate** in the real estate department. Sweeney focuses her practice on real estate development and finance, as well as construction. She was previously a project manager with New Water Street Corporation, a subsidiary of Retirement Systems of Alabama, in New York. **Jason J. Weigand** joined as **counsel** and **Kevin C. Watters** joined as an **associate** in the firm's intellectual property litigation and patents department. Watters' practice primarily involves commercial disputes. He was previously an associate with Bird,

Loechl, Brittain & McCants, LLC, in Atlanta. **Thomas R. Walker** has joined as **counsel** in the firm's restructuring and insolvency department. He represents creditor and debtor clients in bankruptcy and pre-bankruptcy workout matters. Walker was previously an associate with Troutman Sanders LLP. The firm's Atlanta office is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.

>   **Hon. Carl W. McCalla III** joined **Constangy, Brooks & Smith's** workers' compensation defense practice, as a **member**. McCalla also serves as Lead Administrative Law Judge in the State Board of Workers' Compensation's metropolitan Atlanta office. Additionally, **Eric Proser** and **Carla J. Gunnin** were promoted to **member**. Proser is the head of the workers' compensation department. Gunnin focuses her practice on labor relations law and occupational safety and health. Before joining Constangy, she was an attorney with the U.S. Department of Labor, Office of Solicitor in Birmingham. The firm's Atlanta office is located at 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; www.constangy.com.

>  **John W. Hinchey**, an attorney practicing construction and engineering law, joined **JAMS, The Resolution Experts**, the nation's largest private provider of alternative dispute resolution services, as a **mediator and arbitrator**. While continuing as a partner at King & Spalding, he will be based in the JAMS Atlanta Resolution Center. JAMS' Atlanta office is located at 1100 Peachtree St. NE, Suite 640, Atlanta, GA 30309; 404-588-0900; Fax 404-588-0905; www.jamsadr.com.

> **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC**, announced the addition of **Richard A. Walker** to its Atlanta office. Walker, who joins the firm as **shareholder** and a member of the intellectual property group, counsels companies involved in a wide variety of industries. The firm's Atlanta office is located at Monarch Plaza, Suite 1600, 3414 Peachtree Road NE, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

> **Mary D. Lewis** joined **The Finley Firm, P.C.**, as an **associate**. Lewis's practice focuses on property and

casualty litigation, workers' compensation and estate and business litigation. The firm's Atlanta office is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; www.thefinleyfirm.com.

- >  **Arnall Golden Gregory LLP** announced that **Rich Kaye** joined the firm as **partner** and **Aaron Danzig** returned to the firm's **litigation practice**. Kaye maintains a corporate practice that focuses on representing companies in connection with their corporate, commercial, construction and international business activities. Danzig's area of expertise focuses on white-collar criminal defense, internal corporate investigations, corporate compliance and governance matters, and litigation related to business and intellectual property. The firm is located at 171 17th St. NW, Suite 2100, Atlanta, GA 30363; 404-873-8500; Fax 404-873-8501; www.agg.com.

Kaye

- > **Coleman Talley LLP** announced that **W. Harrison Coleman Jr.** and **Lisa W. Wannamaker** were admitted as **partners** and **Jenny A. Cook** joined the firm as an **associate**. Coleman is a member of the firm's transaction practice group and his practice concentrates in representing the firm's real estate clients in multi-family, single family residential and mixed-use developments. Wannamaker's practice concentrates in representing the firm's client in contractual and other business law matters. The firm's Atlanta office is located at 7000 Central Parkway NE, Suite 1150, Atlanta, GA 30328; 770-698-9556; Fax 770-698-9729; www.colemantalley.com.

- > **Greenberg Traurig, LLP**, announced that **Mickey Ross**, formerly with King & Spalding LLP, has joined its Atlanta office as a **shareholder**. Ross' practice will focus on business litigation of all types, including class actions, franchising, trademark, ADA accessibility, antitrust and health care. The firm's Atlanta office is located at The Forum, 3290 Northside Parkway, Suite 400, Atlanta, GA 30327; 678-553-2100; Fax 678-553-2212; www.gtlaw.com.
- > In January, **Weissmann & Zucker, P.C.**, added **Mark Euster** as a name partner and is now **Weissmann, Zucker & Euster, P.C.** Euster has practiced with the firm since 2004. Additionally, the firm added **Kamy Molavi** and **Paul Morochnik** as **partners**, and **Elaine Brasch** as **of counsel**. Molavi, formerly a partner at Nelson Mullins, is a construction litigator. Morochnik, formerly a partner at Thompson O'Brien, is a banking lawyer. Brasch focuses on bankruptcy law. The firm's Atlanta office is located at One Securities Center, 3490 Piedmont Road, Atlanta, GA 30305; 404-364-2300; Fax 404-364-2320; www.wzlegal.com.
- > **Elarbee, Thompson, Sapp & Wilson, LLP**, announced that **Sanford A. Posner** was elevated to **partner** in the firm's immigration practice group. Posner's practice encompasses naturalization and immigration, non-immigrant work visas, immigrant work visas, permanent residency, employer sanctions, naturalization and consular processing. The firm is located at 800 International Tower, 229 Peachtree St. NE, Atlanta, GA 30303; 404-659-6700; Fax 404-222-9718; www.elarbeethompson.com.

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➤ **Cohen Pollock Merlin & Small, P.C.**, announced that **Rebecca G. Godbey** joined the firm as **partner**. Godbey, formerly a partner with Bird & Godbey LLP, practices with the firm's family wealth planning group. She will continue to concentrate her legal work in wills, trusts and estates. The firm is located at 3350 Riverwood Parkway, Suite 1600, Atlanta, GA 30339; 770-858-1288; Fax 770-858-1277; www.cpmas.com.

➤ **Smith Moore LLP** named **Aaron Pohlmann** and **Lori Spencer** as **partners**. Pohlmann represents the firm's litigation practice group and focuses his practice on life, health, and disability insurance law, in addition to matters related to the Employee Retirement Income Security Act. Spencer is a member of the health care practice group and concentrates her practice on corporate and regulatory health care law with a focus on medical research and development matters. The firm's Atlanta office is located at One Atlantic Center, 1201 W. Peachtree St., Suite 3700, Atlanta, GA 30309; 404-962-1000; Fax 404-962-1200; www.smithmoorelaw.com.

➤ **Fish & Richardson P.C.** named **Paul E. Franz** and **Christopher O. Green** as **principals** in the patent prosecution group and litigation group, respectively. Frantz will continue to focus his practice in patent prosecution and litigation in the areas of the electrical and mechanical engineering arts. Green will continue to focus his practice on complex intellectual property litigation involving a diverse range of technologies. The firm's Atlanta office is located at 1180 Peachtree St. NE, 21st Floor, Atlanta, GA 30309; 404-892-5005; Fax 404-892-5002; www.fr.com.

➤ **Gillis & Creasy, LLC**, announced their relocation to a larger office space. The firm is a litigation boutique specializing in general civil litigation, and also handles real estate transactions and related commercial work. The firm's new office is located at 2 Ravinia Drive, Suite 650, Atlanta, GA 30346; 770-394-3127; Fax 770-394-3117; www.creasyllaw.com.


In Albany

➤  **Langley & Lee, LLC**, announced that **Joseph P. Durham Jr.** was named a **partner** in the firm. Durham joined Langley & Lee as an associate in 2003. The firm is located at 1604 W. Third Ave., Albany, GA 31707; 229-431-3036; Fax 229-431-2249; www.langleyandlee.com.

In Augusta

➤ **Hull, Towill, Norman, Barrett, and Salley** announced that **Neal W. Dickert** has joined the firm as a **partner** in its Augusta office, specializing in alternate dispute resolution and general litigation. Dickert served as a Superior Court Judge for the Augusta Circuit from January 1997 until his retirement in November 2007. The firm's office is located at Suite 700, SunTrust Bank Building, 801 Broad St., Augusta, GA 30901; 706-722-4481; Fax 706-722-9779; www.hullfirm.com.

In Camilla

➤  **The Millsaps Law Firm** announced that **Shanna Cody Aderhold** joined the firm to head its real estate, wills and trusts sections. The firm is located at 2 W. Broad St., Camilla, GA 31730; 229-336-7425; Fax 229-336-9587; www.camillalaw.com.


In Columbus

➤ **Amelia Anne Godfrey** joined the firm of **Pope, McGlamry, Kilpatrick, Morrison & Norwood, LLP**, as an **associate**. Prior to joining the firm, Godfrey served for two years as a law clerk to the Hon. Clay Land, U.S. District Court for the Middle District of Georgia. The firm's Columbus office is located at 1111 Bay Ave., Columbus, GA 31901; 706-324-0050; Fax 706-327-1536; www.pmk.com.

➤ **Carlock, Copeland, Semler and Stair, LLP**, announced that **Clayton M. Adams**, member of the general liability, health care litigation and trucking & transportation litigation practice groups, was named **partner**. The firm's Columbus office is located at The Rothschild Building, 1214 First Ave., Suite 400, Columbus, GA 31901; 706-653-6109; Fax 706-653-9472; www.carlockcopeland.com.

➤ **Hall Booth Smith & Slover, P.C.**, opened an **office in Columbus**. The firm has more than 105 attorneys in 25 practice areas serving clients through Georgia offices in Atlanta, Albany, Athens, Brunswick, Columbus and Tifton, as well as a location in Nashville, Tenn. The firm's Columbus office is located at 1443 Second Ave., Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; www.hbss.net.

In Macon


➤  **Constangy, Brooks & Smith, LLC**, promoted **W. Jonathan Martin II** to **managing member** (equity owner). Martin focuses his practice in employment discrimination litigation for management. The firm's Macon office is located at 577

Mulberry St., Suite 710, Macon, GA 31201; 478-750-8600; Fax 478-750-8686; www.constangy.com.

In Martinez

> **John A. Donsbach** and **J. Brian King** announced the formation of **Donsbach & King, LLC**. The firm provides legal counsel and representation in the areas of business formation and planning; business transactions; business litigation; securities and securities litigation; probate and estate administration, disputes, and litigation; wills, trusts and estate planning; as well as tax planning, disputes and litigation. The firm is located at 504 Blackburn Drive, Martinez, GA 30907; 706-650-8750; Fax 706-651-1399; www.donsbachlaw.com.

In Savannah


>  **Zachary H. Thomas** joined the law firm of **Bergen & Bergen, P.C.**, as an **associate**. In his new position, Thomas is involved in all aspects of civil litigation with an emphasis on representing claimant rights in medical malpractice, wrongful death and catastrophic injury cases. Before

joining **Bergen & Bergen**, Thomas served as an associate with the law firm of **Savage, Turner, Pinson & Karsman**. The firm is located at 123 E. Charlton St., Savannah, GA 31401; 912-233-6600; Fax 912-233-6660.

In Valdosta

> **Coleman Talley LLP** announced that **Gregory Q. Clark** joined the firm as an **associate**. His practice areas include business transactions, real estate, and income and estate taxation. The firm's Valdosta office is located at 910 N. Patterson St., Valdosta, GA 31601; 229-242-7562; Fax 229-333-0885; www.colemantalley.com.

In Charleston, W. Va.

>  **Jackson Kelly PLLC** welcomed **Rena K. Seidler** as an **associate** in the firm's litigation and business litigation practice groups. Prior to moving to West Virginia, Seidler practiced family and business law in Georgia. The firm's Charleston office is located at 1600 Laidley Tower, 500 Lee St., Charleston, WV 25301; 304-340-1000; Fax 304-340-1130; www.jacksonkelly.com.

2008 is the 20th Anniversary of the Georgia High School Mock Trial Competition!

In celebration of this significant milestone, please consider a donation to the Barnes Endowment Fund at the Lawyers Foundation of Georgia in support of the 2009 National High School Mock Trial Championship in Atlanta.

We are currently in need of an additional \$240,000 to fully fund the national tournament next spring.

For sponsorship or donation information, please contact the Mock Trial office at the State Bar of Georgia at 404-527-8779/800-334-6865 ext. 779 or mocktrial@gabar.org.
Or Contact Lauren Barrett, Executive Director of the Lawyers Foundation of Georgia 404-659-6867 or lfg_lauren@bellsouth.net



Leave No File Behind

How to Leave a Job Ethically and Professionally

by Paula Frederick

“I’m outta here!” your best friend at the firm whoops as he bursts into your office. “I just got an offer for that in-house position I applied for. I’m on my way to let Big Partner know, then I’m going to stop by the mailroom for some boxes to pack my things. Bye-bye, sucker! No more sweat shop for me!”

You’re pleased for your buddy, but horrified at his departure plans. “Umm.... Mike, you don’t really plan to pack up and leave TODAY, do you?”

“Why not?” Mike responds. “You know Big Partner doesn’t like to keep people around after they have given notice. Besides, I can use the next two weeks for a much-needed vacation.”

“Are you just going to leave the files you’ve been working on in the desk drawer for one of us suckers to pick up?”

“Heck, those files are coming to you anyway,” Mike responds. “Whaddya want me to do?”

“Oh boy,” you shake your head. “You’ve been watching too many movies! Lawyers don’t have the luxury of quitting and just walking out!”

What are the ethical obligations of a lawyer who is leaving a job?

At a minimum, Mike should arrange for an orderly transfer of his work to ensure that each case continues to be handled properly. Ideally, Mike could accomplish this


by working with the firm to assign each new file to a particular lawyer, providing a transfer memo about the status of the case to the new lawyer, notifying the affected clients of the change and filing documents to substitute counsel in any matters pending before a tribunal.

Mike should also promptly provide his new address to the old firm and to the Bar so that they know where to contact him if necessary.

To walk away from the files without ensuring an adequate transition violates Rule 1.3, which prohibits a lawyer from abandoning a legal matter entrusted to him. Mike also risks liability for any malpractice that occurs if any of the cases “fall between the cracks” because of his abrupt departure.

The usual rule on withdrawal, Rule 1.16, also provides guidance. It does not strictly apply to Mike’s situation because the firm will be continuing the representation. Generally, the rule requires that a lawyer comply with applicable laws and rules in the manner of withdrawal. Subpart

(d) requires a lawyer to “take steps to the extent reasonably practicable to protect a client’s interests” by providing reasonable notice to the client.

As Mike’s friend, you can also remind him that Big Partner knows everyone in town. Leaving the firm on good terms will pay dividends that will last much longer than a two-week vacation. 



Paula Frederick 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

(Dec. 15, 2007 – Feb. 20, 2008)

by Connie P. Henry

Disbarments

John Houser Parker

Memphis, Tenn.

Admitted to Bar in 1974

On Jan. 28, 2008, the Supreme Court of Georgia disbarred Attorney John Houser Parker (State Bar No. 562475). This reciprocal disciplinary action arose out of Parker's misappropriation and conversion to his own use of over \$390,000 in funds from clients. The Supreme Court of Tennessee disbarred Parker in November 2006.

Matthew Brian Bernhard

Hoboken, N.J.

Admitted to Bar in 1996

On Jan. 28, 2008, the Supreme Court of Georgia disbarred Attorney Matthew Brian Bernhard (State Bar No. 054890). Bernhard was disbarred in New Jersey for misappropriating client trust account funds.

Christopher Michael Howlette

Atlanta, Ga.

Admitted to Bar in 1998

On Jan. 28, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Attorney Christopher Michael Howlette (State Bar No. 372717). On Nov. 6, 2007, Howlette pled guilty in the Superior Court of Cobb County to sale of cocaine, sale of MDMA and sale of ketamine, which are all violations of the Georgia Controlled Substances Act.

Mary Kathryn Reagan

Alpharetta, Ga.

Admitted to Bar in 1994

On Jan. 28, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Attorney Mary Kathryn Reagan (State Bar No. 597230). Reagan admits that in connection with a real estate closing on two separate properties she issued several checks from her attorney trust account totaling more than \$350,000; that, at the time she wrote the checks, sufficient funds were not available in her trust account to cover the checks; and that she failed to account for the fiduciary funds she received at the closings.

Kurt Martin Thomas

Carrollton, Ga.

Admitted to Bar in 1991

On Jan. 28, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Attorney Kurt Martin Thomas (State Bar No. 704601). On June 4, 2007, Thomas pled guilty in Carroll County under the first offender act to theft by taking.

Robert Norman Wilson

Ayer, Mass.

Admitted to Bar in 1994

On Feb. 11, 2008, the Supreme Court of Georgia disbarred Attorney Robert Norman Wilson, Jr. (State Bar No. 768995). This reciprocal disciplinary action arose out of the revocation of Wilson's license in the Commonwealth of Massachusetts for misappropriation of funds held in trust for his clients.

Joseph Edward Sapp

Washington, Ga.

Admitted to Bar in 2003

On Feb. 11, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Attorney Joseph Edward Sapp (State Bar No. 626306). Sapp did not complete work on his clients' cases, did not keep client funds separate from his own, did not keep proper records reflecting the exact balance held for each client, and did not refund unearned fees. Sapp also was convicted in the Superior Court of Stephens County of five misdemeanor counts, including two counts of family violence battery and one count each of simple battery, cruelty to children and obstructing a person making an emergency phone call.

Constance L. Thomas

Savannah, Ga.

Admitted to Bar in 1978

On Feb. 11, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of Attorney Constance L. Thomas (State Bar No. 704812). Thomas pled guilty to five misdemeanors in the Superior Court of Gwinnett County and agreed to surrender her license to practice law. Thomas pled guilty to four counts of theft by taking and one count of criminal trespass.

Michael B. Butler

Atlanta, Ga.

Admitted to Bar in 1983

On Feb. 11, 2008, the Supreme Court of Georgia disbarred Attorney Michael B. Butler (State Bar No. 099913). Butler acknowledged service of the formal complaint in this matter, but did not file a timely answer. Consequently, the special master denied Butler's motion for dismissal of the grievance and granted the State Bar's motion for findings of fact and conclusions of law by default. The special master, however, did conduct a hearing to determine whether there were any mitigating or aggravating factors, and allowed Butler to offer testimony to establish whatever information might be relevant in light of the default.

On or about June 9, 2004, a client hired Butler to represent her in divorce proceedings and paid him \$3,500 as a retainer fee. She also entrusted \$50,000 to Butler for him to hold in his attorney trust account. The client terminated Butler's services on or about June 16, 2004, and hired a new attorney, who directed Butler to return the unearned portion of the retainer and the \$50,000. Butler did not return the funds and instead used the funds for his own benefit. In July 2004, the Superior Court of Forsyth County ordered Butler to provide to the new attorney, no later than July 30, 2004, all monies that he had in his possession on behalf of the client and to provide an itemized accounting of any other monies that he was paid by the client. Butler failed to comply with the order.

The Supreme Court found no factors in mitigation, but found several factors in aggravation of discipline, including Butler's refusal to acknowledge the wrongful nature of his conduct, dishonest or selfish motive and apparent indifference to making restitution, his obstruction of the disciplinary process, and his submission of false statements of material fact in his response to the grievance.

Earl Antoine Davidson

Atlanta, Ga.

Admitted to Bar in 1981

On Feb. 11, 2008, the Supreme Court of Georgia disbarred Attorney Earl Antoine Davidson (State Bar No. 206525). The facts are deemed admitted by default. On January 2007 Davidson's bank notified the State Bar that \$1,200 was returned due to insufficient funds in his trust account. Davidson wrote checks on and made counter withdrawals from his trust account for his personal use, for the personal use of his nephew, and for the use of a limited liability company in which he shares ownership with his nephew. Davidson's dues are unpaid and he was suspended for noncompliance with Continuing Legal Education rules and regulations.

Suspensions**Dorothea P. Kraeger**

Phoenix, Ariz.

Admitted to Bar in 1988

On Jan. 28, 2008, the Supreme Court of Georgia suspended Attorney Dorothea P. Kraeger (State Bar No. 005940) from the practice of law in Georgia. On March 14, 2006, the Supreme Court of Arizona suspended Kraeger for four years (retroactive to March 23, 2005) and placed her on probation for a period of two years upon her reinstatement. Kraeger is suspended until she provides proof to the Review Panel that she has been reinstated to the practice of law in Arizona.

Ike A. Hudson

Newnan, Ga.

Admitted to Bar in 1979

On Jan. 28, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Attorney Ike A. Hudson (State Bar No. 374518) for a one-year suspension of his license. In August 2005, Hudson agreed to provide legal representation to two different clients and accepted retainers from them. He either failed to do any substantive work on those legal matters or failed to complete the work as promised. He also failed to adequately communicate with one of those clients during the course of his representation. As a result of his conduct, each of the clients suffered some form of harm, ranging from needless worry to a dismissal of action. Both clients had to seek other representation. Hudson failed or refused to refund any portion of the retainers paid. Although both clients filed grievances against him, he failed or refused to answer the Notices of Investigation.

The Court found in mitigation that except for an interim suspension in one of these cases, Hudson had no prior disciplinary history and he was cooperative with the State Bar. Hudson's reinstatement is conditioned upon proof to the Review Panel that he has reimbursed the retainers paid by the two clients as set out in his Petition.

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

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Stephen G. Waldrop

Fayetteville, Ga.

Admitted to Bar in 2000

On Jan. 28, 2008, the Supreme Court of Georgia suspended Attorney Stephen G. Waldrop (State Bar No. 731114) from the practice of law in Georgia for a period of 24 months from Jan. 29, 2007, with conditions for reinstatement. Waldrop pled guilty in Coweta County under the First Offender Act to possession of N-N-dimethylamphetamine, in violation of the Georgia Controlled Substances Act, and was sentenced to a five-year period of probation. Justices Hunstein and Thompson dissented.

Chase Arthur Caro

White Plains, N.Y.

Admitted to Bar in 1986

On Feb. 11, 2008, the Supreme Court of Georgia suspended Attorney Chase Arthur Caro (State Bar No. 111072) from the practice of law in Georgia until the conclusion of disciplinary proceedings in New York that allege misconduct that involves conversion of client funds. Caro has been suspended from the practice of law in New York.

James H. Bone

Villa Rica, Ga.

Admitted to Bar in 1972

On Feb. 11, 2008, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Attorney James H. Bone (State Bar No. 067000) for a three-month suspension of his license to commence from the date of the order.

Bone was the Standing Chapter 13 Trustee for the U.S. Bankruptcy Court of the Northern District of Georgia. He made a tape recording of a settlement conference with the knowledge of the participants. During the conference he agreed to contact the creditors of the Chapter 13 debtor's former wife, who had appeared as a creditor of the Chapter 13 debtor, to explain her financial difficulties as the result of her failure to receive pay-

ments through the bankruptcy case. After a settlement agreement was executed, the debtor's former wife asked Bone's assistant for a copy of the recording of the settlement conference, and the assistant prepared a compact disc of the recording and a cover letter for Bone's signature. However, Bone destroyed the disc, did not send the letter, and instructed his staff to delete the original recording from the computer system. When the former wife later filed a motion to rescind the settlement agreement, which had been filed with the court, Bone filed a responsive pleading stating that no recording of the settlement conference existed due to mechanical error. Following an investigation, Bone amended his response to acknowledge that he had instructed his staff to delete the recording and to inform the court that a digital copy had been found.

In mitigation of discipline the court found that Bone had no prior disciplinary history; Bone admitted his conduct upon inquiry by the U.S. Trustee's Office; Bone corrected the misrepresentation to the court; and Bone did not obtain any financial or other gain by his misconduct.


Review Panel Reprimand**Janet R. Hightower**

Pennsylvania Attorney

On Feb. 11, 2008, the Supreme Court of Georgia ordered that

Janet R. Hightower be administered a Review Panel reprimand. Hightower is licensed to practice in Pennsylvania, but not in Georgia. She worked in a Georgia law firm and signed letters "Janet R. Hightower, Attorney at Law,*" with the asterisk corresponding to a footnote that stated, "Admitted only in PA;." The letters were directed to the opposing party in a case being handled by the firm in which Hightower worked and threatened legal action or attempted to settle the case. The State Bar previously obtained an injunction against Hightower enjoining her from engaging in the practice of law in Georgia.

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 Dec. 15, 2007, two lawyers have 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.

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Creating an Environmentally Friendly Office

by Pamela Myers

Kermit the Frog says, “It’s not easy being green . . .”, but we’ve heard your pleas for help and created this list of 10 green office tips. Perhaps some of these ideas will take hold and create a “green” mindset at your office!

Recycle paper, bottles and cans.

Although basic, recycling these three items can have a huge effect on our landfills. Just like at home, have separate bins in the office for recycling. If your office building does not recycle, have a conversation with the building manager. If your building isn’t willing, you can create a weekly schedule for sharing the work of taking a recycling bin home each week. Here at the Bar we recycle office paper, cans, glass, newspaper and plastics.

Make sure you’re using compact fluorescent (CF) or light emitting diodes (LED) lights throughout the office.

CFs use a quarter of the energy and last up to 10 times as long as standard lights. LEDs are even more energy-efficient. Bulbs and tubes are easy to find at home improvement stores. If your building is in charge of the lighting, talk to your building manager, making sure they understand how much money they can save from buying CF or LED lights—lower cost is always an incentive. *Note:* Because CFs and LEDs contain mercury, broken or burned out bulbs must be handled very carefully and turned in at a Household Hazardous Waste collection site.

Get lighting motion sensors for offices, conference rooms and restrooms.

There’s no reason for lights to be on when there’s no one in the room. We have these here at the Bar Center. In my office, if there’s no activity for 10 minutes, they automatically shut off. These sensors can be purchased at a home improvement center and installed by a qualified electrician or you can do it yourself if you’re handy. As well as saving electricity, you can also tell who’s in, who’s out and, possibly, who’s snoozing!

Turn off the lights when you leave and shut down your printers, fax machines and computers.

Many of us are still operating under the false impression that it’s more efficient to leave computers on overnight. This belief is a strong holdover from our incandescent heritage. It is advisable to shut off all the electronics when you leave the office. There’s an added benefit to this, especially with your computers; when a computer is properly logged off, successful unauthorized attempts to power up and log in are dramatically reduced.

If possible, use laptop computers rather than desktop computers.

Energy Star models use up to 90 percent less energy. (Read more at www.energystar.gov.) It’s fine to continue using the equipment you have until it needs to be replaced.

Curb the bottled water habit.

Americans throw out more than 35 billion plastic water bottles every year. We don’t often think about how many water bottles are used at the office each



year. You can sign up for a water delivery service, or get a water filter and have everyone use a ceramic or glass cup. This is an easy thing to do and it can have a big impact.

Stock your office's kitchen with washable ceramic plates and mugs rather than paper toss-aways.

I don't like to admit it, but I don't like to wash dishes at the office. But I'm working on it!

Use recycled or recyclable office papers and other office products.

Just about everything for daily office use now comes in a recycled version. You can get paper, envelopes, folders, pads and sticky notes. You can find many of these options at Staples, OfficeMax and Office Depot, and you can also find them online at Green Earth Office Supply (www.greenearthoffice.com) or at The Green Office (www.thegreenoffice.com).


Get a programmable thermostat.

Most probably, you have outfitted your home with this type of thermostat. They are easy to find at home improvement stores and are a snap to install. Utilizing this inexpensive upgrade will help you

keep your building or offices warm/cool during regular business hours and save power and money when the staff is away.

Go green when redecorating or replacing furnishings in your office.

There are many options when it comes to refurnishing or replacing items in your office. Many items such as paint, flooring, textiles and furniture are now available in either recycled or renewable resources. Home improvement centers are now carrying a limited stock of these items. Choice is greatly expanded by working with a decorator or design service. A total "green" makeover may not be on your agenda, but these alternatives are worth keeping in mind.

Going green can be easier than you think. If you'd like additional information, contact Pam at 404-526-8621. 



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

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Sections Fill Calendars in Spring 2008

by Johanna B. Merrill

Several sections have held events coming into the spring. On Feb. 29 the **Environmental Law Section** kicked off its calendar year with its annual inaugural luncheon, featuring speaker Dr. Carol Couch, director of the Georgia Environmental Protection Division. Martin Shelton of Schulten Ward & Turner, LLP, is the section's chair for 2008.

The **Intellectual Property Law Section**, chaired by Todd McClelland, has hosted several luncheons and meetings since the year began. On March 4, the section's Trademark Committee, chaired by James Johnson, hosted Lynne G. Beresford, commissioner for trademarks at the U.S. Patent and Trademark Office for a discussion of current happenings at the Trademark Office. The following day, the Copyright Committee, chaired by Melissa Howard, presented a CLE luncheon on the topic "Music in the Digital Age." Speakers Noni Ellison-Southall, James Trigg and Charmaine Williams talked about music litigation, clearance and licensing issues faced by lawyers and their clients today. On March 18 the Patent Committee, chaired by Philip Burrus, held a luncheon on the Patent Reform Act with speaker E. Anthony Figg of Rothwell, Figg, Ernst & Manbeck, P.C. Figg is also the chair of the American Bar Association's Patent Law Reform Task Force. The Litigation Committee, chaired by Brad Groff, also hosted a lunch in March with speakers Angela Payne James, Scott Brient and Jennifer Liotta, all of Alston & Bird, who discussed the topic "Patent Obviousness: Post-KSR Developments in Patent Litigation and Prosecution."

It's also now time to join, and rejoin, sections for the 2008-09 Bar year. Please note that the section, **Franchise & Distribution Law**, will be on the dues notice for the

first time. All sections have a web presence at www.gabar.org or you may contact the section liaison with any section-specific questions at 404-527-8774.

Update from the Sections

By Philip Burrus
Burrus Intellectual Property Law Group, LLC

Patent Resources Group Comes to Atlanta

On Feb. 13, 2008, Professor Kayton's Patent Resources Group came to Atlanta. Nearly every patent practitioner is familiar with Professor Kayton. His legal education company, Patent Resources Group, is responsible for numerous attorneys and agents passing the patent bar. In addition to providing first-rate patent bar review courses, the Patent Resources Group also provides many advanced courses for more seasoned attorneys and patent agents.

One of the more popular courses is "Crafting and Drafting Winning Patents." This course is generally a three-day course in a remote city (read "not Atlanta") and is offered at a tuition of nearly \$2,200. When including travel and lodging costs, the course—while excellent—is sometimes cost prohibitive for practitioners to attend.

After much work and cooperation from Brad Buhler and Sally Sakelaris at Patent Resources Group, the Patent Committee of the IP Section of the State Bar was able to arrange a condensed version of Crafting and Drafting Winning Patents in Atlanta. The one-day course was entitled "Latent Dangers of Common Patent Prosecution Practices."

Hosted at the Bar Headquarters, the class was a six-hour CLE event focused upon drafting better patent applications. Targeted at practitioners with between four and six years experience, the course provided a sight-seer's tour through many Federal Circuit cases where drafting pitfalls were key factors in the various decisions. Paul Gardner provided an entertaining look at cases that no practitioner wants to experience. His discussion high-

lighted common practices—often taught to young attorneys in the past—that can result in decisions invalidating patents or leading to narrow claim construction.

The course began with claim construction issues. Gardner cited the 1895 case *McCarty v. Lehigh* for the premise that narrowing elements from the specification, which are not recited in the claims, may not be read into the claims. He then took the audience through a string of Federal Circuit cases from 1988 and 2007 in which the court read elements from the abstract, specification, drawings and prosecution history into the claims to arrive at narrow claim interpretations.

His talk then turned to enablement. He began the discussion with a 1973 case of *In re Smythe*. In that case, a “fluid” recited in the claims was enabled, and covered either bubbles or gas. He quickly contrast several cases held invalid for lack of enablement, including the famous *Gentry Gallery v. Berkline*, in which a sofa control

“readily accessible to an occupant in the seat” was held invalid due to a narrow description of controls in the specification and figures.

The next topic was improper incorporation by reference. Gardner cited cases where practitioners failed to properly incorporate by reference, as well as cases where incorporation by reference was over-reaching and eventually led to a more narrow claim construction. The course concluded with several cases on inequitable conduct issues arising in patent prosecution.

While there were many takeaways from the class, a couple points were paramount: First, single embodiment specifications are written at the drafter’s peril. Many of the cases involving narrow claim construction were due to a single embodiment being described in the specification. Second, Gardner suggested never referring to anything in the specification as “the invention.” He even went as far as to suggest—with case law supporting

the suggestion—not to mention either disadvantages of the prior art or advantages of the present invention. Oops! I meant advantages of method steps and apparatus components described in your specification.

The Patent Committee is always looking for new and interesting events for its members. If you have ideas for an event, or if you are interested in hosting an event, please contact Philip Burrus at pburrus@burrusiplaw.com. Upcoming events include an April event on European Patent Opposition Practice. The Patent Committee extends sincere appreciation to the staff at the State Bar, especially Johanna Merrill for helping with all our events. 



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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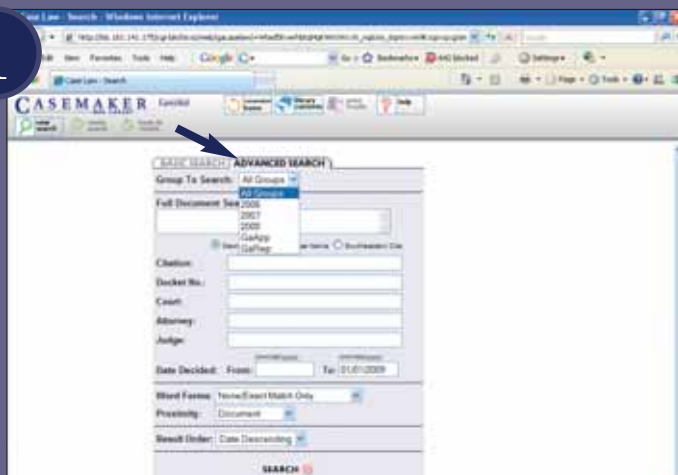
by Jodi McKenzie

Most people do their searches in Casemaker on the basic search page. In fact, there may be many attorneys who only use the basic search page. The basic search page is convenient and user friendly because it allows you to find case law based on keywords or phrases. But using the advanced search options can do this and much more. The advanced search options can make your searches faster and your results more on point. Let's take a closer look at some of the features on the advanced search page.

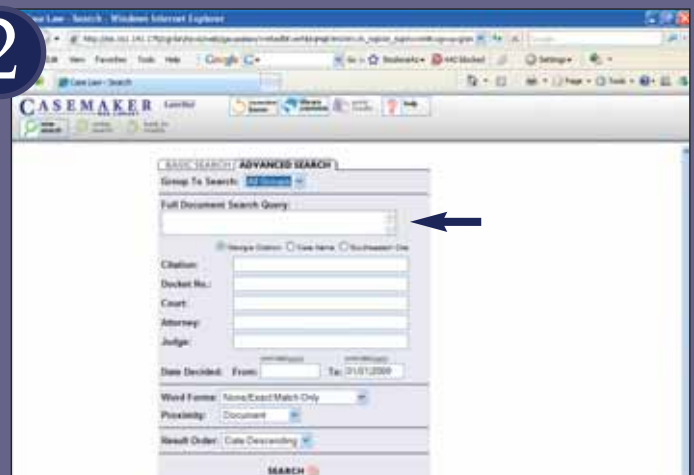
You access the advanced search screen by clicking on the advanced search tab that appears when you begin a search in Caselaw. The first field is the "Group to Search," which is set by default to "All Groups" (see fig. 1). This means that the search engine is looking in both the Georgia Appellate Reporter and the Georgia Supreme Court Reporter for all years going back to 1938. The pull down button for this field will allow you to indicate that you only want to look in one of the reporters or in only a specified year. Most searches are done using the default "All Groups" setting.

The next field is the "Full Document Search Query" field, also known as the basic search field (see fig. 2). This field works exactly the same way as the field on the basic search screen. Again, this is where you want to enter key words or phrases. The search engine then looks for those search terms within the content of the opinions. Your resulting documents include your search terms and are displayed based on date descending chronological from the date the cases were decided.

1



2



Next, you will see three radial buttons under the basic search field. These allow you to do a search based on official citation number, case name, or Southeastern cite number. When you want to find a case by the citation number, simply select the corresponding radial button by clicking on it. Then enter the citation number in the field directly below the radial buttons called "Cite." For a case name search, you would click on the case name button and then enter the case name in the "Cite" field. You can do a search using one party's name or both parties' names. You would follow the same procedure for the Southeastern cite search (see fig. 3).

The next four fields show you that you can search cases based on the docket number, the court, an attorney or a judge. With the attorney or judge search, it is sometimes necessary to play with the name to find the correct results. You may know an attorney as Bob, but he signs his legal documents Robert. You would need to use Robert in order to find his cases. Because the judge and attorney field searches are so specific about where they look for these names on the documents, it may be helpful to enter the judge or attorney's name in the basic search field with quotation marks around it to make sure you find all of their corresponding cases (see fig. 4).

The next option allows you to do a "Date Decided" search. This allows you to set a time frame on your search. If you wanted to find every document that had been added to Casemaker since the beginning of the year, you would fill in 01/01/2008 for the "from" date and leave the default date set at 01/01/09 to include every document up to the current date. These time frames can be set for anytime from 1938 forward. By adding search terms into the Basic Search field with a date search, you can have the search engine look specifically for documents decided during a particular time frame and referencing a particular topic (see fig. 5).

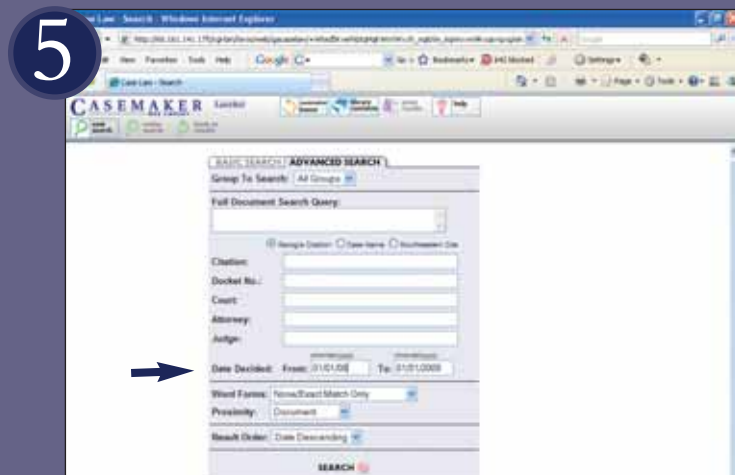
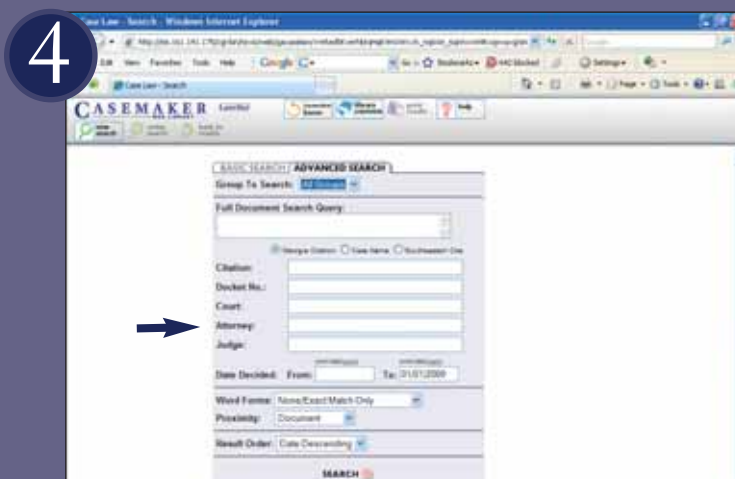
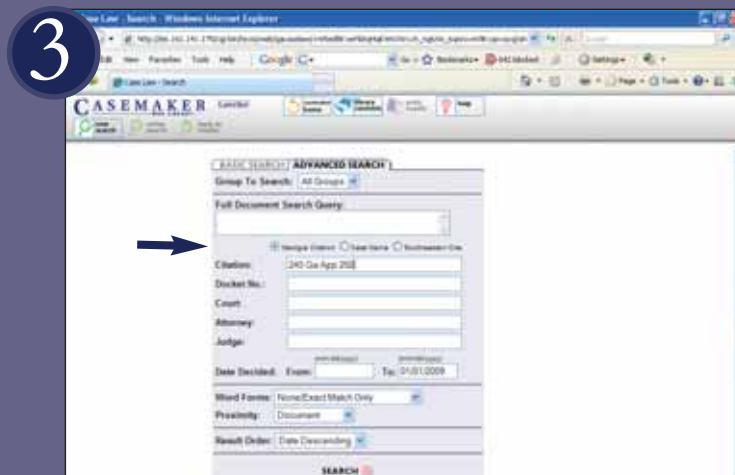
The following options, "Word Forms," "Proximity," and "Result Order" require more in depth explanations and will be addressed in the next installment.

Casemaker training is available at the State Bar of Georgia. The next training day can be found on the State Bar of Georgia homepage or in your most recent copy of E-News, the Bar's electronic newsletter.

Please contact Jodi McKenzie, at 404-526-8618, if you need further assistance with Casemaker. 



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



Common Comma Conundrums Part II

by Karen H. Sneddon and David Hricik



The last column explored a few mandatory rules concerning comma usage. As promised, this installment of Writing Matters continues to explore common comma conundrums by examining an “it depends” rule of comma usage. Rather than a matter of style, however, you will see that sometimes whether a comma should be used depends on the substantive meaning of the sentence. The presence or absence of a comma can change meaning. By the time we’re done, you’ll understand the two different meanings conveyed by the following sentences:

Her son, who went to Mercer, was elected judge.
Her son who went to Mercer was elected judge.

What we’re dealing with are restrictive and nonrestrictive clauses. As used here, a “clause” is simply a group of words with a subject and a predicate. Although this grammar terminology no doubt conjures dreary images of diagramming sentences, understanding the distinction between restrictive and nonrestrictive clauses is important to proper comma usage.¹ The rule about usage is what makes the presence or absence of commas important: commas should be used to book-end only nonrestrictive clauses, not restrictive clauses. When commas offset a clause, therefore, it conveys to the reader that the clause is nonrestrictive and that can change the meaning of the sentence.

Let’s see why.

The use of an appositive often raises this comma conundrum. An “appositive” is a noun or noun phrase that modifies a noun that immediately precedes it. A restrictive appositive cannot be removed from a sentence without obscuring the identity or meaning of the word or phrase the appositive modifies. In other words, the noun or noun phrase limits, or restricts, a prior word or phrase in the sentence. In contrast, a nonrestrictive appositive does not limit, or restrict, a prior word or phrase. Instead, a nonrestrictive appositive provides additional information, but not information necessary to identify the word or phrase the appositive modifies.

This example should help clarify the difference between restrictive and nonrestrictive appositives: *My maternal grandmother, Eliza Santos, was the first lawyer in my family.* The phrase “maternal grandmother” clearly identifies the individual, and no additional information is necessary to do so. “Eliza Santos” provides additional information. But it is not necessary to know which maternal grandmother was the first lawyer in the family, since (as of today at least!) someone can have only one maternal grandmother.

How can commas create ambiguity or change meaning? Suppose you write this sentence: *The plaintiff’s sister Kaylee witnessed the accident.* Because no commas are used, the word “Kaylee” is read as a restrictive appositive and conveys the fact—whether true or not—that


the plaintiff has more than one sister. In contrast, this sentence—*The plaintiff’s sister, Kaylee, witnessed the accident*—conveys the fact that the plaintiff has one sister, Kaylee. The presence of the two commas changes the meaning of the sentence and may make the sentence factually inaccurate.

Now you should understand why the sentence without commas about the Mercer graduate becoming a judge conveys something quite different than the one with commas. The sentence without commas indicates that she has more than one son!

Practice Problems

We have two practice problems this installment, and we provide the answers as examples in the handy chart we include at the end. Don’t cheat, though, and look there first!

1. *The child’s biological father who was 18 when the child was born refused to relinquish his parental rights.* What kind of clause is “who was 18 when the child was born”? If commas are needed, where should they be?
2. *The defendant’s aunt who lives in Macon agreed to post bail.* What

type of clause is “who lives in Macon”? Does this sentence indicate that the defendant has only one aunt? If that’s the case, are commas necessary? If the defendant has two aunts, how should the sentence be revised? 



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. Understanding restrictive and non-restrictive also helps decipher the use of *that* and *which*, a dilemma that (which?) will be the subject of another installment of *Writing Matters*.

The Lawyer Assistance Program of the State Bar of Georgia

Stress?
Chemical dependency?
Family Problems?
Mental or Emotional Impairment?

The Lawyer Assistance Program is a free program providing confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law.

For more information, please call the confidential hotline number at 800-327-9631.

Suggested Answers to the Practice Problems

	Restrictive Clause: Provides necessary information to identify a word or phrase in the sentence	Nonrestrictive Clause: Provides additional, nonessential information that is not necessary to clearly identify a word or phrase in the sentence
	Do not set off by commas.	Set off by commas.
1		<p><i>The child’s biological father, who was 18 when the child was born, refused to relinquish his parental rights.</i></p> <p>“The child’s biological father” identifies the individual. The clause includes additional, nonessential information.</p>
2	<p><i>The defendant’s aunt who lives in Macon agreed to post bail.</i></p> <p>This sentence conveys that the defendant has more than one aunt. The clause “who lives in Macon” is necessary to identify the particular aunt who has agreed to post bail.</p>	<p><i>The defendant’s aunt, who lives in Macon, agreed to post bail.</i></p> <p>This sentence conveys that the defendant has only one aunt. The clause “who lives in Macon,” then provides additional, nonessential information.</p>

Top Honors Given to Judges and Lawyers for Community Service

by Avarita L. Hanson

On the unseasonably balmy evening of Jan. 29, the State Bar of Georgia and the Chief Justice's Commission on Professionalism presented the Ninth Annual Justice Robert Benham Awards for Community Service at the Bar Center. Patrise Perkins-Hooker of Atlanta's Hollowell Foster & Gepp, P.C., chair of the awards selection committee, opened the program by leading the honorees into the Bar Center's auditorium to the sound of Mariah Carey's "Hero."

Perkins-Hooker introduced the event's master and mistress of ceremonies; Master of Ceremonies William "Bill" Liss has represented the public on the selection committee since its inception and is the financial, consumer and legal editor for Atlanta's WXIA-TV News (11 Alive). The "public's advocate" on television for many years, Liss is also an active member of the bars of New Jersey and the District of Columbia. Atlanta attorney Avarita Hanson, mistress of ceremonies, currently serves as the executive director of the Chief Justice's Commission on Professionalism. She has been a leader in many arenas in the state—as a practitioner, law professor, public official and community volunteer.

The Justice Robert Benham Awards for Community Service grew out of a Task Force created when Justice Benham served as chair of the Chief Justice's Commission on Professionalism. The State Bar of Georgia, with the Commission, continues to sponsor these awards and considers this program a top priority

activity. Because Chief Justice of the Supreme Court of Georgia and chair of the Commission, Justice Leah Ward Sears, had an out of town engagement, she delivered her congratulatory greetings by video to the more than 200 people in attendance who hailed from Hartwell to Valdosta.

Committee member W. Seaborn Jones, of Atlanta's Owen Gleaton Egan Jones & Sweeney, introduced Justice Benham and the genesis of the awards. The Justice Robert Benham Community Service Awards were instituted in 1998 to honor the legacy of former Supreme Court of Georgia Chief Justice Robert Benham. During his tenure as chief justice, Justice Benham focused the attention of lawyers and judges on the community and public service aspects of professionalism. Justice Benham has personified community and public service in his own activities off the bench. He has been both the advocate of the quality of giving and commitment to our community, and a role model for these awards.

Justice Benham remarked that lawyers, doctors and the clergy were historically seen as the three professions who were viewed as "community healers." "However," he remarked, "as law practices became more business-like, lawyers became more adversarial." In his comments on the WXIA-TV 11 o'clock evening news, Justice Benham said, "I am very happy, because I've seen many people—lawyers—who are now viewed as community healers rather than adversaries and that makes me proud that that's the role we play more often than not."

Special guests in attendance included Georgia Attorney General Thurbert Baker, Court of Appeals judges and other judges from around the state, and past honorees—Augusta Superior Court Judge W. Duncan Wheale and Cynthia H. Clanton with the Administrative Office of the Courts.

In an Academy Award-type presentation replete with music and photos featuring the honorees in

Justice Robert Benham Awards for Community Service



Lifetime Achievement Award:
C. Thompson Harley
Fletcher, Harley & Fletcher, LLP, Augusta

Nominated by Dr. Dan Rahn, President, Medical College of Georgia, Augusta



Lifetime Achievement Award:
Frank B. Strickland
Strickland Brockington & Lewis LLP, Atlanta

Nominated by Kenneth L. Shigley, Shigley Law Firm, LLC



Judicial District 1: Judge James F. Bass Jr.
Superior Court, Eastern Judicial Circuit, Savannah
Chair of the Georgia Commission on Family Violence, St. Joseph's and Candler Health Systems, Savannah Area Behavioral Health Collaborative, The 100 Black Men of Savannah, Temple of Glory Community Church, Justice Builders

Nominated by Georgia Commission on Family Violence, Submitted by Judge R. Michael Key and Cynthia H. Clanton



Judicial District 2: Joseph K. Mulholland
District Attorney, South Georgia Judicial District, Bainbridge
Youngest district attorney in Georgia, elected in 2004 at the age of 24, South Georgia Literacy Programs, Child Fatality Review Board, Child Abuse Protocol Committee, Child Attendance Protocol Committee, Child Advocacy Center, South Georgia Bar Association President, Decatur County Bar, Adopt-A-Town (Katrina relief program for Pascagoula, Mississippi)

Nominated by Frances Willis, Administrative Assistant, District Attorney



Judicial District 3: Michael L. Chidester
Michael L. Chidester, P.C., Byron
Mayor pro tem of the City of Byron, Peach County Planning and Zoning Board, Byron Better Hometown, Inc., Byron Area Historical Society, Byron Rotary Club, Peach County Chamber of Commerce

Nominated by Lawrence C. Collins, Collins & Aromatorio, P.C.



Judicial District 4: Judge Mark Anthony Scott
Superior Court, Stone Mountain Judicial District, Decatur
United States Air Force veteran, Leadership Academy of the 100 Black Men of DeKalb County, North Druid Hills Kiwanis Club, New Bethel A.M.E. Church of Lithonia

Nominated by Denise M. Warner, DeKalb County Superior Court



Judicial District 5: Linda T. Muir
Of Counsel, The Saylor Law Firm P.C., Atlanta
Cool Girls, Inc.'s Advisory Council and Cool Tech, The Future of Newcomb College, Quantum Leaps, Buckhead Women's Club, International Alliance for Women, Vinings Homeowner's Club, Atlanta Women's Network, Atlanta Chapter of the American Corporate Counsel Association, Trinity Presbyterian Church

Nominated by Attorney General Thurbert E. Baker



Judicial District 5: Christopher Glenn Sawyer
Alston & Bird LLP, Atlanta
Chairman and Emeritus Advisor, Trust for Public Land, 2007 top non-profit in the nation, The Beltline Partnership, Chattahoochee Nature Center, Chattahoochee River Greenway, Land Trust Alliance, The Nature Conservatory, Atlanta Bar Association, Atlanta Volunteer Lawyers Foundation, Atlanta Legal Aid Society, Leadership Georgia, Trinity Presbyterian Church, Yale University Divinity School Advisory Board

Nominated by The Trust for Public Land, Submitted by Karen Fuerst, Regional Counsel



Judicial District 5: Julie M.T. Walker
Former Atlanta City Judge, Private Practice, Cousins Public Interests Fellow of the University of Georgia Law School, Atlanta
Founding member and past president of the Georgia Association of Black Women Attorneys, founder of the GABWA Foundation, Aid to Imprisoned Mothers, Sister-to-Sister mentoring program at the Fulton County Juvenile Court, Founder of the Civil Pro Bono Family Law Project

Nominated by Beverly Iseghohi, Civil Pro Bono Family Law Project



Judicial District 6: Rudjard M. Hayes
Sanchez Hayes & Associates, Tyrone
Children's advocate, mentor and coach of youth football with the Marietta Vikings and Peachtree City Packers, Little League baseball, the Peachtree City Swim Team, Boys & Girls Club, Inc., Mock Trial Team of Our Lady of Mercy Catholic High School, Shepherd Spinal Center volunteer, Sunday School Teacher, Children's Health Care of Atlanta Child Advocacy Center's Testimony Project

Nominated by Lorraine Sanchez Hayes & Anita Johnson Clark, Sanchez Hayes & Associates, LLC



Judicial District 7: Nathan J. Wade
Law Offices of Nathan J. Wade, P.C., Marietta
Coach of Cobb County Athletic Club Cougars, youth basketball team and the Buckhead YMCA youth team, volunteer reader at Brumby Elementary School, a mentor at the Wood-Wilkins Center, Cobb County's alternative school, mock trial judge and coach, Black United for Youth-Cobb, Kiwanis Club, Cobb County Parks and Recreation Board

Nominated by Tonya C. Boga, The Boga & Edwards Law Group



Judicial District 8: Jehan Y. El-Jourbagy
Haygood Lynch Harris Melton & Watson, Monticello
Jasper County High School Band Booster Club, 4-H Club Alumni, Truancy Prevention Project, Art Trail Coordinator, organizer and conductor of the Monticello Community Ban, Jasper County Water & Sewer Authority, Monticello Downtown Development Authority, Jasper County Historical Foundation, Towaliga Bar Association, Kiwanian of the Year for 2007

Nominated by Larry P. Lynch, Haygood Lynch Harris Melton & Watson LLP



Judicial District 9: John Acklin Gram
Whelchel & Dunlap, LLP, Gainesville
Boys and Girls Club of Hall County, Salvation Army, Good News Clinics, Gainesville State College Foundation, Healthy Hall Partnership, Health Access Initiative, Challenged Child and Friends

Nominated by Wendy Glasbrenner, Georgia Legal Services Program



Judicial District 10: Walter James Gordon Sr.
The Gordon Law Firm, Hartwell
Rotarian of the Year, Rotary Club of Hartwell, Jaycees, Actor, Founding Member and Board member of the Hart County Community Theater, Youth Sunday School Teacher, adult leader, deacon and member of the Men's Vocal Group of the First Baptist Church of Hartwell, Northern Circuit Bar Association, Georgia EMC Counsel Association, and local chapter of the American Cancer Society

Nominated by Murphy C. Miller

action, Bill Liss provided the professional narration describing the honorees' contributions to their communities beyond official duties of their legal work. This year, the State Bar of Georgia and the Chief Justice's Commission on Professionalism honored two judges and 12 outstanding attorneys. The honorees received original glass sculptures featuring three figures in a cooperative posture holding the seal of the State Bar of Georgia, designed by Patrise Perkins-Hooker and produced by Atlanta's Lillie Glassblowers, Inc. The 12 judicial district awards were handed out prior to the two Lifetime Achievement Awards. Three lawyers this year were singled out for the honors from Judicial District 5, the Atlanta District, which has the largest number of attorneys, many deserving recognition as outstanding community servants.

Two attorneys were selected to receive the Lifetime Achievement Awards: C. Thompson Harley of Augusta and Frank B. Strickland of Atlanta. The Lifetime Achievement Award is the highest award given to a judge or lawyer who, in addition to meeting the criteria for the Justice Benham Community Service Award, has demonstrated an extraordinarily long and distinguished commitment to volunteer participating in the community throughout his or her legal career.

C. Thompson Harley, of Fletcher, Harley & Fletcher, LLP, was recognized for his more than 30-year record of service, particularly benefiting Augusta's most needy residents. An elder with the First Presbyterian Church of Augusta, he spends much time serving citizens in the church's inner city. As president of the Salvation Army Advisory Board, he was instrumental in securing a \$70 million dollar grant to construct a Kroc Center in Augusta for the National Salvation Army Board. He has worked with the Boy Scouts, Westminster Schools of Augusta, and championed the

effort to bring the U.S. Olympic Rowing Teams to Augusta to train. Harley also served the Augusta Port Authority, Rotary Club of West Augusta and the Augusta-Richmond County Museum of History.


A true champion of providing access to justice for all, Frank B. Strickland has for more than 30 years promoted civil legal aid, performed pro bono work and engaged bar activities to support these efforts. The lead partner in Atlanta's Strickland Brockington & Lewis LLP, as chairman of the Legal Services Corporation, a presidential appointment with Senate confirmation, Strickland is currently responsible for leading the government-funded corporation which supports funding for civil legal aid programs across the country. He has garnered bipartisan support in the Congress for this cause and effected increased funding for legal aid programs. As a board member of the Atlanta Legal Aid Society, he led the charge driven by a federal judge and recruited 400 volunteer lawyers to represent 800 Cuban detainees in the Federal penitentiary in their attempts to prove they were not dangerous and should be released. He has been a board member of the Georgia Legal Service Program, the Federal Defender Program, a leader in the Georgia Republican Party, served on the Georgia Ethics Commission, and is a past president of the Atlanta Bar Association.

The 2008 Benham Service Community Award recipients have all served a wide range of community organizations, government-sponsored activities and humanitarian efforts outside of their judicial duties and professional practices. Their fields of service range from environment and conservation activities, youth mentoring, social service, church and religious activities, politics, community development, education, sports, recreation, arts, health care and securing access to the legal system for all. The involve-

ments and accomplishments of this year's honorees are immeasurable and they are all deserving of these awards.

In her closing remarks Perkins-Hooker thanked the members of the Selection Committee: Lisa E. Chang, Law Offices of Lisa E. Chang, PC, Decatur; W. Seaborn Jones, Owen Gleaton Egan Jones & Sweeney, Atlanta; William "Bill" Liss, WXIA-TV News, Atlanta; J. Henry Walker IV, Kilpatrick Stockton LLP, Atlanta; and Brenda C. Youmas, Edwards & Youmas, Macon. This Committee has had only three chairs in its history. Perkins-Hooker presented tokens of appreciation to the two past committee chairs, Judge G. Alan Blackburn of the Court of Appeals of Georgia and J. Henry Walker IV.

Perkins-Hooker thanked State Bar of Georgia President Gerald Edenfield and Executive Director Cliff Brashier for their financial support for the awards program. She also thanked the staff of the Chief Justice's Commission on Professionalism for their efforts to ensure that the program and reception so excellently reflected the purpose of this event: Assistant Director Terie Latala, Office Administrator Mary McAfee, John Marshall Law School Student Intern Travis Koon and the State Bar volunteers. She acknowledged the co-emcees, Bill Liss and Avarita Hanson. Following presentations of the awards, the recipients and their guests were graciously feted at a reception in their honor.

Nominations are sought for the 10th Annual Justice Robert Benham Awards for Community Service to be presented in 2009. The Call for Nominations appearing with this article outlines the awards criteria and procedure. 



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



The State Bar of Georgia and
The Chief Justice's Commission on Professionalism
request nominations for the

10th Annual Justice Robert Benham Awards for Community Service



The State Bar of Georgia and the Chief Justice's Commission on Professionalism invite nominations for the 10th Annual Justice Robert Benham Awards for Community Service. Awards will be presented at a special ceremony in Atlanta in 2009.

Judges and lawyers meet the criteria for these awards if they have combined a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government-sponsored activities, or humanitarian work outside of their professional practice. Contributions may be made in any field, including but not limited to: social service, education, faith-based efforts, sports, recreation, the arts, or politics.

Eligibility: Nominees must: **1)** be a member in good standing of the State Bar of Georgia; **2)** have a record of outstanding community service and continuous service over a period of time to one or more cause, organization or activity; **3)** not be a member of the Selection Committee, staff of the State Bar of Georgia or Chief Justice's Commission on Professionalism; and **4)** not be in a contested judicial or political election in calendar year 2008.

10th Annual Justice Robert Benham Awards for Community Service
Nomination Form

Nominee:

Name: _____

Address:* _____

(* Please use either the nominee's work or home address that corresponds with the location of their most significant community service.)

Phone: _____ Email: _____

Nominator:

Name:** _____

(** For organizations, identify a contact person in addition to the name of the organization.)

Address: _____

Phone: _____ Email: _____

In addition to this form, nominations must also be accompanied by:

- ☐ **A Nomination Narrative:** Explain how the nominee meets the award criteria described above. Specify the nature of the contributions and identify those who have benefitted from the nominee's involvement. Specify when and how long the nominee participated in each identified activity.
- ☐ **Biographical Information:** Attach a copy of the nominee's resume or curriculum vitae.
- ☐ **Letters of Support:** Include 2 letters of support from individuals and/or organizations in the community that describe the nominee's work and the contributions made.

Submission of Materials: Send nominations to Terie Latala, Chief Justice's Commission on Professionalism, Suite 620, 104 Marietta Street, N.W., Atlanta, GA 30303 • Phone: (404) 225-5040 • Fax: (404) 225-5041 • Email: terie@cjcpga.org

All Nominations must be postmarked by October 17, 2008

In Memoriam

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

David Walter Adams
Moultrie, Ga.
Admitted 1995
Died February 2008

James Arogeti
Atlanta, Ga.
Admitted 1967
Died January 2008

James S. Berry Jr.
Durham, N.C.
Admitted 1985
Died December 2007

Thomas H. Calhoun
Warner Robins, Ga.
Admitted 1971
Died December 2007

Larry J. Campbell
Harrison, Tenn.
Admitted 1976
Died November 2007

James Burton Cantrell
Spanish Fort, Ala.
Admitted 1949
Died October 2007

David G. Crockett
Atlanta, Ga.
Admitted 1969
Died January 2008

Wayne C. Crowe
Peachtree City, Ga.
Admitted 1961
Died March 2007

Jay G. Davis
Duluth, Ga.
Admitted 1974
Died August 2007

James P. Fields
Brunswick, Ga.
Admitted 1979
Died December 2007

Melvin Gutterman
Atlanta, Ga.
Admitted 1975
Died January 2008

Steven James Halls
Norcross, Ga.
Admitted 2006
Died October 2007

Frank B. Hester
Atlanta, Ga.
Admitted 1951
Died July 2007

Lawrence Floyd Klar
Fayetteville, Ga.
Admitted 1992
Died February 2008

E. R. (Roy) Lambert
Madison, Ga.
Admitted 1950
Died February 2008

Carl E. Lancaster Jr.
Macon, Ga.
Admitted 1954
Died December 2007

Melburne D. McLendon
Atlanta, Ga.
Admitted 1949
Died January 2008

Faryl Sims Moss
Atlanta, Ga.
Admitted 1980
Died February 2008


Guy Parker
Peachtree City, Ga.
Admitted 1942
Died October 2007

Lawrence S. Rosenstrauch
Columbus, Ga.
Admitted 1944
Died September 2007

Robert W. Scherer
Atlanta, Ga.
Admitted 1953
Died January 2008

Kyle Yancey
Mableton, Ga.
Admitted 1951
Died February 2008

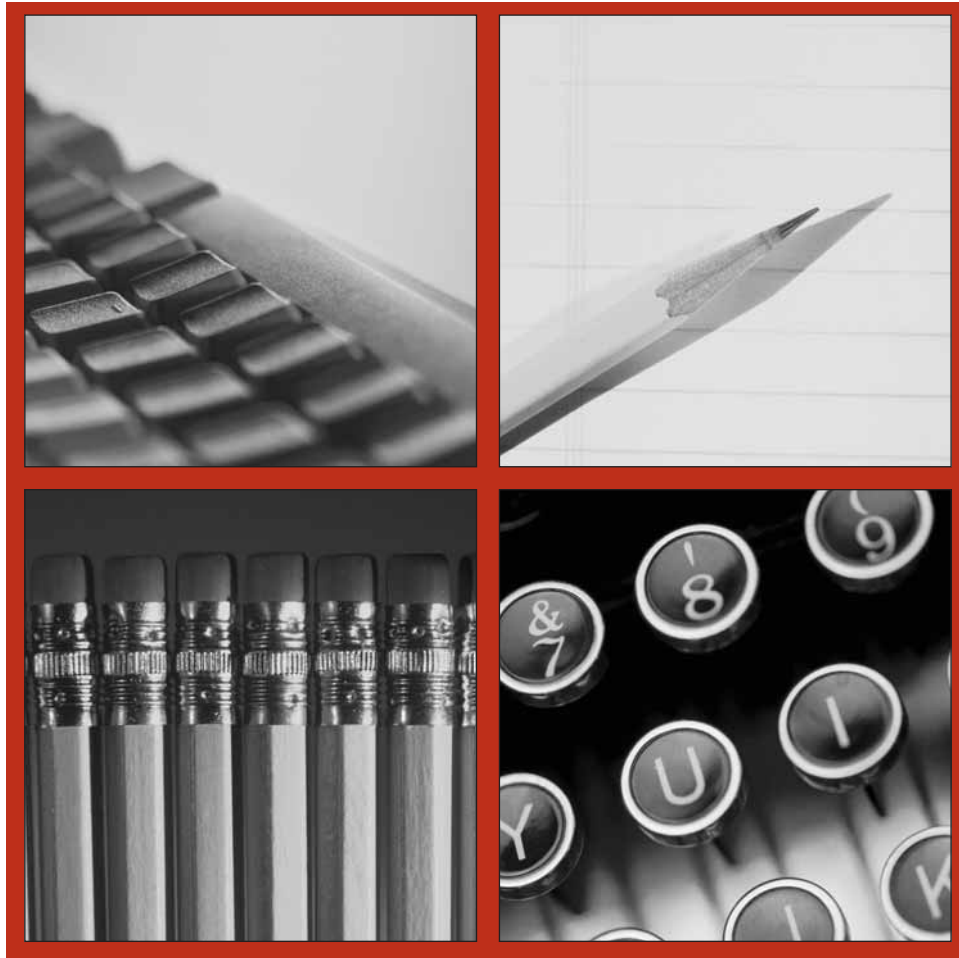
Paul Peter Zilka
Lawrenceville, Ga.
Admitted 1991
Died January 2008

Wayne C. Crowe of Peachtree City died March 2007. A member of the State Bar of Georgia, he practiced law in Atlanta from 1962-94 with the Maley & Crowe law firm. Crowe belonged to the Old War Horse Lawyers Club and Peachtree City United Methodist Church. He had a true passion for aviation and spent many happy hours flying his plane. Crowe was also a loving father and grandfather who treasured his three grandchildren. 



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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Submit articles to Sarah I. Coole, Director of Communications,
104 Marietta St. NW, Suite 100, Atlanta, GA 30303 or sarah@gabar.org.
If you have additional questions, you may call 404-527-8791.

*Not all submitted articles are deemed appropriate for the Journal.
The Editorial Board will review all submissions and notify the author of their decision.

April-May

APR 1	NBI, Inc. <i>Boundary Disputes – Resolving Client Conflicts</i> Atlanta, Ga. 6 CLE Hours	APR 3-4	Ali-Aba <i>Global Warming – Climate Change and the Law</i> Multi-Site 13 CLE Hours
APR 1	Lorman Education Services <i>Basic Principles of Construction Insurance</i> Self Study 1.5 CLE Hours	APR 3-4	Ali-Aba <i>Insurance Industry and Financial Services Litigation</i> Multi-Site 11 CLE Hours
APR 1	Lorman Education Services <i>Covenants Not to Compete and Trade Secrets</i> Multi-Site 1.5 CLE Hours	APR 3	ICLE <i>Nuts & Bolts of Business Law</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
APR 1	Lorman Education Services <i>Policies and Procedures in Dealing With Employees</i> Multi-Site 1.5 CLE Hours	APR 4	ICLE <i>Georgia Non-Profit Law Seminar</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
APR 3	Lorman Education Services <i>Conducting Effective Witness Interviews</i> Multi-Site 1.5 CLE Hours	APR 4	American Immigration Lawyers Association <i>2008 Spring CLE Conference</i> Washington, D.C. 7.7 CLE Hours
APR 3	Lorman Education Services <i>Criminal Practice-Triage for the Civil Lawyer</i> Multi-Site 1.5 CLE Hours	APR 4	Lorman Education Services <i>AIA Contracts Seminar</i> Multi-Site 6.7 CLE Hours
APR 3-5	Southeastern Bankruptcy Law Institute <i>34th Annual Seminar on Bankruptcy Law and Rules</i> Atlanta, Ga. 19.4 CLE Hours	APR 4	ICLE <i>Inside the Courtroom</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
APR 3	Mealey Publications, Inc. <i>Mealey Lead Litigation Conference</i> Orlando, Fla. 10 CLE Hours	APR 6	Patent Resources Group, Inc. <i>Drafting Patent License Agreements</i> Various Dates and Locations 15 CLE Hours

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



APR 6	Patent Resources Group, Inc. <i>Designing Around Valid U.S. Patents</i> Various Dates and Locations 15 CLE Hours	APR 10	Lorman Education Services <i>Pros and Cons of Cost-Plus vs. Fixed Price Contracts</i> Multi-Site 1.5 CLE Hours
APR 7	Lorman Education Services <i>Understand and Interpret Financial Statements</i> Multi-Site 1.5 CLE Hours	APR 10	Lorman Education Services <i>Changes to Cafeteria Plans What You Need to Know</i> Multi-Site 1.5 CLE Hours
APR 8	American Arbitration Association <i>ADR Step Clauses in the New Construction Industry Standard Form Contract Documents – Are you Ready?</i> Self Study 1 CLE Hours	APR 11	NBI, Inc. <i>Family Law from A to Z</i> Atlanta, Ga. 6 CLE Hours
APR 9	ICLE <i>Triple Your Memory & Confidence and Halve Your Stress</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 11	ICLE <i>LLCs and LLPs</i> Atlanta, Ga. See www.iclega.org for locations 3 CLE Hours
APR 9	NBI, Inc. <i>The Latest in Patent Law</i> Multi-Site 1.5 CLE Hours	APR 11	ICLE <i>Real Property Foreclosure</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
APR 9	Lorman Education Services <i>Federal Flood Plain Development – Critical Issues in Flood Insurance Reform and Wetland Permitting</i> Multi-Site 1.5 CLE Hours	APR 14	Lorman Education Services <i>Phased Retirement Programs – Exploring the Issues of an Emerging Trend</i> Multi-Site 1.5 CLE Hours
APR 9	Lorman Education Services <i>Successful Strategies for Controlling Workers Compensation</i> Multi-Site 1.5 CLE Hours	APR 14	Lorman Education Services <i>The Art of Legal Writing</i> Multi-Site 1.5 CLE Hours
APR 10	ICLE <i>Trials Tips, Tactics & Tales</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 15	Lorman Education Services <i>The Development Approval Process</i> Atlanta, Ga. 6 CLE Hours
		APR 16	Lorman Education Services <i>Managing Construction Projects</i> Savannah, Ga. 6 CLE Hours

April-May

APR 16	Lorman Education Services <i>Strategies Short of Foreclosure – Introduction to Real Estate</i> Multi-Site 1.5 CLE Hours	APR 17	NBI, Inc. <i>Real Estate Closings A-Z: Navigate Your Closing With Confidence</i> Atlanta, Ga. 6 CLE Hours
APR 16	Lorman Education Services <i>Landlord and Tenant Law</i> Atlanta, Ga. 6 CLE Hours	APR 18	ICLE <i>Criminal Law for the Civil Law Practitioner</i> See www.iclega.org for locations 6 CLE Hours
APR 16-18	ICLE <i>Probate Court Judges 2008 Spring Seminar</i> Athens, Ga. 10 CLE Hours	APR 22	Lorman Education Services <i>Basic Principles of Construction Insurance</i> Multi-Site 1.5 CLE Hours
APR 16	American Arbitration Association <i>Spotlight on Entertainment ADR – Lights, Camera Arbitration</i> Self Study 1 CLE Hours	APR 22	Lorman Education Services <i>Covenants Not to Compete</i> Atlanta, Ga. 3.8 CLE Hours
APR 17	Lorman Education Services <i>What Are the Implications of Adopting an English Only or English Fluency Policy</i> Multi-Site 1.5 CLE Hours	APR 23	NBI, Inc. <i>School Safety – Practical Solutions and Legal Safeguards</i> Multi-Site 1.5 CLE Hours
APR 17	ICLE <i>Employment Law in the Trenches</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 23	Lorman Education Services <i>Mental Illness and the ADA – An Employers Nightmare</i> Multi-Site 1.5 CLE Hours
APR 17	ICLE <i>Power Point in the Courtroom</i> Athens, Ga. See www.iclega.org for locations 6 CLE Hours	APR 24	Lorman Education Services <i>Valid Consents – What Every Health Care Provider Should Know</i> Multi-Site 1.5 CLE Hours
APR 17	ICLE <i>Employment Law</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 24	Lorman Education Services <i>Are Attorney Communications with Experts an Open Book or is Work Product Protection Possible?</i> Multi-Site 1.5 CLE Hours

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APR 24	ICLE <i>Governmental Liability</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 30	Practicing Law Institute <i>Foreign Issuers & The U.S. Securities Laws 2008</i> New York, N.Y. 6.5 CLE Hours
APR 25	Lorman Education Services <i>Legal Implications of Health Rewards and Punitive Disincentives</i> Multi-Site 1.5 CLE Hours	APR 30	Lorman Education Services <i>Recent Developments in Exempt Organization Taxation</i> Multi-Site 1.5 CLE Hours
APR 25-26	ICLE <i>2008 International Law Symposium</i> Montego Bay, Jamaica See www.iclega.org for locations 8 CLE Hours	APR 30	Lorman Education Services <i>Risk Management in Telephone Triage – Lessons Learned</i> Multi-Site 2 CLE Hours
APR 25	ICLE <i>Guardian Ad Litem Training</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	APR 30	Lorman Education Services <i>How Companies Can Avoid Disaster by Implementing a Records Retention and Data Management Plan</i> Multi-Site 1.5 CLE Hours
APR 25	Special Needs Trusts Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	MAY 1	American Arbitration Association <i>Will Traditional Litigation Strategies Work in Employment Arbitration?</i> Self Study 1 CLE Hours
APR 25	Law Seminars International <i>Patent Claim Construction</i> Atlanta, Ga. 6.5 CLE Hours	MAY 1	Lorman Education Services <i>The Uniform Customs and Practice for Documentary Credits</i> Multi-Site 1.5 CLE Hours
APR 28-29	Practicing Law Institute <i>Insurance Coverage 2008</i> Various Dates & Locations, Ga. 12 CLE Hours	MAY 2	Practicing Law Institute <i>Hotels 2008</i> New York, N.Y. 6.25 CLE Hours
APR 28	Cobb County Bar Association <i>The Rule of Law – Panel Discussion</i> Marietta, Ga. 1 CLE Hours	MAY 2	ICLE <i>Mediation Advocacy</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
APR 29	Lorman Education Services <i>The Interstate Land Sales Full Disclosure Act – Application</i> Multi-Site 1.5 CLE Hours		

April-May

MAY 2	ICLE <i>Business Immigration Law</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	MAY 8	Lorman Education Services <i>Keys to Understanding Land Records</i> <i>Teleconference</i> Multi-Site 1.5 CLE Hours
MAY 5-7	ICJE <i>Juvenile Court Judges 2008 Spring Seminar</i> Athens, Ga. 10 CLE Hours	MAY 8-10	ICLE <i>Real Property Law Institute</i> Amelia Island, Fla. See www.iclega.org for locations 12 CLE Hours
MAY 5	Lorman Education Services <i>Tax Treatment of Charitable Fundraising</i> Multi-Site 1.5 CLE Hours	MAY 8	Lorman Education Services <i>Document Retention and Destruction – What Human Resource Professionals Must Know</i> Multi-Site 1.5 CLE Hours
MAY 5	Atlanta Tax Forum, Inc. <i>Partnerships</i> Atlanta, Ga. 1 CLE Hours	MAY 8	Lorman Education Services <i>Internal Controls Teleconference</i> Multi-Site 1.5 CLE Hours
MAY 6	Lorman Education Services <i>Documentation and Proof of Construction Delay</i> Multi-Site 1.5 CLE Hours	MAY 12	Practicing Law Institute <i>Advanced Seminar on Copyright Law 2008</i> New York, N.Y. 6 CLE Hours
MAY 6	Lorman Education Services <i>ALTA Owners and Lenders Policies</i> Multi-Site 1.5 CLE Hours	MAY 12	Lorman Education Services <i>7 Questions to Use When Establishing Cause for Disciplining and Terminating Employees</i> Multi-Site 1.5 CLE Hours
MAY 7	Lorman Education Services <i>Health Savings Accounts</i> Multi-Site 1.5 CLE Hours	MAY 12	Lorman Education Services <i>The Art and Science of Firing a Client – Ethically</i> Multi-Site 1.5 CLE Hours
MAY 7	Lorman Education Services <i>Employment Law A to Z Seminar</i> Atlanta, Ga. 6.7 CLE Hours	MAY 13	Lorman Education Services <i>Pupil Records – Rules Responsibilities and Requirements</i> Multi-Site 1.5 CLE Hours
MAY 7	Lorman Education Services <i>Breaking Through to Not Guilty – New Trial Tactics</i> Multi-Site 1.5 CLE Hours		

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MAY 13	Lorman Education Services <i>The Uniform Environmental Covenants Act</i> Multi-Site 1.5 CLE Hours	MAY 16	ICLE <i>Common Carrier Liability</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours
MAY 14	Lorman Education Services <i>Executing Cost Saving Strategies</i> Multi-Site 1.5 CLE Hours	MAY 19	Lorman Education Services <i>Rights and Issues of the Subordinate Lender</i> Multi-Site 1.5 CLE Hours
MAY 14	Lorman Education Services <i>Family Limited Partnerships in Estate Planning</i> Multi-Site 1.5 CLE Hours	MAY 20	Lorman Education Services <i>The New IRS Rules Covering Corporate Estimated Tax</i> Multi-Site 1.5 CLE Hours
MAY 14	Lorman Education Services <i>Drafting Clear and Enforceable Contracts</i> Multi-Site 1.5 CLE Hours	MAY 20	Lorman Education Services <i>Documentation and Proof of Construction Delay</i> Multi-Site 1.5 CLE Hours
MAY 15	Lorman Education Services <i>Prevailing Wage Law</i> Atlanta, Ga. 6.7 CLE Hours	MAY 20	Lorman Education Services <i>Discovery Skills for Legal Professionals</i> Atlanta, Ga. 6 CLE Hours
MAY 15	Lorman Education Services <i>Developing a Pay-for-Performance Plan</i> Multi-Site 1.5 CLE Hours	MAY 21	Lorman Education Services <i>Construction Lien Law</i> Atlanta, Ga. 6.7 CLE Hours
MAY 15	ICLE <i>Dog Bite Cases</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	MAY 21	Lorman Education Services <i>7 Questions to Use When Establishing Cause for Disciplining</i> Multi-Site 1.5 CLE Hours
MAY 15	ICLE <i>Construction, Mechanics' and Materialmen's Liens</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours	MAY 22-24	ICLE <i>Family Law Institute</i> Destin, Fla. See www.iclega.org for locations 12 CLE Hours
MAY 16	ICLE <i>Nuts & Bolts of Employment Law</i> Atlanta, Ga. See www.iclega.org for locations 6 CLE Hours		

Amendments to the Rules of the U.S. Court of Appeals

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

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

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

Proposed Amendments to Uniform Superior Court Rules 4, 17, 24 and 39

At its business meeting on Jan. 24, 2008, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 4, 17, 24, and 39. A copy of the proposed amendments may be found at the Council's website at www.cscj.org. Should you

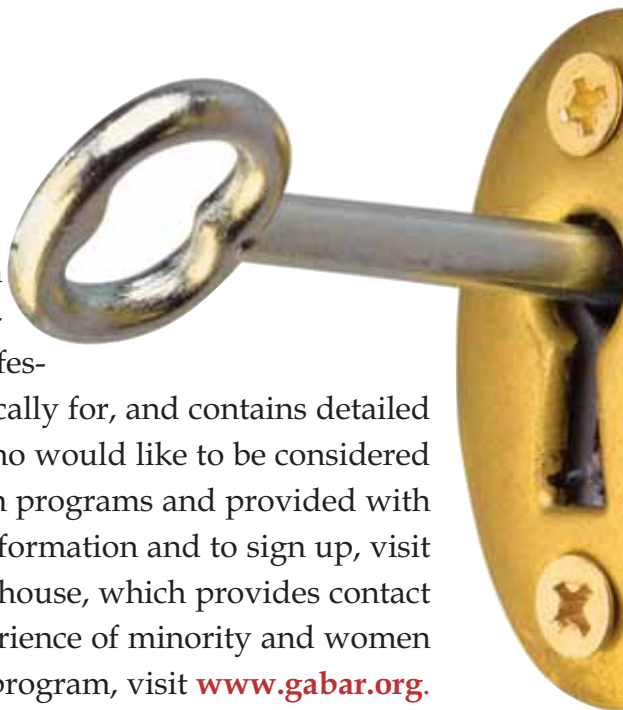
have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, Georgia 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, June 16, 2008.

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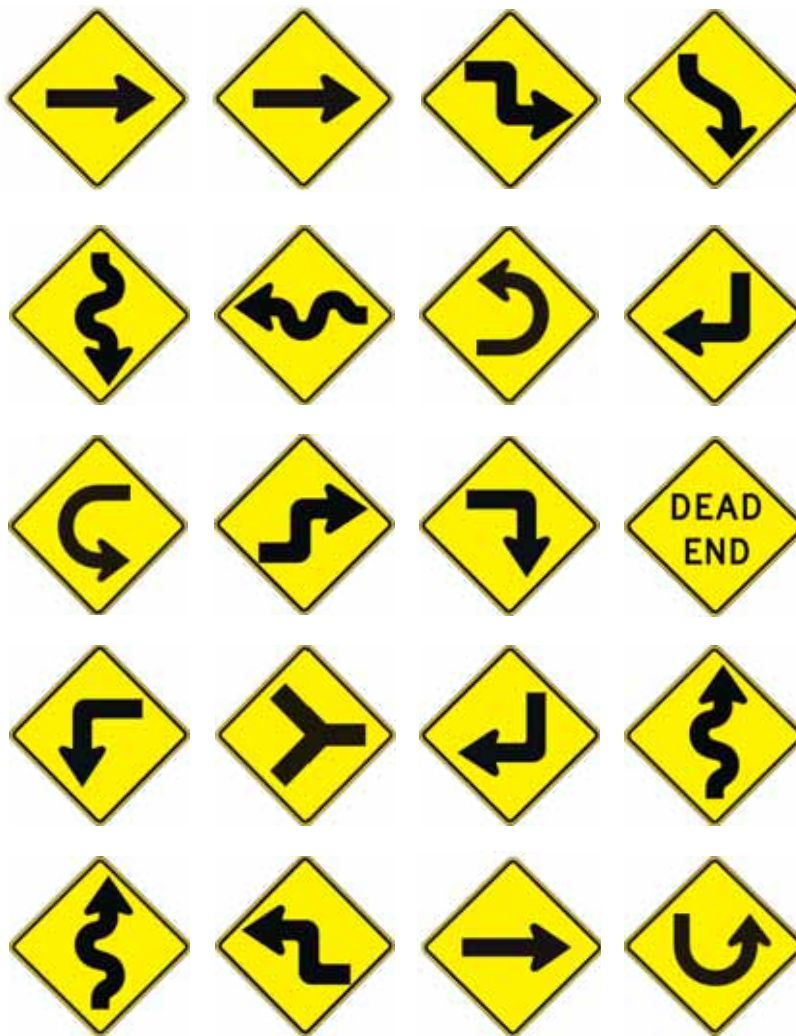
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